

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11107 of 2024

1. Nityanand Kumar Son of Suresh Prasad, Resident of Village- Balawapuua, P.S.- Asthawan, District- Nalanda, Bihar.
2. Rajesh Paswan Son of Arjun Paswan Resident of Village- Adampur, P.S.- Bahadur, District- Patna, Bihar.
3. Gautam Kumar Son of Rajendra Prasad Resident of Bhadani Niwas, Mohall- Rajendra Nagar, P.S.- Nawada, District- Nawada, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, Labour Resources Department, Govt. of Bihar, Niyojan Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Labour Resources Department, Bihar, Patna.
4. The Deputy Secretary, Labour Resources Department, Bihar, Patna.
5. The Joint Director (Training), Labour Resources Department, Govt. of Bihar, Bihar, Patna.
6. The Director, Directorate of Employment and Training, Labour Resources Department, Govt. of Bihar, Bihar, Patna.
7. The Deputy Director (Employment and Training), Labour Resources Department, Govt. of Bihar, Bihar, Patna.
8. The Additional Chief Secretary, General Administration Department, Bihar, Patna.
9. Bihar Technical Service Commission through Secretary, Patna.
10. Bihar Public Service Commission through Secretary, Patna.
11. Principal Secretary, Department of Science, Technology and Technical Education, Govt. of Bihar, Patna.
12. The Director General, Vigilance Investigation Bureau, Bihar Govt., Patna.
13. The Department of Vigilance through Principal Secretary, Bihar, Patna.
14. The Senior Superintendent of Police, Patna.
15. Shailendra Bharti Son of Late Musha Ram, Present Vice-Principal, Women ITI, Village- Chauri, Madhubani and Resident of P.O.- Madhopur, P.S.- Turkauliya, District- East Champaran, Bihar.
16. Anil Kumar Son of Dukhi Prasad Present Vice- Principal, Women ITI, Purnia, Bihar, Resident of Near Women ITI, P.S.- Maranga, District- Purnia, Bihar.
17. Sanjeev Kumar Verma Son of Late Nag Narayan Prasad Present Vice-Principal, Government ITI, Areraj, Resident of CEO Building, Campus of Government ITI, Motihari P.S.- Town, District- East Champaran.
18. Ramji Ram Son of Yogi Ram Resident of Village- Gannipur Manpur, P.O.- Bharthipur, P.S.- Patepur, District- Vaishali, Bihar.
19. S.M. Sahid Anwar Son of Late S M Muslim Hasan, Resident of Sangam Colony, Opposite of Women ITI, Digha Ghat, P.S.- Digha, Patna, Bihar.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Vikash Kumar Pankaj, Advocate.
Mr. Rishav Dev, Advocate.
For the State : Mr. Shankar Thakur, AC to GP-27.
For BPSC : Mr. Sanjay Pandey, Advocate.
Mr. Nishant Kumar Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-07-2024

Heard Mr. Vikash Kumar Pankaj, learned counsel along with Mr. Rishav Dev, learned counsel appearing on behalf of the petitioners; Mr. Shankar Thakur, learned AC to GP-27 for the State and Mr. Sanjay Pandey, learned counsel along with Mr. Nishant Kumar Jha, learned counsel for the Bihar Public Service Commission.

2. The petitioners have prayed following reliefs, made in Para-1 of the writ petition, which is, *inter alia*, reproduced hereinafter:

“(i) For the issuance of writ in the nature of writ of Certiorari to set aside the Notification contained in Memo No. 01/13/2023-32 dated 14/06/2024 (Annexure-P/6) issued by Respondent No. 3 whereby de-facto promotion as a temporarily work arrangement In-Charge capacity to the post of Vice Principal granted to the Petitioners vide Notification Memo No. 13/202-95 dated 28.12.2023 (Annexure-P/2), has abruptly & arbitrarily been cancelled by a stroke of pen without issuing any show-cause and without even hearing the Petitioners and moreover, by illegally reviewing their own decision made earlier in Notification Memo No. 13/202-95 dated 28.12.2023 (Annexure-P/2).

(ii) To issue Writ of Mandamus or any other appropriate Writ Order direction commanding Respondents particularly, Respondent No.2, 12 & 13 to initiate effectual thread-bear inquiry/investigation by the State Vigilance or any other specialized independent competent government agency as to under what circumstances the file for promotion to the Respondent Nos. 15 to 19 vide aforesaid impugned Notification dated 14/06/2024 (Annexure-P/6) has been processed for exterior consideration to defeat the promotion earlier granted to the Petitioner vide



Notification Memo No. 13/202-95 dated 28.12.2023 (Annexure-P/2) without any change in factual matrix or circumstances on which earlier the said promotion of the Petitioners & Respondent Nos. 15 to 19 were considered and on detailed consideration on all the aspect of the matter, the Petitioners were eventually granted Promotion vide said Notification Memo No. 13/202- 95 dated 28.12.2023 (Annexure-P/2) and Respondent Nos. 15 to 19 were not found ineligible for promotion due to lack of appropriate legitimate qualification of the promotional post.

