

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3935 of 2020

1. Guddu Kumar S/o Ganesh Chaudhary R/o Village and Post Basauli, P.S. Kurhani, District- Muzaffarpur.
2. Arun Kumar S/o Bhola Baitha R/o Village- Chak Mehshi, P.O. Purushottampur, P.S. Maniyari, District- Muzaffarpur.
3. Anil Kumar Rajak S/o- Suraj Rajak R/o- Village and Post- Chhajan Harishankar, PS- Kurhani, District- Muzaffarpur.
4. Moni Kumari W/o- Bablu Chaudhary R/o Village- Dubiyahi, PO- Chhajan Harishankar, PS- Kurhani, District- Muzaffarpur.
5. Shani Kumar Baitha S/o- Jira Lal Baitha R/o- Village and P.O.- Basauli, PS- Kurhani, District- Muzaffarpur.
6. Vinod Chaudhary S/o- Nathuni Rajak R/o- Village- Bangra Banshidhar, P.O and PS- Kurhani, District- Muzaffarpur.
7. Chunchun Manjhi W/o- Nageshwar Manjhi R/o- Village- Gausi Bhagirath, P.O and PS- Kurhani, District- Muzaffarpur.
8. Shakuntala Kumari W/o- Pinku Kumar R/o- Village- Kharauna, P.O- Kharauna, PS- Kurhani, District- Muzaffarpur.
9. Anil Kumar S/o- Asharfi Chaudhary R/o- Village- Godni, P.O.- Sonebarsa, PS- Maniyari, District- Muzaffarpur.
10. Renu Kumari W/o- Naresh Rajak R/o- Village- Barkurwa, P.O.- Tukri, PS- Kurhani, District- Muzaffarpur.
11. Jitendra Kumar Rajak S/o- Dukhit Rajak R/o- Village- Chhajan Gonu, P.O- Chhajan Harishankar, PS- Kurhani, District- Muzaffarpur.
12. Nitu Kumari W/o- Ravindra Kumar R/o- Village and Post- Kishunpur Madhuban, PS- Kurhani, District- Muzaffarpur.
13. Lakshmi Kumari W/o- Rajendra Rajak R/o- Village- Chhajan Sangram, P.O.- Chhajan Harishankar, PS- Kurhani, District- Muzaffarpur.
14. Munchun Kumari W/o- Gauri Shankar Chaudhary R/o- Village and Post- Ladaura, PS- Kurhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Principal Secretary, Department of Education, Government of Bihar, Patna.
4. The Directorate of Public Education through its Director, Department of Education, Government of Bihar, Patna.
5. The Director, Directorate of Public Education, Department of Education, Government of Bihar, Patna.



6. The Director, Primary Education, Government of Bihar, Patna.
7. The State Programme Officer, Bihar Education Project Council, Shiksha Bhawan, Patna.
8. The Programme Officer, Bihar Education Project Council, 5/5 Anandpuri West Boring Canal Road, Patna
9. The District Magistrate, Muzaffarpur.
10. The District Education Officer, Muzaffarpur.
11. The District Programme Officer, Establishment, Muzaffarpur.
12. The Block Development Officer, Block- Kurhani, District- Muzaffarpur.
13. The Block Education Officer, Block- Kurhani, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Advocate. Ms. Nirmala Kumari, Advocate.
For the Respondent/s	:	Smt. Abhanjali, AC to GA-12.
For BEPC	:	Mr. Girijish Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-02-2025

Heard Mr. Amit Narayan, learned counsel along with Ms. Nirmala Kumari, learned counsel appearing on behalf of the petitioners; Smt. Abhanjali, learned AC to GA-12 for the State and Mr. Girijish Kumar, learned counsel for the Bihar Education Project Council.

2. The petitioners in paragraph no. 1 of the present writ petition have sought, *inter alia*, following relief(s), which is reproduced hereinafter:-

“i. For quashing Memo No. 1570 Patna dated 23.07.2018 (Annexure 6) carrying Guidelines, 2018 for Selection of Tola Sevak & Shiksha Swayamsevi / Shiksha Sevak, issued under signature of Principal Secretary, Department of Education, Bihar as same is unconstitutional and in violation to Articles 14, 15, 16 and 21 of the Constitution of India;

ii. For quashing Memo No. 1566 Patna dated



05.07.2019 (Annexure 7) issued under signature of Additional Chief Secretary, Department of Education, Bihar directed other respondents to fill vacancies of Shiksha Sevak /Shiksha Sevak (Talimi Markaz) in accordance with aforesaid Guidelines, 2018 i.e., Memo No. 1570 Patna dated 23.07.2018;

iii. For quashing & prohibiting employment, selection, appointment etc made through any advertisement or other wise of Tola Sevak & Shiksha Swayamsevi / Shiksha Sevak in relation to aforesaid Memo No. 1570 Patna dated 23.07.2018 and/or Memo No. 1566 Patna dated 05.07.2019;

iv. For directing respondents to complete recruitment of petitioner which includes their training, appointment, posting and allotment of work on the post of Tola Sevak or equivalent for which they have already been selected by the respondent;

v. For any other relief or reliefs to which the petitioners may be deemed entitled, may be granted to them."

