

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2875 of 2017

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1. Anita Kumari and Anr Daughter of Khooblal Ram, Resident of Village- Rampur, P.O.- Phulwaria, P.S....., District- Gopalganj.
 2. Manoj Kumar Mahto, Son of Sri Ram Sharan Mahto, Resident of Village- Mayapur, P.O.- Badarbanna Bazar, P.S.- Bahera, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Bihar Education Project, Government of Bihar, Patna.
3. The District Program Officer-cum-Member Secretary, Primary Education and Sarva Shiksha Abhiyan, Bihar Education Project Darbhanga
4. The Block Education Officer, Benipur, Darbhanga.
5. The Head Master, Kasturba Gandhi Balika Awasiya Vidyalay, Mayapur, Benipur, Darbhanga.
6. Sri Sukomal Jha, S/o Sri Sachidanand Jha, resident of Village- Balni, P.O.- Bhaya, Baheri, District- Darbhanga.
7. Kamini Devi, Wife of not known, resident of Village P.O.- Pahaddi, P.S. Bahera, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Krishna Chandra
For the Respondent/s	:	Mr.Prabhakar Jha- Gp27
		Mr. Girijish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 24-09-2024

1. The petitioners have filed the present writ application for quashing the order contained in Memo No. 743 dated 15.12.2016 by which the private respondent nos. 6 & 7 have temporarily been appointed by terminating the services of the petitioners.

2. The petitioners were appointed on Class-IV posts as



Head Cook and Peon respectively in Kasturba Gandhi Balika Awasiya Vidyalaya, Mayapur, Benipur, District- Darbhanga. The petitioner no. 1 was appointed on 01.12.2008 and the petitioner no. 2 was appointed on 01.01.2011.

3. Learned counsel for the petitioners submits that the petitioners have worked uninterruptedly on their respective posts till 18.12.2016 and thereafter orally they have been directed to leave the job on the ground that temporary appointee have joined the posts upon which the petitioners were discharging the duties. The petitioners have challenged the impugned action on the ground that the petitioners are being discriminated inasmuch as the respondents cannot replace one adhoc appointee with another adhoc appointee. He relies upon a judgment of the Hon'ble Supreme Court reported in (2022) 15 SCC 540 *Manish Gupta and Another versus President, Jan Bhagidari Samiti and Ors.*

4. On the other hand, Mr. Girijish Kumar, learned counsel for the Bihar Education Project Council submits that the petitioners were appointed on adhoc basis with condition that whenever fresh appointment after following the due process will be started, their services would not be extended and they will be treated to have vacated their posts. He further submits that a



co-ordinate Bench of this Court vide order dated 28.02.2018 passed in CWJC No. 14475 of 2008 has held that in the matters of appointment not being under the State, a writ petition under Article 226 of the Constitution of India is not competent, and further, that the nature of the job was contractual for one year, which ended in the year 2016 and after that it was open to the petitioners to apply pursuant to any separate advertisement subject to fulfilling the other eligibility criteria. He further submits that the Bihar Education Project Council has advertised the posts for appointment in consonance with Articles 14 and 16 of the Constitution of India inasmuch as the petitioners were appointed on their respective posts without any open advertisement. He also submits that in the advertisement, in question, the reservation roster has also been followed and it was open to the petitioners to apply for their appointment pursuant to the advertisement.

5. In reply, learned Counsel for the petitioners submits that a Division Bench of this Court, in LPA No. 599 of 2013, in the matter of removal/termination of the services of the Warden and Night Guard, entertained the writ application, which was rejected by the learned Single Judge on the ground that the writ is not maintainable.



6. I have heard learned Counsel for the parties concerned.

7. It is an admitted position that the petitioners were working on their respective posts for the last so many years. The contention of the petitioners is that the action of the authorities in making appointment on the posts on which the petitioners were working is discriminatory and arbitrary inasmuch as the authorities are going to replace one adhoc appointee with another adhoc appointee. Learned counsel for the Bihar Education Project Council has put an emphasis on the facts that the appointment of the petitioners were made without following the requirement of Articles 14 and 16 of the Constitution of India and without any open advertisement after following the reservation roster. Accordingly, the authorities have decided to make fresh appointment after following the due process of appointment by open advertisement.

8. This Court in CWJC Nos. 8849 of 2009, 157978 of 2012 , 20227 of 2013, 23630 of 2013 , 2931 of 2014 , 20150 of 2014, 7947 of 2014 , 9147 of 2019 and many other writ applications has held that writ applications filed by the Warden, full time teachers, part time teachers, cook, Assistant Cook, Peon and Chowkidars working in Kasturba Gandhi School is not maintainable because the appointment was on contract basis and



no reinstatement can be directed if the contract is terminated.

9. Accordingly, on the basis of previous judgment, I hold that this writ application is not maintainable and the same is dismissed.

10. However, the petitioners may pursue their remedy in accordance with law before the Civil Court.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	
CAV DATE	
Uploading Date	04-10-2024
Transmission Date	

