

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1003 of 2025

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1. Rajesh Kumar Singh Son of Ram Pujan Singh, resident of Village- Mashrak Barhiya Tola, Mashrak, P.S. - Mashrak, District- Saran Chapra.
 2. Tapan Kumar Singh, Son of Rajbanshi Singh, Resident of village- Mirpurjuara, P.S. - Awatar Nagar, District - Saran (Chapra).
 3. Vishal Prasad, Son of Nirmal Kumar, resident of Katra Khajanchi Mandir, P.S. - Chhapra, District- Saran, Chapra.
 4. Savitri Kumari, Wife of Anshun Kumar Singh, resident of village- Majalishpur, P.S. - Kopa, District - Saran Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Education Department, New Secretariat Patna, Government of Bihar, Patna.
2. The Additional Chief Secretary Education Department Government of Bihar, New Secretariat, Patna.
3. The Director, Secondary Education, Govt. of Bihar, New Secretariat Patna,.
4. The District Education Officer, Chhapra, Saran.
5. The Block Education Officer, Chhapra, Saran.
6. The Principal Sadhu Lal Prithvi Chand +2 School Chhapra, Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhirendra Singh, Advocate
For the Respondent/s : Additional Advocate General (4)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-01-2025

Heard Mr. Dhirendra Singh, learned counsel
appearing on behalf of the petitioners and the learned AAG 4 for
the State.

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 issuance of appropriate writ/writs, order/orders, direction/directions to the respondents authority to set aside letter no.09/B1, bi, Pa, Ra, 09/2015-325 dated 30.03.2024 issued by Mr. Kanhaiya Prasad Srivastava, Director, Secondary Education, Education Department, Govt. of Bihar whereby and whereunder direction has been issued to the concern authorities, not to take the service of guest teacher in Higher Secondary School of the state with effect from 01.04.2024 by which petitioners have terminated from the post of guest teacher in Sadhu Lal Prithvi Chand +2 School, Chhapra Saran without any notice or opportunity.

ii. For issuance of appropriate writ/writs, order/orders, direction/s against the respondents authority to re-appoint the petitioner on the post of guest teacher, botany, Chemistry physical in SLP C+2 School, Chapra Saran in which they have already continue working for 05 years and 8 months (13.07.2018 to 30.03.2024).

iii. For issuance of appropriate writ/ writs, order/orders, direction/s to stay the operation of the letter dated 30.03.2024 issued by the Director, Secondary Education Govt. of Bihar because action of the respondents are clear out violation the Art. 14, 16 and 21 of the Constitution of India.

iv. Any other relief or reliefs for which the petitioner found entitled on the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioners referring to the communication dated 30.03.2024 made by the Education Department, addressed to all the District Education Officers to terminate the services of the teachers, who were appointed on the temporary basis for teaching the students



of Class 11th and 12th and accordingly, the services of total 94738 teachers have been unilaterally terminated. He further submitted that the petitioners fulfill all the requisite criteria to be absorbed into service on permanent basis, in view of the fact that though their appointment was temporary but the same was made against the sanctioned post, as such, the unilateral decision of the State Government cannot be sustained in the eye of law.

4. *Per contra* learned counsel appearing on behalf of the State submitted that the appointment of the teachers was made in accordance with the policy of the State Government contained in notification dated 25.01.2018, which was notified on 08.02.2018 for appointing teachers on temporary basis in different subjects including the subjects, for which the petitioners were appointed on temporary basis. The petitioners were conscious of the terms and conditions contained therein and now they cannot deny that they have not fully understood such terms and conditions. The learned counsel specifically refers to Clause 5 of the said notification dated 08.02.2018 and submits that the writ petition is fit to be dismissed.

5. Having considered the rival submissions made on behalf of the parties, as well as, considering the terms and



conditions contained in notification dated 08.02.2018 by which total 4257 teachers were required to be appointed in different subjects, namely, English, Mathematics, Physics, Chemistry, Biology and Botany, as has been indicated in the said notification, whereas from the order of the termination dated 30.03.2024, contained in **Annexure P/3**, it appears that the total 94738 teachers were appointed on temporary basis and posted in different schools. As such, more appointment rather than what has been notified by the State Government was made, vide notification dated 08.02.2018. The terms and conditions of the notification dated 08.02.2018 also stipulates the criteria particularly in paragraph no.5, which is re-produced hereinafter as follows : -

“राजकीय, राजकीयकृत एवं राष्ट्रीय माध्यमिक शिक्षा अभियान अंतर्गत उत्कृष्ट उच्च माध्यमिक विद्यालयों में अतिथि शिक्षक के रूप में सेवा देने वाले अतिथि शिक्षक विद्यालय के लिए शिक्षक के नियोजन होने तक कार्यरत रहेंगे।”

6. Further, Paragraph number 6 of the said notification prescribes for the applicable remuneration per month to be paid to the Guest Teachers (Atithi Teachers) in the Higher Secondary for which the State Government has also earmarked the budgetary head.

7. The case of the petitioners is that on the basis of the direction contained in letter no.325 dated 30.03.2024, the



petitioners, who were discharging their duties as Guest Teachers continuously were terminated, without providing them any opportunity of hearing. As such, the petitioners have not made out their case to be considered for appointment on regular basis and for regularization their services.

8. In paragraph no.9 of the writ petition, the statement has been made that after the advertisement of M.TREI published by the BPSC, all the Guest Teachers have been appointed, i.e., a total 4257 Guest Teachers (Athithi Teachers) and such number of vacancies have been kept reserved for the Guest Teachers as communicated vide letter no.371 date 03.07.2023 and the learned counsel appearing on behalf of the petitioners submitted that the conditions stipulated in paragraph no.5 of the Gazette notification dated 08.02.2018 makes it mandatory to be followed at least when the notification stipulates the total number of Guest Teacher to be 4257.

9. I find that the notification has been issued by the State Government in exercise of power conferred under Article 166/162 of the Constitution of India and the State Government being author of the said notification now cannot terminate the petitioners that too without giving them due opportunity of hearing.



10. Recently, the Hon'ble Supreme Court in **Civil Appeal No. of 2024 [Arising out of SLP (C) No.5580 of 2024] (Jaggo Vs. Union of India & Ors.)** and another after considering the case of the temporary employees, contractual employees and the employees like present one, who have been appointed by the State Government. I find it proper to refer Paragraph Nos.20, 21, 22, 23, 25 and 27 of the case of **Jaggo Vs. Union of India & Ors. (SLP (C) No. 5580 of 2024)**, in which taking note of the judgment passed in **Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.** case, reported in **(2024) 1 S.C.R. 1230**, the Hon'ble Apex Court has made following observations, which are reproduced hereinafter :-

“20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.[2024] 1 S.C.R. 1230, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant



paras of this judgment have been reproduced below:

*“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).
7. The judgement in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”*

21. The High Court placed undue emphasis on the initial label of the appellants’ engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also



sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of "Temporary" Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual, even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*



• **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

11. The petitioners can not be terminated by any executive order, as such, the directives contained in Letter No.352 dated 30.03.2024 cannot override the government notification dated 08.02.2018, which has been issued after approval of the Governor of Bihar. Accordingly, the impugned letter no.325 dated 30.03.2024 cannot be sustained in the eye of law.

12. The competent authorities are directed to rectify their action forthwith and pass a reasoned order after giving due opportunity of hearing to all the affected persons in accordance with law.



13. With the above observation/direction, the present writ petition is allowed.

(Purnendu Singh, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	30.01.2025
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