

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11498 of 2021

-
1. Mohammad Junaid Akhter S/o Mohammad Mumtaz, R/o-Ekbal Hassan Road P.O.-M.I.T., P.S./-Brahmpura District-Muzaffarpur Was Working as Talimi Markaj Siksha Swamsevi, Urdu Primary School, Brahmpura Balak, Nagar Kshetra, Muzaffarpur
 2. Rukshar Mumtaz S/o Mohammad Mumtaj R/o-Ekbal Hassan Road P.O.-M.I.T., P.S./-Brahmpura District-Muzaffarpur Was Working as Talimi Markaj Siksha Swamsevi, Urdu Primary School, Brahmpura Balak, Nagar Kshetra, Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Additional Chief Secretary, Education Department Bihar, Patna.
2. The Secretary, education Department, Bihar Patna.
3. The Director, Mass Education Cum Addl. Secretary, Education Department, Bihar Patna.
4. The Distirct Magistrate, Muzaffarpur.
5. The District Education Officer (Literacy) Muzaffarpur.
6. The District Program Officer, Secondary Education and Literacy, Muzaffarpur.
7. The School Sub Inspector, Nagar Kshetra, Muzaffarpur.
8. The Headmaster Cum Ex-Officio Member, Selection/ Steering Committee, Urdu Primary School, Brahmpura Balak, Nagar Kshetra, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar Manoj, Advocate Mr. Suryanarayan Yadav, Advocate
For the State	:	Mr.Hitesh Suman, Ac to SC 13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 03-07-2025 Heard Mr. Manoj Kumar Manoj along with Mr. Suryanarayan Yadav, learned counsels appearing on behalf of the petitioner and Mr. Hitesh Suman, learned AC to SC 13 for the State.

2. The issue regarding the entitlement of the petitioners who have claimed themselves to be *Taleemi Markaz*



has already been settled by a Division Bench of this Court in LPA No.2185 of 2015. This Court has held that they don't hold any government post, nor they are permanent employee of the State and the Court cannot exercise its jurisdiction under Article 226 of the Constitution of India.

3. Similar issue came before this Court in CWJC No.3955 of 2020, in which *vide* order dated 04.02.2025, I have passed *inter alia* following order in paragraph nos.7 to 9:-

*“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 Tola 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."

4. I don't find to interfere in the matter and grant relief to the petitioners, as prayed for in the present writ petition.

5. The present writ petition is, accordingly, consigned.

(Purnendu Singh, J)

Sanjay/-

U			
---	--	--	--

