

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10728 of 2016

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1. Usha Kumari W/o Sri Vijay Kishore Prasad Sharma R/o village + Post Sadaybigha, Barahiya, P.S. Veerupur, District - Lakhisarai
 2. Kumari Ranju Sinha W/o Sri Ajay Kumar Singh R/o Karyanand Nagar, Ward No. 9, Purani Bazar, P.S. Lakhisarai, District - Lakhisarai
 3. Neelam Kumari W/o Sri Mukesh Kumar S/o Karyanand Nagar, Ward No. 9, Purani Bazar, P.S. Lakhisarai, District - Lakhisarai
 4. Kanchan Kumari W/o Sri Manoj Kumar R/o Purani Bazar, Purvi Karyanand Nagar, Ward No. 7, P.S. Lakhisarai, District Lakhisarai

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Education Department, Government of Bihar, New Secretariat, District-Patna
3. The Director, Bihar Education Project Council, State Level Office, Shiksha Bhavan, Rashtrabhasha Parishad Campus, Saidpur, Rajendra Nagar, Patna-800004
4. The District Magistrate, District Lakhisarai
5. The District Education officer, District Lakhisarai
6. The District Program officer SSA, District Lakhisarai
7. Head Master - Cum - Sanchalak Kasturaba Gandhi Balika Vidyalaya, Middle School Rajouna Chouki, District-Lakhisarai
8. Head Master - Cum - Sanchalak Kasturaba Gandhi Balika Vidyalaya, Vidyalaya Shiksha Samiti, Rajkiya Buniyadi Vidyalaya Nandnama, Ramgarh Chowk, District-Lakhisarai

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Avanindra Kumar Jha, Advocate
For the Respondent/s	:	Mr.Rajesh Kumar Sinha- GP 23
For B.E.P.C.	:	Mr. Girijish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 06-08-2024

1. Heard learned counsel for the parties concerned.
2. The writ petitioners have filed the present writ application for quashing the order contained in Memo No. 835



dated 16.02.2016, passed by the Director, Bihar Education Project Council (in short B.E.P.C.), whereby it has been directed to change the status, designation and remuneration of the petitioners from Anshkalik/ Part-time Teachers to Vocational Training Instructors in Kasturba Gandhi Bal Vidyalyaya (in short K.G.B.V.), running in the State of Bihar. The petitioners have further prayed for a direction to the respondent- authorities to restore the status, designation and remuneration of the petitioners as Anshkalik/ Part-time Teachers in K.G.B.V.

3. The brief facts of the case is that pursuant to an Advertisement dated 19.03.2008, published in Hindi daily Newspaper 'Prabhat Khabar', petitioners were appointed as Anshkalik/ Part-time Teachers on 18.06.2009 in different Kasturba Gandhi Balika Vidyalayayas situated in the district of Lakhisarai. As per the terms of appointment, the contract of the petitioners was extended from time to time and the last extension was given in the year, 2015.

4. Learned counsel for the petitioners submits that the Director, B.E.P.C. passed the impugned order, by which it has been directed to change/ reduce the status, designation and remuneration of the petitioners and similarly situated persons across the State from Anshkalik/ Part-time Teacher to Vocational Training instructor with effect from the next agreement period.



5. The District Programme Officer, Lakhisarai, in the garb of impugned order, moved a step further and while the petitioners' extended agreement was still continuing, directed to give consent to work as Vocational Training Instructor, following which, the Headmaster-cum-Sanchalak of the Schools stopped the petitioners from marking their attendance w.e.f. 18.03.2016. Aggrieved by the same, the petitioners filed representation and subsequently, the present writ application. He next submits that impugned order has been passed only with a purpose to give undue and unfair advantage to the persons appointed as Full-time Teachers and at the same time, discriminated the petitioners from similarly situated Teachers.

6. Learned counsel relies on Memo no. 2163 dated 06.05.2009, by which, it has been directed that tenure of those teachers/ employees who have completed one year, should be extended without any unnecessary delay unless their services has been found unsatisfactory.

7. On the other hand, learned counsel for the B.E.P.C. and State argued that Kasturba Gandhi Balika Vidyalayas are running in the State since the year 2005, where 100 girls of Scheduled Castes, Scheduled Tribes, Other Backward Castes, Minority and Below Poverty Line (BPL) category are enrolled for providing elementary education with a view to bring them in the



main stream of the society. Girls are also provided with free fooding and residential facility there. Altogether, there are 535 K.G.B.Vs. in the State of Bihar running in the financial pattern of 60 : 40, shared between Center and State.

