

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24076 of 2019

1. Shri Ram Mandal, Son of Late Dina Mandal, Resident of Village-Nasratkhani, P.S. Nathnagar, District-Bhagalpur, working as office attendant in School Respondent No. 29.
2. Md. Guljar Khan, Son of Md. Mojiv Khan, Resident of Village-Bhikhanpur Gumti No. 3, P.S.-Eshakchak, District-Bhagalpur, working as office attendant in School Respondent No. 33.
3. Arvind Kumar Rai, Son of Choudhary Prasad Rai, Resident of Village-Niyamatpur Dhinu Nava Len, P.S.-Nathnagar, District-Bhagalpur, working as office attendant in School Respondent No. 67.
4. Janardan Prasad, Son of Sukhdeo Prasad Singh, Resident of Village-Athgama, P.S. Kharik, District-Bhagalpur, working as office attendant in School Respondent No. 35.
5. Nand Kishore Pandit, Son of Saryug Prasad Pandit, Resident of Village-Karela (Pandit Tola), P.S. Madhusudanpur, District-Bhagalpur, working as office attendant in School Respondent No. 37.
6. Jaykrishan, Son of Butan Madal, Resident of Village-Goghatta, P.S. Budhuchak, Mohanpur Goghatta English, District-Bhagalpur, working as office attendant in School Respondent No. 39.
7. Kishori Paswan, Son of Ram Das Paswan, Resident of Village-Badi Athgama, P.S.-Kharik, District-Bhagalpur, working as office attendant in School Respondent No. 41.
8. Upendra Das, Son of Vaijudas, Resident of Village-Vishunpur Jiccho, P.S.-Goradih, District-Bhagalpur, working as office attendant in School Respondent No. 43.
9. Rajendra Prasad Mandal, Son of Anandi Madal, Resident of Village-Jan Mohammadpur, P.S.-Kahalgaun, District-Bhagalpur, working as office attendant in School Respondent No. 45.
10. Anup Yadav, Son of Jagarnath Prasad Yadav, Resident of Village-Subhash Chandra Marg Jail Road, Javaripur, P.S.-Tilkamanjhi, District-Bhagalpur, working as office attendant in School Respondent No. 47.
11. Binod Kumar Jha, Son of Madhav Jha, Resident of Village-Shivpuri Caloni, P.S. Jagdishpur, District-Bhagalpur, working as office attendant in School Respondent No. 47.
12. Awojay Kumar, Son of Anant Mohan Ghosh, R/o Village-Hanuman Path Shitala Mandir, P.S. Tilkamanjhi, District-Bhagalpur, working as office attendant in School Respondent No. 47.
13. Md. Tanvir Kumar, Son of Md. Abdul Wasir, Resident of Village-Mirdaha lain, P.S. Jagdishpur, District-Bhagalpur, working as office attendant in School Respondent No. 47.
14. Pradip Kumar Das, Son of Harish Chandra Das, Resident of Mohalla-H.I.G. 3 Housing Board Coloni, P.S. Varari, District-Bhagalpur, working as office attendant in School Respondent No. 49.
15. Md. Gulsar Ahmad, son of Vasir Ahmad, Resident of Village-Barhpura, P.S.



Jagdishpur, District-Bhagalpur, working as office attendant in School Respondent No. 51.

