

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4129 of 2020

=====

Binod Kumar Son of Late Bhagwat Prasad Resident of Village Bijokhari, P.O.
and P.S.- Telhara, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
3. The Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
5. The Director, Primary Education, Bihar, Patna.
6. The Director, Mid-day Meal Scheme, Bihar, Patna.
7. The Deputy Secretary-cum-Nodal Officer, Education Department, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Raj Kishor Prasad
For the Respondent/s : Mr.Ashutosh Ranjan Pandey (Aag15)

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 25-04-2024

Heard learned counsel for the petitioner, learned counsel for the Director, Mid Day Meal Scheme Project and learned counsel for the State.

2. The present writ petition has been filed for quashing the office order contained in Memo No.44 dated 08.01.2020 issued under the signature of respondent No.4 by which the representation filed by the petitioner for grant of pay parity with a regular Government employee of the same rank has been rejected on the ground that the post of Accountant held



by him under the scheme and his appointment is on contract basis, while the petitioner is working against the sanctioned vacant post in the Directorate of Education Department under the scheme in terms of resolution No.2401 dated 18.07.2007 issued by the Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.

3. Counsel for the petitioner submits that the basis of his appointment is contained in Letter No.541 dated 20.10.2008 vide annexure-3 of the writ petition. He further submits that the petitioner was reappointed on the said post vide Letter No.620 dated 13.11.2009, and thereafter he is still continuing since more than 12 years. His claim is on the basis of the Memo No.2401 dated 18.07.2007. He seeks relief from the Court that his entitlement on the basis of Government Resolution contained in Memo No.2401 dated 18.07.2007 has to be granted.

4. Counsel further submits that at the time of disposal of his writ petition, the said Government resolution has not been taken into consideration, and therefore, the decision of the respondent No.4 is bad in law.

5. Counsel for the Director Mid-day Meal Scheme submits that बिहार राज्य मध्याह्न भोजन योजना समिति and its Mid-day Meal Scheme are time bound scheme of the Central



Government and running by the Central Government and the State Government in different proportion.

6. Counsel further submits that for the purpose of said Mid-day Meal Scheme, the Directorate of Education Department has been established on 21.05.2008 for the first time and the said Directorate has published a notice dated 23.09.2009 vide Annexure-C of the counter-affidavit for engagement on different posts under Mid-day Meal Scheme including one post of Accountant in Hindi Dainik 'Hindustan' on 02.10.2009.

7. Counsel submits that the petitioner was applied for engagement on the post of Accountant in pursuance of the aforesaid advertisement and he was selected which is evident from Letter No.620 dated 13.11.2009 under Mid-day Meal Scheme and his contract period was valid till 31.03.2010. He submits that in his appointment letter, it has been categorically mentioned that fixed honorarium will be paid on the basis of attendance and monthly report.

8. Counsel further submits that the period of contract of petitioner was further extended till 31.03.2011 and enhanced honorarium of Rs.14,700/- vide letter No.485 dated 17.06.2010 and period of contract was enhanced for further period of one



year under Mid-day Meal Scheme. He submits that the tenure of contract period categorically till the age of 60 years, and therefore, no further agreement required to be issued only for extension of tenure of contract, however, the others term and condition remain the same. It is further stated that in the past separate agreements executed from time to time only for extension of the tenure of contract period, however, other conditions remained unchanged.

9. Counsel further submits that in the similarly situated case relating to Central Government time bound Scheme called “Sarva Shiksha Abhiyan”, this Hon’ble Court has hold proposition in C.W.J.C. No.14475 of 2008 decided on 28.02.2018 in which same analogy has been decided.

10. Counsel further submits that the said appointment was made according to Mid-day Meal, therefore no statutory or legal right of the petitioner is invaded or threatened or infringed which is condition precedent for the maintainability of the writ petition, therefore, writ application is not maintainable.

11. Counsel for the respondent No.6 also submits that since the petitioner is working on contractual post, therefore, protection under Article 309 of the Constitution of India is not available to the petitioner.



12. Counsel has also relied in the case of **Dhruv Sah Vs. State of Bihar, the Chief Secretary Govt. of Bihar, Patna** passed in **C.W.J.C. No.5945 of 2010** decided on **20.10.2011** in which matter is relating to Bihar Education Project Council based on a scheme of Government of India and services of the petitioner has not been treated as like that of regular employees.

13. Upon hearing the parties, it transpires to this Court that one legal question is involved in the present writ petition, that is, implementation of Rule 2007 contained in Memo No.2401 dated 18.07.2007 for the petitioner or not.

14. From the pleadings and the arguments of the parties, it transpires to this Court that the petitioner is undisputedly working in a project of Mid-day Meal Scheme Project which has itself established in the year 2008 then a question that a rule which has been framed in the year 2007 definitely not been framed taken into consideration for the establishment, namely, Mid-day Meal Scheme Project, which has been established in future. This Court is of the firm view that a rule which has been framed in the year 2007 shall definitely not framed for a Directorate, which has to be established in future. Hence, this Court answers that Memo No.2401 dated 18.07.2007 shall not be applicable for the



petitioner who is working under a Directorate itself established in the year 2008 and he joined in the year 2009.

15. In this view of the matter, the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