8. Initially, KG.B.V. Schools started on the guidelines of Government of India with Model I, II and III. Model I and II had the provision of residential teaching of 100 & 50 girls, respectively whereas Model III had the provision of residential facility of 100 girls. As per the letter dated 21.02.2008, issued by the Ministry of Human Resources, Government of India all the K.G.B.Vs. of the State were converted into Model III Schools. The State adopted the Government of India norms regarding number of teaching and other staffs necessary for providing residential education to 100 girls. In furtherance of that order dated 27.11.2007, issued by the State Project Director, B.E.P.C. in favour of all DSE-cum-District Programme Coordinator of all the Districts, by which provision was made for selection and appointment of 13 staffs viz. one ward cum teacher, three subject specialist full-time female teachers, three female teachers for vocational training, one accountant, one chief cook, two assistant cooks, one peon and one night guard, however, their service conditions were decided whereby part-time teachers were appointed for vocational training with per day honourarium @



200/- for a maximum period of 20 days in a month.

9. It has further been argued that till 2014-15, funds was provided for K.G.B.V. teachers and staffs in a lump-sum manner as given in cost title of the budget. But in 2015-16, Government of India made post-wise provision for salary, in which, there was no provision for Full-time Teachers. The programme is being run with Government of India support and under guidance of Government of India. In the budget of 2015-16, approved by the Government of India, provision had been made for 03 part-time teachers @ 5,000/- per month. Besides, there is another head also for vocational training. In the 77th meeting of the State Executive Committee of B.E.P.C., the designation of the post “Full-time Teacher (for subject teaching) was changed as “Part-time Teacher to solve the technical hindrance and to differentiate between above said post, name of part-time teachers to Vocational Training Instructors because their work was associated with providing vocational training only.

10. Learned counsel also submits that in respect of the changes in designation by the impugned order, all service conditions were kept unchanged. It was decided to take the consent of the Part-time Teachers and Vocational Training Instructors regarding change of the name of the post before issuing order of contract extension/ appointment. Initially, by the



impugned order dated 16.02.2016, it was decided to take work from the Vocational Training Instructors on weekly basis or on other holidays only. This order, however, was amended vide subsequent order bearing Memo No. 2865 dated 31.05.2016, which makes the provisions of honorarium @ 200/- per day for a maximum period of 20 days in a month, as was being given to Part-time/ Anshkalik Teachers. No substantial change in the service conditions of Part-time Teachers and Full-time Teachers has been done except the name of nomenclature and this change has been made due to technical problem.

11. Learned counsel relies upon the various judgments on the similar issue passed by this Court, the copies of which have been annexed as Annexure-R/K to the counter affidavit, filed by respondent no. 3.

12. I have heard learned counsel for the parties and gone through the materials on record. The issue involved in the present writ application is not *res integra* and the same impugned order dated 16.02.2006 was challenged by similarly situated teachers before this Court in C.W.J.C. no. 6153 of 2016 (Smt. Soni Kumari and others v. the Secretary to the Government of India) and analogous cases and a co-ordinate Bench of this Court by its order dated 27.02.2018, dismissed the writ application by arriving at the conclusion that the initial engagement of the petitioners was made



as 'Part Time Teacher' which subsequently renamed as 'Vocational Training Instructors'. Such engagement was contractual in nature under the scheme of Sarv Shiksha Abhiyan in Kasturba Gandhi Balika Vidyalaya. Any dispute relating to their initial contractual appointment/extension of contractual period and any change in the service conditions cannot be a subject matter of writ jurisdiction of this Court. Since the petitioners' appointment was contractual in nature, therefore, they are not entitled to get any protection under Article 311 or any other provisions under the Constitution of India. The petitioners being appointed by the B.E.P.C., which is a registered society under the Societies Registration Act, 1860 and petitioners have no such substantive right to continue on the post beyond the terms and conditions of their contractual appointment, as such, no mandamus can be issued for enforcement of non-existent right.

13. Being aggrieved by the aforesaid judgment, the writ petitioner Smt. Perveen Kauser filed a letters patent appeal bearing L.P.A. No. 414 of 2018 before the Division Bench of this Court, which is dismissed vide order dated 30.01.2019, after coming to the conclusion that such a decision taken by the Project Director, B.E.P.C. was in tune with the directions of the Government of India and such policy making being in the domain of the State does not warrant interference by this Court under Article 226 of



the Constitution of India. The implementation of the scheme in its altered form even otherwise does not seem to offend either Article 14 or 16 of the Constitution of India.

14. Hon'ble Supreme Court, in a judgment reported in 2007 4 SCC 737 (Directorate of Film Festivals & others v. Gaurav Ashwin Jain and others) has held that the scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

15. Considering the aforesaid discussions and judgments passed by this Court as well as Hon'ble Supreme Court, I am of the view that the impugned order was tested by a



co-ordinate Bench and the Division Bench of this Court and dismissed the challenge made by the similarly situated teachers. Accordingly, no relief can be granted to the petitioners in the present writ application, as such, the same is dismissed.

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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