(iii) To issue the consequential writ of Mandamus commanding Respondents particularly, Respondent Nos. 2. & 14 immediately & expeditiously lodge First Information Report (FIR) under Sections 59, 318, 319, 336, etc. of Bharatiya Nyaya Sanhita (BNS) or / and any other appropriate sections of other penal enactments, against Respondent No. 15 & 17 for playing fraud and acquiring a full time 2 years on- Campus regular classroom mode Diploma in Electrical Engineering simultaneously being in full time Government service and without even taking any kind leave nor permission from the parent Department.”

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners who were holding the post of In-charge Vice Principal by way of *de facto* promotion on the basis of temporary work arrangement vide order contained in Memo No. 13/2023-95 dated 28.12.2023 are aggrieved by the order contained in Memo No. 32 dated 14.06.2024 communicated to them by the Joint Secretary in accordance with the provision of Article 166 of the Constitution of India. Learned counsel further submitted that the petitioners had earlier filed C.W.J.C. No. 8348 of 2024 for grant of regular promotion to the post of Principal to which they became eligible from year 2021 and the said writ petition is pending. It is the grievances of the petitioners that the order dated 14.06.2024 has



been passed without giving any opportunity of hearing to the petitioners or assigning any reason as to whether the said order has been passed in terms of 'Clause 3' of the Appointment Letter contained in Memo No. 95 dated 28.12.2023. On these ground, learned counsel submits that even though the order has been passed by the State Government, the Appointing Authority should have given minimum opportunity of hearing to the petitioners.

4. *Per contra*, Mr. Shankar Thakur, learned counsel appearing on behalf of the State submitted that in terms of 'Clause 3' of the Appointment Letter, the petitioners were aware of the very fact that their appointment was temporary in nature and the same was subject to the availability of those persons, who had achieved the required degree recognized by the Hon'ble Court or by any competent authority through distance education mode which the respondent nos. 15 to 19 possessed and the petitioners have also admitted that they were more qualified than them on the date of passing of the order contained in Memo No. 32 dated 14.06.2024. In clear terms of the order contained in Annexure-2, it cannot be said that the petitioners were required to be given a prior hearing before passing of the said order. He further clarifies that the terms and conditions of the contract itself is binding upon the petitioners and now



without challenging the same at the very threshold, they cannot turn around and challenge the same on the ground of violation of principle of natural justice, which is not available to the petitioners in such cases.

5. Having heard the rival submissions made on behalf of the parties, before interfering with the order dated 14.06.2024 contained in Memo No. 32, it is well settled law that the *“Foundational principle of executive governance is based on realization that sovereignty rests in the people. Every limb of the constitutional machinery is obliged to be people oriented. Every holder of public office is accountable to the people. Question of unfettered discretion in the executive just does not arise. Fetters on discretion are: clear, transparent and objective criteria or procedure which promote public interest, public purpose and public good, and all powers vested in public office, even in field of contract must be exercised only in furtherance thereof. Public authorities ordained to act reasonably and in good faith and upon lawful and relevant grounds of public interest.”*

6. The Hon’ble Apex Court in the case of **State Bank of India & Ors. v. Rajesh Agarwal & Ors (Civil Appeal No. 7300 of 2022)** has held that *“we need to bear in mind that the principles of natural justice are not mere legal*



formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.”

7. In the case of **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**, reported in **(2010) 9 SCC 496**, the **Apex Court has held that** “not to provide an opportunity of hearing to the borrowers before classifying their accounts as



fraud is violation of natural justice. Therefore, the impugned decision to classify the account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad-interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.

8. I find that the writ petition is devoid of the foundational facts relating to each petitioners like their educational qualification and their date of appointment. However, considering the fact that the petitioners were directed to officiate as In-charge Vice-Principal at the respective place of their posting in different government ITI colleges in accordance with the terms and conditions of the appointment letter contained in Annexure-2. It is admitted that their appointment was temporary in nature and the petitioners were required to discharge their duty in capacity of In-charge Vice-Principal subject to the condition that in case qualified persons holding degree becomes eligible in terms of Clause 3 of the “terms and conditions” of the appointment letter is clear that the petitioners



have been provided with the pay scale applicable for the post of Vice-Principal from the date of their officiating as Vice-Principal.

9. The only ground for interference with the impugned order dated 14.06.2024 contained in Memo No.32, I find that the order itself don't give any information that the authority had given any notice prior to passing of the order which adversely affects the right of the petitioners. In view of the above principle of law, I find that the petitioners who were officiating on the post of In-charge Vice-Principal at different ITI colleges was subject to the terms and conditions contained in Clause 3 of the notification dated 28.12.2023 contained in Memo No. 95. The law requires to follow the principle of natural justice by the authority even in the case of an administrative order as has been held in the case of **Rajesh Agarwal (supra) and Kranti Associates (supra)**.

10. The petitioners, if so advised may file their representation before the Competent Authority.

11. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.08.2024
Transmission Date	N.A.

