

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.287 of 2022
In
Civil Writ Jurisdiction Case No.1986 of 2021

1. The State of Bihar.
2. The Chief Secretary State of Bihar.
3. The Principal Secretary, General Administrative Department Bihar, Patna.
4. The Director, Mass Education, Education Department Bihar, Patna.
5. The Director (Janshiksha) Education Department Bihar, Patna.
6. The District Magistrate, Saran.
7. The District Transport Officer, Saran.
8. The District Education Officer, Saran.
9. The District Programme Officer, Saran.
10. The District Programme Officer (Estb.) Saran.
11. The District Programme Officer (Literacy) Saran.

... .. Appellant/s

Versus

Kamlesh Kumar S/o Sitav Ram, R/o Village Pratappur, P.O. Pratappur, P.S.
Dariyapur, Distt. Saran.

... .. Respondent/s

with
Letters Patent Appeal No. 404 of 2022
In
Civil Writ Jurisdiction Case No.2131 of 2021

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Mass Education-Cum-Additional Secretary, Education Department, Government of Bihar, Patna.
4. The District Education Officer, Saran at Chapra, District-Saran at Chapra, District-Saran at Chapra.
5. The District Programme Officer (Literacy), Saran at Chapra, District-Saran at Chapra,



6. The Headmaster, Dalan Singh High School (10 Plus 2), Manjhi, Block-
Manjhi, District-Saran at Chapra,

... .. Appellant/s

Versus

Satish Kumar Singh Son of Late Keshav Prasad Singh Resident of Village-
Parsa Mathura, P.O. and P.S. Parsa, District-Saran at Chapra, Presently
residing at Behind of Ganga Singh College, Hem Chandra Mitra Road, P.O.
Sahebganj, P.S. Chapra Town, District-Saran at Chapra.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 287 of 2022)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. S.S. Prasad, S.C. 8
Mr. Anil Kumar, A.C. to S.C. 8
For the Respondent/s : Mr. Basant Kumar Chaudhary, Sr. Advocate

(In Letters Patent Appeal No. 404 of 2022)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Apurva Kumar, Advocate
For the Respondent/s : Dr. Alok Kumar Sinha, Advocate
Ms. Raj Rashmi Sinha, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 10-02-2025

Re. I.A. No. 01 of 2022 in L.P.A. No. 287 of

2022 and I.A. No. 02 of 2022 in L.P.A. No. 404 of

2022 :-

Mr. P.K. Shahi, the learned Advocate General for
the appellants presses I.A. Nos. 01 of 2022 & 02 of 2022



in L.P.A. Nos. 287 of 2022 & 404 of 2022 respectively for condoning the delay of 56 days and 81 days in preferring the appeals.

2. For the reasons stated in the applications, the delay of aforementioned days in preferring the appeals are condoned.

3. Both the afore-noted interlocutory applications stand allowed.

Re. L.P.A. Nos. 287 of 2022 & 404 of 2022:-

4. Both the appeals have been taken up together and are being disposed off by this common judgment.

5. The State of Bihar, in the past, had promulgated Non-Formal Education Programme where Supervisors and Instructors were engaged. With the abandoning of the programme, the Supervisors and Instructors became jobless. Later, by the orders of this Court, the Supervisors, because they were lesser in



number, were accommodated against various Government posts and their services were regularized. Since the Instructors were not accommodated anywhere, who were in large number, they came before this Court vide ***C.W.J.C. No. 8418 of 2010 (Sheo Bhajan Prasad Diwakar and Ors. vs. State of Bihar and Ors.)*** where a direction was issued for considering their cases for regularization/appointment on the same terms as had been done for the Supervisors associated with the same programme *i.e.* Non-Formal Education Programme.

6. The aforementioned direction passed by the learned Single Judge was upheld in ***L.P.A. No. 1489 of 2011***, but it was observed that with respect to Instructors, only those persons be accommodated who would be found to be working for three years continuously at the time when the Non-Formal Education Scheme was abolished. The Instructors never insisted on Class-III posts and, therefore, they could be taken in service even on Class-IV posts as per the vacancies available in



different departments. The reason for this was that such privilege could not be given to a person who would have worked for a short period and then have left the work. They would then have no legitimate claim in that regard.

7. Against the aforementioned direction of the Division Bench of this Court, referred to above, the State of Bihar had preferred ***S.L.P. (Civil) No. 32079 of 2015***, which too was dismissed *vide* order dated 26.02.2016 with an observation that the relief would only be granted to such of the Instructors who had approached either the High Court or the Supreme Court till 26.02.2016.

8. Thereafter, the State resolved to and proceeded with the exercise of regularizing/appointing the erstwhile Instructors with the condition that they should have approached either the High Court or the Supreme Court on or before 26.02.2016; they must have worked for at least three years continuously before the abolition of the Scheme; that they should be less than sixty years



of age; they should have minimum qualification of Matriculation or equivalent examination and that the panel so prepared would be valid for five years from 27.04.2017.

9. For effecting the process, District Level Committees were constituted in each of the 38 districts of the State of Bihar to sort out eligible Instructors who could be given appointment on Class-III or Class-IV posts. The exercise was gigantic because of the sheer number of Instructors who had applied. Nonetheless, appointments were made, the respondents in both the appeals being the beneficiaries of such appointments.

10. In clause 10 of the appointment letter to the respondents, it was clearly stated that if any information/fact provided by the applicant would be found to be false/misleading in future, their services then would be terminated.

