

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11039 of 2024

1. Ramesh Kumar son of Sri Ram Gopal Roy, resident of village Bhagwatipur, P.S. Shahpur, District Patna.
2. Brajesh Kumar, Son of Sri Satyendra Pandey, resident of Kharanti, P.S. Obra, District Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Higher Education, Department of Education, Government of Bihar, Patna.
3. The Under Secretary, Department of Education, Government of Bihar, Patna.
4. Special Executive Officer posted with Principal Secretary, Department of Education, Government of Bihar, Patna.
5. The Officiating Chairman cum Officiating Director, Bhojpuri Academy, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Government Pleader (18)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 01-08-2024 Heard learned counsel for the petitioners and
learned counsel for the State.

2. The present writ petition has been filed for quashing the letter dated 26.10.2018 issued under the signature of Director, Higher Education-cum-Chairman-cum-Director, Bhojpuri Academy. Further prayer has been made to quash the



letter dated 31.10.2018 followed by appellate order dated 10.05.2024 as the said order has been passed without assigning any reason. Further prayer has been made that the petitioners shall be given the entire salary, which are due to the petitioners, and service of the petitioners be regularized.

3. Learned counsel for the petitioners submits that the petitioners have earlier moved before this Court in CWJC No.3475 of 2019, which was disposed off vide order dated 18.03.2024, by which the petitioners were directed to file representation before the Additional Chief Secretary, Department of Education, Government of Bihar, Patna, and in compliance of the said order passed by this Hon'ble Court they had filed representation, but their representation was rejected vide Memo No.1858 dated 10.05.2024. Counsel for the petitioners further submits that the said letter has been passed by which it transpires that the said appointment is not a legal appointment rather a regular appointment. The petitioners have served the department for a considerable period of time. Therefore, payment during the said period be made and their services be directed to be regularized.

4. Learned counsel for the State, on the other hand, submits that the Chairman is not the authorized person for



making regular appointment in the organization. He further submits that upon direction made by Hon'ble Court, the Additional Chief Secretary, Education, had passed reasoned and speaking order in which everything has been mentioned including that the appointment of the petitioners have been made without any advertisement, without following roster, without any recruitment process as well as without taking prior permission from the concerned authority.

5. In the light of the submissions made by the parties and upon going through the documents, it transpires to this Court that petitioners had moved earlier before this Court in CWJC No.3475 of 2019, in which they had challenged two letters i.e., letter dated 26.10.2018 and letter dated 31.10.2018. On which there is no finding made by Hon'ble single Judge in the said writ and only liberty was granted to file representation. Here in the present writ petition, the petitioners have challenged two earlier letters, which have already been challenged in the writ petition as well as a new order which is contained in Memo No.1858 dated 10.05.2024.

6. It transpires to this Court that there are two legal issues involved in the present case. The first is that the letters dated 28.10.2018 and 31.10.2018, which were already



challenged before the earlier writ petition on which no relief was granted, can it be challenged in the fresh writ petition? The legal answer is no, it cannot be, particularly in the light of Section 11(vi) of CPC. The only point left for the petitioners is that the present writ petition has been filed to challenge the order contained in Memo No.1858 dated 10.04.2018. Upon perusal of the said writ, it transpires to this Court that prior to passing the order, due opportunity of hearing be granted to the petitioners and this order has been passed completely in consonance with the principles of natural justice and a reasoned and speaking order has been passed in which it has categorically been held that the appointment has been made without any advertisement, without any roster clearance, without any oral or written examination, without preparation of any merit list as well as in gross violation of departmental letter date 13.04.2014 in which prior sanction from the government is necessary for appointment.

7. In this view of the matter, this Court finds that there is no illegality in the order and, therefore, the order passed by the Additional Chief Secretary is hereby affirmed and this writ petition is dismissed. But from the fact it transpires to this Court that petitioners have served in the



academy during certain period on temporary basis and, therefore, they shall be entitled for payment during which they worked but they are not entitled for regularization. Respondent authority is directed to make payment for the period they worked, if not paid, within 90 days from the date of receipt/production of a copy of this order.

(Dr. Anshuman, J)

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