

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6490 of 2018

1. Manendra Kumar Son of Ram Babu Singh Resident of Village- Rampurwa, P.S.- Hilsa, District- Nalanda.
2. Premchandra Kumar, Son of Narendra Prasad Resident of Village- Amarpuri, P.S.- Harnant, District- Nalanda.
3. Rintu Kumar, Son of Naval Prasad @ Naval Singh Resident of Village- Fatehpur, P.S.- Chighsaura, District- Nalanda.
4. Jitendra Kumar, S/o Rambriksh Singh Resident of Village- Nagar Nausa, P.S. Nagarnausa, District- Nalanda.
5. Manjit Kumar, Son of Anil Prasad Resident of Village- Chandi, P.S.- Chandi, District- Nalanda.
6. Gajendra Kumar, Son of Late Kedar Sharma Resident of Village- Bhamendrapur, P.S.- Hilsa, District- Nalanda.
7. Raj Kishore Kumar, Son of Late Preman Prasad Resident of Village- Bhagwatpur, P.S.- Islampur, District- Nalanda.
8. Kumari Nilam Sinha, Wife of Krishnadeo Prasad Resident of Village- Sultanpur, P.S.- Ekangarsarai, District- Nalanda.
9. Kari Devi, Wife of Late Sadan Kewat Resident of Village- Patan Bigha, P.S.- Islampur, District- Nalanda.
10. Amola Devi, Wife of Sudhir Kumar Resident of Village- Nadha, P.S.- Hilsa, District- Nalanda.
11. Malti Devi, Wife of Ramanuj Ravidas R/o Village- Chamadil, P.S.- Hilsa, District- Nalanda.
12. Raushan Kumar, Son of Dwarika Prasad Resident of Village- Chakrasullah, P.S.- Ben, District- Nalanda.
13. Jyotsna Bharti, W/o Chandeshwar Prasad Resident of Village- Chandaut, P.S.- Hilsa, District- Nalanda.
14. Manju Devi, W/o Nandlal Prasad Resident of Village- Pura, P.S.- Ekangarsarai, District- Nalanda.
15. Ram Dahin Das @ Ramdahin Prasad, S/o Shivchandra Prasad R/o Village- Lalse Bigha, P.S.- Hilsa, District- Nalanda.
16. Pramanand Prasad, S/o Sri Krishna Sao R/o Village- Barsiyama, Rasulpur, P.S.- Telhara, District- Nalanda.
17. Sunita Devi, W/o Lal Babu Paswan R/o Village- Makhdumpur, P.S.- Karai Parsurai, District- Nalanda.
18. Chanchala Devi, W/o Late Rajesh Kumar R/o Village- Ward No. 22, Gandhinagar Ramchandarpur, P.S.- Biharsharif, District- Nalanda.
19. Shailendra Kumar Sharma, S/o Late Kameshwar Sharma Resident of Village- Noorsarai, P.S.- Noor Sarai, District- Nalanda.
20. Rambalak Kumar, S/o Late Bihari Mahto Resident of Village- Chandasi, P.S.- Noorsarai, District- Nalanda.



... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director Bihar, State Education Project, Govt. of Bihar, Patna.
3. The District Magistrate, Nalanda.
4. The District Education Officer, Nalanda.
5. The District Programme Officer, Primary Education and Sarva Shiksha Abhiyan Nalanda.
6. The Block Education Officer, Harnaut, District- Nalanda.
7. The Block Education Officer, Karai Parsurai, District- Nalanda.
8. The Block Education Officer, Nagarnausa, District- Nalanda.
9. The Block Education Officer, Hilsa, District- Nalanda.
10. The Block Education Officer, Chandi, District- Nalanda.
11. The Block Education Officer, Thartan, District- Nalanda.
12. The Block Education Officer, Islampur, District- Nalanda.
13. The Block Education Officer, Noorsarai, District- Nalanda.
14. The Head Master, Kasturba Gandhi Residential Girls School, Harnaut, District- Nalanda.
15. The Headmaster, Kasturba Gandhi Residential Girls School, Karai Parsurai, District- Nalanda.
16. The Head Master, Kasturba Gandhi Residential Girls School, Nagar Nausa, District- Nalanda.
17. The Head Master, Kasturba Gandhi Residential Girls School, Hilsa, District- Nalanda.
18. Headmaster, Kasturba Gandhi Residential Girls School, Chandi, District- Nalanda.
19. The Head Master, Kasturba Gandhi Residential Girls School, Thanthari, District- Nalanda.
20. The Headmaster, Kasturba Gandhi Residential Girls School, Islampur, District- Nalanda.
21. The Head Master, Kasturba Gandhi Residential Girls School, Noorsarai, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Zaki Haider Mr. Kumar Kaushik
For the State	:	Mr.Madhaw Prasad Yadav -Gp23 Mr. Arvind Kumar, AC to GP 23
For the BEPC	:	Mr. Girjesh Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