11. With respect to the respondents, there was a complaint received later that their self-certification of



having worked continuously for three years prior to abandoning of the Non-Formal Education Project, was false and not based on records, leading to an inquiry in which it was found that the accusation against the respondents were correct.

12. They were asked to explain to which they submitted the details of payment shown in the bank pass-books. This information was also found to be incorrect.

13. In the inquiry, except for a bald statement made by the respondents that they had worked continuously for three years and had obtained remuneration in their respective bank accounts, no other evidence was furnished and the pass-book entries could not be verified as the records were not available in the concerned banks.

14. As such, their services were terminated.

15. They approached this Court *vide* C.W.J.C. Nos. 1986 of 2021 and 2131 of 2021 respectively, wherein a learned Single Judge of this Court held that



once the respondents were regularized, their appointments could not have been cancelled without prior opportunity to them in a domestic proceeding.

16. Relying on several Supreme Court decisions that even temporary employees would be entitled for domestic inquiry if the allegations are made against such employees before terminating their services, the orders terminating the services of respondents were set aside.

17. It was also observed by the learned Single Judge that the respondents would be entitled to monetary benefits during the intervening period from the date of termination till their reinstatement; the benefits would be calculated and disbursed within a period of three months.

18. However, by the aforementioned judgments, the State was given the liberty to initiate inquiry against the respondents for furnishing false information within a period of three months from the date of the order.

19. The appeals were preferred against the



aforenoted judgments in favour of the respondents on the ground that one of the conditions for appointment of the respondents was that they should have worked continuously for three years prior to the project having been stopped. The information provided by the respondents with respect to this criteria was found to be incorrect. It was argued that there was no necessity of initiating any departmental proceeding against the respondents as it would have been an empty formality.

20. The Courts have discarded the principle of natural justice when satisfied that the outcome of the case would not have been different, had the principle of natural justice been fully observed.

21. The present cases, the State has argued, would fall under this category where even after an inquiry, the result would have been the same.

22. The other ground of challenge was that allowing the respondents the monetary benefits from the date of termination till reinstatement would incur



approximately Rs. 12,00,000/- for each of the respondents to the State exchequer and ultimately it would amount to making the respondents win even after furnishing false and fabricated evidence to procure the appointments. It would also lead to a groundswell of the opinion that false information by the candidates could be furnished with impunity.

23. During the course of argument, it was further brought to the notice of the Court that in view of the liberty granted to the State to initiate inquiry against the respondents, an inquiry was initiated under the ***Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*** against the respondents. They were charge-sheeted and inquiry officers and presenting officers were appointed. The respondents, instead of replying to the charge memo, questioned the very initiation of departmental proceeding by filing representations.

24. The inquiry report was submitted which



indicated that as per the payment register and other documents available in the department, the respondents were not paid money for working for three continuous years as claimed by them. A reasoned order thereafter was passed by which the recommendation made in favour of the respondents was cancelled and a resolve was expressed for taking appropriate steps for recovering the salary paid to the respondents from the date of appointment to the date of dismissal.

25. We have examined the issue from all angles. The claim of the respondents have been negated on the prime ground that they could not prove that they had continuously worked for three years prior to the stopping of the project. In fact, it should have had been the State which had regularized the services of the respondents to check up its own records with respect to the payment register. In such context, to a large extent, the judgment passed by the learned Single Judge could not have been faulted on account of the respondents not



having been put to the rigors of departmental proceeding. Nonetheless, it also cannot be lost sight of that the right to be paid by way of salary springs from a legal right to validly hold the post for which salaries are claimed. It is a right consequential to a valid appointment to such post.

26. Refer to ***Rita Mishra & Ors. vs. Director, Primary Education Bihar & Ors. AIR 1988 Patna 26(FB)*** and ***The State of Bihar & Ors. vs. Devendra Sharma (2020) 15 SCC 466.***

27. ***In Chairman Board of Mining Examination and Chief Inspector Mines & Anr. Vs. Ramjee (1977) 2 SCC 256***, the Supreme Court had observed very pithily that “*natural justice is no unruly horse, no lurking landmine, nor a judicial cure – all. If fairness is shown by the decision maker to the man proceeded against, the form, the features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained*



of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case can be exasperating. One can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter”.

28. Now that one part of the judgment of putting the respondents to domestic inquiry was followed by the State/appellant, the question remains only with respect to payment for the period between the termination and the reinstatement for the purposes of holding inquiry.

29. We are of the considered view that such a direction for payment of salary for such period to the respondents ought not to have been directed by the learned Single Judge.

30. We, therefore, set aside the aforementioned direction with respect to payment of salary to be calculated from the period of termination till the period of



their reinstatement for conducting inquiry against them.

31. The judgments impugned are modified to the extent indicated above.

32. There would be no obligation on the State to make any payment to the respondents.

33. However, the resolve to recover the salary for the entire period that the respondents were in service would not be in tune with law. When pointed out, the learned Advocate General gave an undertaking that such recovery shall not be ordered.

34. However to be on the fair side of the respondents, we further direct in view of the judgment of the Supreme Court in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) & Ors. 2015 (4) SCC 334*** and ***High Court of Punjab & Haryana & Ors. vs. Jagdev Singh (2016) 14 SCC 267***, the State would not be entitled to recover the salary of the respondents which have been paid to them till the time they were terminated from service.



35. Both the appeals are allowed to the extent indicated above.

36. Interlocutory Application(s), if any, also stands disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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