16. Ashok Kumar Rajak, Son of Late Visheshwar Lal Rajak, Resident of Village-Bhikanpur Gumti No. 1 Near Hanuman Mandir, P.S. Eshakchak, District-Bhagalpur, working as office attendant in School Respondent No. 37.
17. Aashutosh Kumar Das, Son of Yamuna Prasad Das, Resident of Village Krishna Nagar Colony, Eshakchak, P.S. Jagdishpur, District-Bhagalpur, working as office attendant in School Respondent No. 57.
18. Amarjit Kumar Singh, Son of Shyam Deo Singh, Resident of Village-Chakraju, P.S. -Ekchari, District-Bhagalpur, working as office attendant in School Respondent No. 59.
19. Naresh Rai, Son of Chote Rai, Resident of Village-Bishanrampur, P.S. Nathnagar, District-Bhagalpur, working as office attendant in School Respondent No. 61.
20. Bhikhari Madal, Son of Villu Mandal, Resident of Village-10 Marg Mundichak Sadar Hospital, P.S. Tilkamanjhi, District-Bhagalpur, working as office attendant in School Respondent No. 65.
21. Shatrughan Sorenan, Son of Sukal Soren, Resident of Vilalge-Longay, P.S. Shivrinarayanpur, District-Bhagalpur, working as office attendant in School Respondent No. 71.
22. Subhash Soren, Son of Mandal Soren, Resident of Village-Bhirondha, P.S. Sanokhar, District-Bhagalpur, working as office attendant in School Respondent No. 73.
23. Nand Lal Mandal, Son of Kiro Mandal, Resident of Village-Barohiya, P.S.-Budhuchak, District-Bhagalpur, working as office attendant in School Respondent No. 75.
24. Bal Krishna Uraon, Son of Panchu Uraon, Resident of Village-Sardari, P.S. Katihar, District-Katihar, working as office attendant in School Respondent No. 53.
25. Mahendra Kol, Son of Surendra Kol, Resident of Village-Lal Beru, P.S. Jhajha, District-Jamui, working as office attendant in School Respondent No. 55.
26. Alma Kisku, Son of Kanhu Kisku, Resident of Village-Kokritari, P.S. and District-Banka, working as office attendant in School Respondent No. 63.
27. Ranjit Kumar Rajak, Son of Ram Udgar Rajak, Resident of Village-Basantpur Karkha, P.S. Bibhutipur, District-Samastipur, working as office attendant in School Respondent No. 69.
28. Rizwan Ahmad, Son of Md. Mujtaba, Resident of Village Katrol, P.S.-Jale, District-Darbhanga, working as office attendant in School Respondent No. 69.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Bihar, Patna.



3. The Principal Secretary, Department of Education, Bihar, Patna.
4. The Director, Secondary Education, Bihar, Patna.
5. The District Magistrate, Bhagalpur.
6. The District Magistrate, Samastipur.
7. The District Magistrate, Katihar.
8. The District Magistrate, Jamui.
9. The District Magistrate, Banka.
10. The District Magistrate, Darbhanga.
11. The Regional Deputy Director, Education, Bhagalpur.
12. The Regional Deputy Director, Education, Samastipur.
13. The Regional Deputy Director, Education, Katihar.
14. The Regional Deputy Director, Education, Banka.
15. The Regional Deputy Director, Education, Jamui.
16. The Regional Deputy Director, Education, Darbhanga.
17. The District Education Officer, Bhagalpur.
18. The District Education Officer, Samastipur.
19. The District Education Officer, Katihar.
20. The District Education Officer, Banka.
21. The District Education Officer, Jamui.
22. The District Education Officer, Darbhanga.
23. The District Programme Officer, Sarv Siksha Abhiyan, Bhagalpur.
24. The District Programme Officer, Sarv Siksha Abhiyan, Samastipur.
25. The District Programme Officer, Sarv Siksha Abhiyan, Katihar.
26. The District Programme Officer, Sarv Siksha Abhiyan, Banka.
27. The District Programme Officer, Sarv Siksha Abhiyan, Jamui.
28. The District Programme Officer, Sarv Siksha Abhiyan, Darbhanga.
29. Ekchari Plus two High School, Ekchari, P.S. Rasalpur, District Bhagalpur, through its Head Master.
30. Incharge Head Master, Ekchari plus two High School, Ekchari, P.S. Rasalpur, District Bhagalpur.
31. Smt. Parvati Devi Muraraka Girls High School, Sultanganj P.S. Sultanganj, District Bhagalpur through its Head Master.
32. Incharge Head Master, Smt. Parvati Devi Muraraka Girls High School, Sultanganj P.S. Sultanganj, District Bhagalpur.
33. Nurpur Plus Two High School Nurpur P.S. Madhusudanpur, District Bhagalpur through its Head Master.
34. Incharge Head Master, Nurpur Plus Two High School, P.S. Madhusudanpur, District Bhagalpur.
35. M.M. High School, Athgama Raghopur P.S. Naugachia, District Bhagalpur



through its Head Master.

