

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2003 of 2004

=====

Surendra Prasad Tiwari, son of Ramdeo Tiwari, R/o – Village – Kudaria, P.S. - Tarari, District – Bhojpur, At present residing at Boring Canal Road, P.S. - S.K. Puri, District – Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Secondary, Primary and Adult Education, Government of Bihar, Patna.
3. The Commissioner-cum-Secretary, Personnel & Administrative Reforms, Government of Bihar, Patna.
4. The Deputy Secretary, Primary, Secondary and Adult Education, Government of Bihar, Patna.
5. The Director, Mass Education, Government of Bihar, Patna.
6. Joint Director, Mass Education Directorate, Government of Bihar, Patna.
7. Deputy Director, Mass Education Directorate, Government of Bihar, Patna.
8. Assistant Director, Mass Education Directorate, Government of Bihar, Patna.
9. The District Mass Education Officer, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr.Arvind Kumar Tripathi, Advocate
For the Respondent/s	:	Mr.Rajeshwar Singh, G.A.-10
		Mr. Jitendra Kumar, AC to G.A.-10

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

18 21-02-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. This writ application was initially filed challenging Memo No. 510 dated 26th September, 2001 as contained in Annexure '1' to the writ application. The petitioner claims that his service was terminated by respondent no. 1 on a wrong premise that he happened to be an employee of Non-Formal Educational Scheme. The petitioner claims that he was appointed in Adult Education and has been declared an



employee of Adult Education, moreover the order of termination has already been cancelled by the Director vide Annexure '8' to the writ application.

3. Learned counsel for the petitioner has drawn the attention of this Court towards the order of the Hon'ble Division Bench in CWJC No. 4716 of 1993 (The Bihar State Adult and Non-Formal Education Office Employees Association and others vs. The State of Bihar and others). It appears on perusal of the said order that the Association through its General Secretary has challenged the validity of the orders of termination of the petitioner nos. 2 to 12. The Hon'ble Division Bench of this Court had been pleased to quash the order as contained in Annexure '2 series' dated 28.02.1993 by the Director of Mass Education on the ground that the petitioners were appointed without following the regular procedure. The Court noticed that in some of the cases earlier on finding that termination has taken place without giving any show cause notice to the affected persons, the order of termination were quashed. The Hon'ble Division Bench further noticed in the said case that a large number of Class III and Class IV posts were available in the Non-Formal wing of the same Directorate of Non-Formal Education even then the respondents without



resorting to absorb the services of the petitioners had terminated the services of petitioner nos. 2 to 12.

4. It was contained before the Hon'ble Division Bench that in similar cases in respect of *ad hoc* employees and surplus employees the government have made absorption by different orders vide Annexure '25' to the writ application.

5. In view of the order of the Hon'ble Division Bench in CWJC No. 4716 of 1993 holding that the petitioner's termination of service is bad in law and quashing of the impugned orders with a direction to the government to take appropriate steps in absorbing the petitioners in Non-Formal wing of education in accordance with their seniority, the government seems to have acted and taken consequential decisions.

6. The respondent no. 4 has filed a counter affidavit as well as a supplementary counter affidavit. It is stated that the petitioner was appointed in Mass education, Rohtas vide office order no. 227 dated 29.06.1995 as Clerk-cum-Accountant on a temporary post on *ad hoc* basis in the temporary scheme pertaining to adult education sponsored by the Government of India. In his appointment letter itself it was specifically mentioned that his service is totally temporary and can be



dispensed with without any notice or assigning any reason.

7. It is further stated that the Central Government sponsored scheme came to a close in 1992 and the services of the petitioner was dispensed with but in compliance with the order dated 01.09.1993 passed in CWJC No. 4716/1993 the petitioner was absorbed in another centrally sponsored scheme called Non-Formal Education running in the State vide Letter No. 2830 dated 13.09.1993. This Non-Formal Education Programme of the Government of India also came to a close on 31.03.2001, hence, the service of the petitioner along with similar other persons were finally terminated with effect from 01.04.2001 as the Programme in which they were employed was closed with effect from 31.03.2001.