ORAL

Date : 23-03-2023

The petitioners were appointed on Class-IV posts, as Peon, Assistant Cook, Head Cook and Night Guard in various Kasturba Gandhi Residential Girls Schools in different blocks. They were appointed between 14.12.2008 and 23.12.2023.

2. Learned Counsel for the petitioners submits that the petitioners have been working for the last 10-15 years, though on contractual basis, but the grievance of the petitioners is that the respondents are going to make fresh appointment on different posts, including the posts held by them, on contractual basis and for which, an advertisement has been published vide Advertisement No. BSPP/KGBV/02/2022, annexed as Annexure -10(a) to I. A. No. 02 of 2023. The petitioners have challenged the advertisement in question, on the ground that the petitioners are being discriminated inasmuch as the respondents cannot replace one adhoc appointee with another adhoc appointee.

3. On the other hand, learned Counsel for the Bihar Education Project Council submits that the petitioners were appointed on adhoc basis with the condition that whenever fresh appointment, after following the due process, will be started, their



services would not be extended and they will be treated to have vacated their posts. He further submits that a co-ordinate Bench of this Court, vide order, dated 28.02.2018, passed in CWJC No. 14475 of 2008, has held that in the matters of appointment not being under the State, a writ petition under Article 226 of the Constitution of India is not competent, and further, that the nature of the job was contractual for one year, which ended in the year 2009 and after that it was open to the petitioner to apply pursuant to any separate advertisement subject to fulfilling the other eligibility criteria. He further submits that the Bihar Education Project Council has advertised the posts for appointment in consonance with Articles 14 and 16 of the Constitution of India inasmuch as the petitioners were appointed on their respective posts without any open advertisement. He also submits that in the advertisement, in question, the reservation roster has also been followed and it is open to the petitioners to apply for their appointment pursuant to the advertisement.

4. In reply, learned Counsel for the petitioners submits that a Division Bench of this Court, in LPA No. 599 of 2013, in the matter of removal/termination of the services of the Warden and Night Guard, entertained the writ application, which was rejected



by the learned Single Judge on the ground that the writ is not maintainable.

5. I have heard learned Counsel for the parties concerned.

6. It is an admitted position that the petitioners have been working on their respective posts for the last so many years, say for 10 to 15 years. The contention of the learned Counsel for the petitioners is that the action of the authorities in making appointment on the posts on which the petitioners are working is discriminatory and arbitrary inasmuch as the authorities are going to replace one adhoc appointee with another adhoc appointee. Learned Counsel for the Bihar Education Project Council has put an emphasis on the facts that the appointment of the petitioners were made without following the requirement of Articles 14 and 16 of the Constitution of India and without any open advertisement after following the reservation roster. Accordingly, the authorities have decided to make fresh appointment after following the due process of appointment by open advertisement. He further submits that the petitioners, if so desire, may submit their applications for appointment pursuant to the Advertisement No. BSPP/KGBV/02/2022.



7. Taking into consideration the nature of controversy and the fact that the petitioners are working for the last many years, in my opinion, the interest of justice demands that if the petitioners apply for the appointment pursuant to the fresh advertisement, they shall be given one-time age relaxation, if they are found over-age, subject to fulfilling all other criteria prescribed in the advertisement, in question.

8. In case, the petitioners fulfill the eligibility criteria and apply for the posts advertised and are called for the interview, the Interview Committee shall take into consideration their long experience on the posts while assessing their suitability.

9. Since the advertisement was published during the pendency of this writ application, having the last date for submission of online application as 10.01.2023, I feel it appropriate to extend the last date for submission of the online applications, for the petitioners only, for twenty days from today.

10. I have been informed by learned Counsel for the petitioners that interview for the selection on the posts claimed by the petitioners has not yet started.

11. With the aforesaid observation and direction, this writ application is disposed of.



12. I. A. Nos. 1 of 2021 and 2 of 2023 are also disposed,
accordingly.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.03.2023
Transmission Date	N/A