36. Incharge Head Master, M.M. High School Athgama Raghapur P.S. Naugachia, District Bhagalpur.
37. Inter Level High School, Rannuchak Makandpur, Nathnagar, P.S. Nathunagar, District Bhagalpur through its Head Master.
38. Incharge Head Master, Inter Level High School, Rannuchak Makandpur, Nathnagar, P.S. Nathunagar, District Bhagalpur.
39. G.M.V. High School Antichak, Kahalgaon P.S. Kahalgaon, District Bhagalpur through its Head Master.
40. Incharge Principal, G.M.V. High School, Antichak, Kahalgaon P.S. Kahalgaon, District Bhagalpur.
41. Inter Level High School, Naugachia, P.S. Naugachia, District Bhagalpur through its Head Master.
42. Incharge Head Master, Inter Level High School, Naugachia, P.S. Naugachia, District Bhagalpur.
43. High School Prasastadih, P.S. Sabour, District Bhagalpur.
44. Incharge Principal, High School Prasastadih, P.S. Sabour, District Bhagalpur.
45. T.N.B. Collegiate Inter School Bhagapur P.S. Kotwali, District Bhagalpur through its Head Master.
46. Head Master, T.N.B. Collegiate Inter School, Bhagalpur, P.S. Kotwali, District Bhagalpur.
47. Inter School (Boys) Sabour, P.S. Sabour, District Bhagalpur through its Head Master.
48. Head Master, Inter School (Boys) Sabour, P.S. Sabour, District Bhagalpur.
49. High School Sahpur P.S. Nathnagar, District Bhagalpur through its Head Master.
50. Incharge Head Master, High School Sahpur P.S. S. Nathunagar, District Bhagalpur
51. Sant High School, Gogha P.S. Gogha District Bhagalpur through its Head Master.
52. Incharge Head Master, Sant High School, Gogha P.S. Gogha District Bhagalpur.
53. Plus two Higher Secondary School Narayanpur P.S. Narayanpur District Bhagalpur through its Head Master.
54. Incharge Head Master, Plus two Higher Secondary School Narayanpur P.S. Narayanpur District Bhagalpur.
55. Mahabir Singh Madrauni Inter School Chaparhat P.S. Naugachia, District Bhagalpur through its Head Master.
56. Incharge Principal Mahabir Singh Madrauni INter School Chaparhat P.S. Naugachia, District Bhagalpur.
57. Sukhraj Rai Inter School, Nathnagar P.S. Nathnagar District Bhagalpur through its Head Master.



58. Head Master Sukhraj Rai Inter School, Nathnagar P.S. Nathnagar, District Bhagalpur.
59. Ganpat Singh High School Kahalgaon P.S. Kahalgaon District Bhagalpur through its Head Master.
60. Incharge Head Master, Ganpat Singh High School Kahalgaon P.S. Kahalgaon District Bhagalpur.
61. High School, Kajrailli, P.S. Kajrailli, District Bhagalpur through its Head Master.
62. Incharge Head Master, High School, Kajrailli, P.S. Kajrailli, District Bhagalpur.
63. Plus two High School Narayanpur, P.S. Bhawanipur District Bhagalpur through its Head Master.
64. Incharge Head Master, Plus two High School Narayanpur, P.S. Bhawanipur, District Bhagalpur.
65. Jhunjhwnwala Adarsh Balika High School P.S. Kotwali, District Bhagalpur through its Head Master.
66. Incharge Head Master, Jhunjhwnwala Adarsh Balika High School P.S. Kotwali, District Bhagalpur.
67. P.D.P. Balika Uchha Vidya Sultanganj P.S. Sultanganj District Bhagalpur through its Head Master.
68. Head Master, P.D.P. Balika Uchha Vidya Sultanganj P.S. Sultanganj, District Bhagalpur.
69. Indrawati High School, Sakhmohan P.S. Bibhutipur District Samastipur through its Head Master.
70. Head Master, Indrawati High School, Sakhmohan P.S. Bibhutipur District Samastipur.
71. Plus two High School, Phulhara Gorgawan, Mansahi, District Katihar, through its Head Master.
72. Head Master, Plus two High School, Phulhara Gorgawan, Mansahi, District Katihar.
73. High School Nawabganj, Manihari District Katihar, through its Head Master.
74. Head Master, High School Nawabganj, Manihari District Katihar.
75. Rajendra High School, Dhanpara, Mansahi District Katihar, through its Head Master.
76. Head Master, Rajendra High School, Dhanpara, Mansahi District Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.D.K. Sinha, Sr. Advocate
For the Respondent/s : Mr.Madhukar Mishra, AC to SC-16



CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-07-2023 At the outset, Mr. D.K. Sinha, learned senior counsel for the petitioners submits that even though at the time of filing of the writ application the different schools have been made party respondent nos.29 to 76, at this stage he understands that the writ application may be disposed of with a direction to the respondent nos.1 to 28 who are the government departments and offices and are responsible to implement and execute policy decisions of the government. Learned senior counsel, therefore, submits that even though no document showing service of notice on respondent nos.47 to 50 has been received as per the office notes, he would request this Court to hear the writ application and is ready to delete respondent nos.47 to 50 from the array of the parties.

2. Learned counsel for the State has no objection to the same.

3. In the circumstances, this Court directs that let respondent nos.47 to 50 be deleted from the array of the parties.

4. Heard learned senior counsel for the petitioners and learned counsel for the State on the writ application as well as interlocutory applications.

5. This writ application has been filed seeking



quashing of the letter no.1969 dated 25.10.2019 whereby and whereunder certain instructions/directions have been issued by the Director (Secondary Education), Education Department, Government of Bihar in the matter of engagement of night guards in the schools.

6. The contention of learned senior counsel is that all the petitioners have been appointed in different schools as orderly/peon/office attendant which is a Group-C post by virtue of the notification dated 01.06.2018 (Annexure- '1' to the writ application). It is submitted that by the impugned letter/communication to all the District Education Officers, the Director (Secondary Education) has instructed all the District Education Officers to assign the work of night guard to the orderly/peons/office attendants.

7. It is submitted that the government has a policy decision to engage night guards in upgraded schools within the State of Bihar temporarily on monthly honorarium of Rs.1500/- which has been enhanced to Rs.5000/- vide notification no.988 dated 18.06.2018 (Annexure- '2' to the writ application). The grievance of the petitioners is that no such decision has been taken with regard to the high schools.

8. It is submitted that the duty of the 'orderly' has



been provided by the government in its memo no.2916 dated 16.09.2011. It is different from the work which is to be assigned to a night guard.

9. A counter affidavit has been filed on behalf of the respondent nos.3 and 4 wherein it is stated that the Education Department, Government of Bihar took a decision vide memo no.988 dated 18.06.2018 to appoint local persons as night guard in upgraded schools within the State of Bihar. It is contended that the letter no.1969 dated 25.10.2019 is by way of clarification to the earlier letter. The specific statement of the respondents is that the letter no.988 dated 18.06.2018 itself indicates that matter relates to appointment of night guard in Madhyamik Vidyalayas i.e. High Schools, therefore it covers all types of high schools i.e. Upgraded High Schools as well as High Schools and hence the point raised by the petitioners that the said letter only covers the case of upgraded schools is totally erroneous.

10. The petitioners have filed three interlocutory applications.

11. I.A. No.1 of 2021 has been filed seeking amendment in the prayer portion to include a prayer to quash order no.15 dated 06.04.2021 which has been issued during



pendency of the writ application. It is stated that the writ application was heard on 05.12.2019 and notices were issued to the respondent nos.31 to 76 whereafter the order no.15 dated 06.04.2021 has been issued. Annexure- '7' to the I.A. No.1 of 2021 has been issued by the M.S.M., Interlevel School, Chaparhat, Rangra Chowk, Bhagalpur which is by way of implementation of the direction of the Director (Secondary Education) as contained in his letter dated 25.10.2019.

12. I.A. No.02 of 2022 has been filed by the petitioners seeking quashing of the same Annexure- '5' to the writ application and petitioners have brought on record letter no.109 dated 20.01.2022 which has been issued by the District Programme Officer, Primary Education and Sarv Siksha Abhiyan, Bhagalpur in the light of the impugned letter as contained in Annexure- '5' to the writ application.

13. I.A. No.3 of 2022 is another application seeking amendment in the writ application to include quashing of memo no.2093 dated 30.06.2022 which has been issued during pendency of the writ petition saying that the responsibility of theft in school is fixed on petitioners and they have been directed to deposit Rs.60,000/- which will be deducted from the salary. Memo no.2093 dated 30.06.2022 has been issued by the



District Education Officer, Bhagalpur.