8. By filing a supplementary counter affidavit the respondent no. 4 has stated that during pendency of the writ application certain developments have taken place. It is stated and submitted that all the retrenched employees of Non-formal education programme have been absorbed in the different department/field offices against the available vacant posts. This decision has been taken by the State Government Department of Human Resources Development, Bihar, vide resolution no. 562 dated 20.05.2005.



9. It is stated that the name of the petitioner finds place at serial no. 59 of the list of total 186 such retrenched Clerk-cum-Accountant - Clerk-cum-Typist in the pay scale of Rs. 4000-6000/- and the petitioner has been appointed. He has been posted in the District of Bihar.

10. After the supplementary counter affidavit was filed stating that the petitioner has been absorbed by virtue of a policy decision of the Government and he has been posted by order of the District Magistrate vide Memo No. 341 dated 10.08.2006, the petitioner immediately filed an interlocutory application questioning Clause '5' of letter No. 421 dated 10th February, 2006 issued by the Director, Mass Education, whereby though the petitioner was absorbed but his absorption has been treated as fresh appointment and he has been denied the benefits of period of service already rendered and seniority for purpose of counting his pensionary benefits.

11. Learned counsel for the petitioner has, in course of argument, agitated this issue. It is his submission that the petitioner's service be counted with effect from the date he was working in the Adult Education and he should be given the pensionary benefits by counting those periods.

12. Learned counsel for the State submits that the



prayer of the petitioner is totally misconceived. From the statements made in the counter affidavit it would appear that the petitioner was initially engaged in the Adult Education which was a Scheme of the Central Government. With some interval, he was again engaged in another Scheme of the Central Government but with the closure of the Scheme with effect from 31st March, 2001, his service came to an end.

13. Learned counsel submits that its strange that the petitioner, who has been absorbed in the year 2006 that too by virtue of a government decision, is seeking benefit of the period during which he was not borne in the service/cadre. It is submitted that when this case was earlier taken up for consideration, this Court was given to understand that the issues involved in this writ application is the same and one which is pending consideration before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 3431 of 2017. This case was awaiting the judgment of the Hon'ble Supreme Court. Now the judgment of the Hon'ble Supreme Court has come and Hon'ble Supreme Court has upheld the judgment of the Hon'ble Division Bench of this Court in LPA no. 623 of 2014. It is submitted that on bare perusal of judgment of the Hon'ble Division Bench of this Court in LPA No. 623 of 2014, it would



appear that the Hon'ble Division Bench has categorically held in the said case that any appointment made without following the due procedure for making appointment against the public post cannot be approved in view of the Full Bench judgment of this Court in the case of **Ram Sevak Yadav vs. The State of Bihar reported in (2013) 1 PLJR 964.**

14. It is submitted that the petitioner should have been happy upon his fortune on getting absorbed in service as admittedly in the case of the petitioner also at the relevant time no procedure was followed but it was the policy decision of the government which benefited the petitioner.

15. Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that the relief which is now being sought by the petitioner is wholly misconceived. The petitioner has been absorbed in service under policy decision of the government. It is not his case that he has a legal right to get appointed against the regular posts with effect from a particular date. A counter affidavit of the State categorically provides the manner in which the petitioner was engaged from one scheme of the Central Government to another scheme of the Central Government and then his engagement came to an end on 31.03.2001 with the closure of the Non-



Formal Education Programme of the Government of India. Still after about five years, the State Government absorbed the service of the petitioner. This is how the petitioner came in regular employment and entered into service of the government. He will be deemed to have born in the cadre only only upon his appointment by way of absorption against the regular post by the government. His claim for counting his seniority with effect from the date when he was engaged in the Schemes of the Central Government is wholly misconceived. This is the settled position in law.

16. This writ application is, therefore, dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

U			
---	--	--	--