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners were selected from time to time in accordance with 2009 guidelines and thereafter fresh guidelines came into effect in year 2018 w.e.f. 23.07.2018. The petitioners were selected, but in spite of the vacancies, they were not sent for training in accordance with 2009 guidelines and then in accordance with 2018 guidelines, only working Tola Sewak were continued as per clause 12 of the 2018 guidelines, which has been issued vide Memo No. 1570 dated 23.07.2018. Learned counsel submitted that similar relief was subject matter in C.W.J.C. No. 11447 of 2018. Learned counsel has claimed that the case of the petitioners is somewhat similar to that of Taleemi Markaz. The petitioners are also Mahadalit and their



case is required to be considered for being appointed as Tola Sevak in accordance with the scheme to perform the social work by inspiring people from Mahadalit communities to render proper education to the children and illiterate adult women for bringing social change in the society. Learned counsel submitted that the main role of Tola Sevak or the Shiksha Swayamsevi is to function as motivator and facilitator.

4. Learned counsel further informs that the petitioners have earlier filed C.W.J.C. No. 16033 of 2018 for consideration of their grievance as raised in the present writ petition. The said writ petition was heard on 05.02.2019 and this Court had directed the petitioners to file representation before the State Programme Officer, Bihar Education Project Council, who was directed to dispose of the representation of the petitioners within a period of twelve weeks from the date of representation. The State Programme Officer has illegally rejected the representation on the ground that in light of the Letter No. 2600 dated 09.04.2013 only those Tola Sevak were to be considered who were selected and working w.e.f. 10.10.2012 and in this regard public notice was also issued. Learned counsel further submitted that Taleemi Markaz also performs the similar function in respect of minorities who were selected and



not working. He submits that the case of the petitioners being similar, they are also entitled for similar relief of getting appointed from the date of their selection as granted by the co-ordinate Bench of this Court in C.W.J.C. No. 11447 of 2018 vide judgment and order dated 27.07.2022.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that from the order dated 27.07.2022 passed in C.W.J.C. No. 11447 of 2018, it appears that the petitioners of the said writ petitions were volunteer teachers, who were appointed in 2009 and their claim is related to absorption as a teacher, in that background, a co-ordinate Bench of this Court issued direction to reinstate with continuity in service and they would be also entitled to payment of their salary. In the present case, admittedly the petitioners were selected, but they were never appointed. Hence the case of the present petitioners cannot be said to be identical with the writ petitioners of C.W.J.C. No. 11447 of 2018. Learned counsel further submitted that considering the nature of work performed by the Tola Sevak, a co-ordinate Bench of this Court in C.W.J.C. No. 12390 of 2015 held the said writ petition not maintainable under Article 226 of the Constitution of India and the aggrieved parties have filed L.P.A. No. 2185 of 2015 which has been



dismissed by the Division Bench holding that the selection or engagement or hiring of the Toal Sevak is not a permanent appointment under the State, which is required to be considered under Article 226 of the Constitution of India. Learned counsel in these background submitted that the writ petition deserves no merit and same is required to be dismissed.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, having gone through the records of the case and the pleadings made in the writ petition and the counter affidavit filed on behalf of the respondents, I, prima facie, find that Tola Sevak voluntarily undertakes to work as a facilitator and in this regard guidelines were issued in the year 2009 and following the same the petitioners were selected but found not working. Subsequently 2018 guidelines came into effect clarifying that those who were appointed after selection and are working, they can only be considered to be engaged. The very engagement as a Tola Sevak is to facilitate education to Mahadalit of any community voluntarily and the guidelines issued in this regard cannot be said to have been issued under Article 309 of the Constitution of India being binding on the State Government. The Division Bench in L.P.A. No. 2185 of



2015 has clearly found that the selection or engagement or hiring of the Toal Sevak is not a permanent appointment under the State, which is required to be considered under Article 226 of the Constitution of India. Recently the Apex Court in the case of **St. Mary's Education Society Vs. Rajendra Prasad Bhargava**, reported in (2023) 4 SCC 498, has laid down the exceptions as under:

“An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. Individual wrongs or breach of mutual contracts without having any public element cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.”

(emphasis

supplied)

8. The present petitioners have not been able to make out a case as to whether the case of the petitioners comes under any exception as laid down by the Apex Court recently. The writ petition don't deserve any merit. The writ petition stands dismissed.

9. It is, however, made clear that the contention of the petitioners that case of the petitioners is similar to that of



petitioners of C.W.J.C. No. 11447 of 2018 is also misconceived. In the said writ petition, it has been rightly pointed out by the State Government that the Shikshak Swayamsevaks Taleemi Markaz after their selection were appointed and they were working and in that background this Court had directed to give the benefit of notional salary following the principle of ‘no work no pay’. The facts of the present case is entirely different. Here the petitioners though were selected as claimed by the petitioners, but it is admitted that they were not working.

(Purnendu Singh, J)

Mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.02.2025
Transmission Date	N.A.