14. Copies of these interlocutory applications were served upon the State as back as on 04.08.2021, 28.03.2022 and 25.07.2022 respectively, however, there is no opposition to these interlocutory applications, hence, the amendments sought for and the pleadings in these interlocutory applications are allowed. They will form part and parcel of the main writ application.

Consideration

15. Having heard learned senior counsel for the petitioners and learned counsel for the State as also on perusal of the records, this Court finds that there is an admitted position emerging from the records. It is evident that as per the State's counter affidavit vide letter no.988 dated 18.06.2018 a policy relating to engagement of night guards in Madhyamik Vidyalayas has been conveyed to all concerned. The night guards are to be engaged from amongst the local persons on temporary basis. Paragraph '8' of the counter affidavit is very specific about the mode of engagement of a night guard.

16. There is no explanation in the counter affidavit as to why instead of adopting the mode of appointment/engagement of night guards in the different



schools, the Director (Secondary Education) has come out with a guideline as contained in Annexure- '5' to the writ application whereunder now where there is two or more peons in a High School the peons of the school are to be engaged as night guards on rotation basis. The specific case of the petitioners in paragraph '12' of the writ application is that the night guard is different post for which appointment is being done separately which is a grade below the post of orderly/peon/office attendant. This specific statement in the writ application has not at all been controverted.

17. While this Court is alive to a situation whereunder in certain circumstances due to non-availability of the night guards in the case of extreme urgency, the Department of Education may come out with a temporary kind of instructions/guidelines to the schools but the Court is unable to appreciate that why despite there being a policy since the year 2012 to engage night guards from amongst the local persons, instead of appointing night guards in the manner provided under the policy of the government, after about 7 years the impugned communication is being made and at this stage it is being claimed that the communication is by way of a clarification. It seems no endeavour has been made by the State to engage night



guards in accordance with its policy decision.

18. The orders issued by the different schools and the District Education Officer which have been brought on record by way of interlocutory applications further show that in the light of the communication dated 25.10.2019 (Annexure- '5') the schools are deputing the office attendants as night guards and instead of considering their case for promotion etc., there are complaints that they are being posted as daily wagers. In one of the cases (I.A. No.3 of 2022), the District Education Officer has ordered recovery of Rs.60,000/- from the office peons alleging that smart TV which was kept in the school has been stolen away because they were not working.

19. In these circumstances, this Court is of the opinion that instead of engaging night guards for the schools, the office attendants cannot be compelled permanently and on regular basis to work as night guards and they cannot be fixed with responsibilities in the manner as has been done by the District Education Officer, Bhagalpur vide memo no.109 dated 20.10.2022.

20. This writ application and the interlocutory applications are, thus, being disposed of with a direction to the Director (Secondary Education) to review its decision within a



period of thirty days from today and ensure that appropriate steps be taken in all Higher Secondary Schools in terms of the policy decision of the government to engage night guards. The procedures for engagement be laid down and after following the established procedure of law for such engagements, the engagement process be completed within a maximum period of six months from the date of receipt/communication of a copy of this order.

21. Till then, by way of temporary arrangements only the office peons/attendants may be engaged for the work of night guards. After expiry of period of six months, the orderly/office attendants/peons shall not be deputed as night guards in any of the schools. The order of District Education Officer imposing a punishment of recovery of Rs.60,000/- from the petitioners in I.A. No. 03 of 2022 is not sustainable in law. Recoveries cannot be fasten upon the petitioners without following established procedure of law. The impugned order of the District Education Officer in I.A. No. 03 of 2022 does not show that the petitioners were ever served with any chargesheet showing loss of the articles of the school on account of their negligence, therefore, the amount of Rs.60,000/-cannot be recovered from them. Memo No.2093 dated 30.06.2022 issued



by the District Education Officer, Bhagalpur is, therefore, set aside. Recovery, if any, made from the persons affected by the said order will be refunded to them within a period of thirty days.

22. The District Education Officer, Bhagalpur is further directed not to fasten any liability of such nature on the orderly/office attendants/peons in the manner it has been sought to be done vide letter no.109 dated 20.01.2022 (I.A. No.2 of 2022).

23. This writ application as well as the interlocutory applications are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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