

SC. XI
21/11/12

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No...../2012

Manju Kumari --- Petitioner.

Vs.

The State of Bihar and others --- Respondents.

Subject:- *Termination, School Service*

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IN THE HIGH COURT OF JUDICATURE AT PATNA

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C.W.J.C. No...../2012

Manju Kumari --- Petitioner.

Vs.

The State of Bihar and others --- Respondents.

Synopsis

The present writ petition is being preferred by assailing the validity of the order as contained in Memo No. 599 Madhepura dated 07.09.2012 passed by the District Programme Officer, Primary Education-cum-co-ordinator, Kasturba Gandhi Girls School, Shankarpur, District Madhepura. Whereby the directions given for the cancellation of the appointment to the petitioner with the immediate effects and the compliance reports referring the certain letters and orders at the level of the directorate even without observing the requirement of the natural justice as well as the communications issued by the learned Director under letter no. 4112 dated 21.08.12 and the further prayer is with respect to her

reinstatement in the service against the respective post and the subsequential/consequential benefit attached to the post.

List of dates

05.06.08

The petitioner was appointed as full time teacher on or after completing the process required under the law by the Vidyalay Siksha Samittee to Kasturba Gandhi Girls School Madhaili Bazar, Shankarpur within the district of Madhepura.

21.08.12 :- The references have given by the District Programme Officer to the letter communicated by the directorates bearing letter no. 4112 dated 21.08.2012 but the ratio referred as a pre-conditions on or before the adverse order was completely ignored and the order impugned was passed without explanation and without approval of the District Coordinator as directed and suggested as letter no. 4112 dated 21.8.12.

07.09.12 :-

The District Programme Officer, Madhepura had committed the serious error of records while issuing

the Memo No. 599 Madhepura dated 07.09.2012 addressing the Headmaster-cum-co-ordinator of the school in question pertaining to the cancellation of her appointment with the immediate effects and furnished the compliance report and the said copy was forwarded by the Headmaster to the petitioner. In the said letter the references have been given to letter no. 4112 dated 21.08.12 in support of the order of cancellation but the ratio decided and communicated through the said letter not followed.

Hence, this writ petition.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No...../2012

In the matter of an
application under Article 226
of the Constitution of India;

And

In the matter of:-

Manju Kumari, W/o Sri Brahamdeo Prasad Yadav, C/o Sri
Brahamdeo Prasad Yadav, Advocate, resident of Mohalla --
Anandpuri, P.O.- *Madhepura*..., P.S. *Madhepura* Ward No.
04, East of Block, District *Madhepura*.

.....Petitioner.

Versus

1. The State of Bihar.
2. The District Education Officer, Madhepura.

Through :-
Jyotish Kumar
Advocate
AER No - 00868

3. The District Programme Officer, Primary Education-cum-Sarva Shiksha Abhiyan, Madhepura.
4. The Headmaster-cum-Co-ordinator, Kasturba Gandhi Girls School, Madhaili Bazar, Shankarpur, District Madhepura.

.....Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner above named;

Most Respectfully Sheweth:

1. That the present writ petition is being preferred by assailing the validity of the order as contained in Memo No. 599 Madhepura dated 07.09.2012 passed by the District Programme Officer, Primary Education-cum-coordinator, Kasturba Gandhi Girls School, Shankarpur, District Madhepura. Whereby the directions given for the cancellation of the appointment to the

petitioner with the immediate effects and the compliance reports referring the certain letters and orders at the level of the directorate even without observing the requirement of the natural justice as well as the communications issued by the learned Director under letter no. 4112 dated 21.08.12 and the further prayer is with respect to her reinstatement in the service against the respective post and the subsequential/consequential benefit attached to the post and for the other necessary relief/s to the basis of the facts and the circumstances of the case as enumerated and stated hereinafter.

2. That it is stated and humbly submitted that the substantial questions of law involved in this writ petition are as follows:-
 - (i) Whether the order under challenge in the present writ petition is based on the wrong facts and the wrong interpretation of the law including the non observance to the requirement of the natural justice?
 - (ii) Whether the authority have failed to appreciate the basic principle of law as well as the command of the constitution with the effects that the no one can be

condemned and the order which adversely effects the rights shall be passed?

- (iii) Whether the learned District Programme Officer had committed the serious error of record while passing the order for the cancellation of the petition's appointment with the immediate effect by referring the letter no. 4112 dated 21.08.2012 issued by the learned Director by not following the spirits of the letters as aforementioned?
- (iv) Whether the authorities have failed to appreciate that even the letter as contained in Memo No. 4112 dated 21.8.12 reflects the light to the concern authority for providing the adequate opportunity of hearing to the effected party and take the legal action after the necessary approval by the District coordinator of the said scheme and it was further order for the determination pertaining to the communications of the illegal appointment to the District coordinator scheme within a limited time or not?

- (v) Whether the District Programme Officer has failed to appreciate that the conditions and the pre-conditions imposed by the directorates on or before the adverse order it can not be passed through whimsically and arbitrarily rather on the point of sub-ordination. He is bound to follow the pre-condition imposed to them?
- (vi) Whether the authorities have failed to appreciate that the rights conferred under Article 311 (2) of the Constitution did not permit for a major punishment without providing the adequate opportunity of hearing and even the show cause?
- (vii) Whether the learned District Programme Officer has committed a serious error of record by imposing himself to be a supreme and above the law. On the reason that neither the command of the constitution nor the departmental order by fixing the barrier impress to comply on or before the adverse order?
- (viii) Whether the authorities have failed to appreciate that the equal can not be treated as unequal by giving the

interpretation of the communications issued from the directorates rather the order in rem must be followed by giving the equal treatment to the all concern?

(ix) Whether the action of the respondent authorities are malafide, arbitrary, without jurisdiction as well as power and authority due to the wrong and the ulterior motive?

(ix) Whether the action of the respondent authorities are otherwise bad in law and facts and as such demand of the law requires the interference with extend to the setting aside the order under challenge in the present writ petition and her reinstatement in service?

3. That it is stated and humbly submitted that the petitioner is a citizen of India and she is residing within the territorial jurisdiction of this Hon'ble Court.

4. That it is stated and humbly submitted that the petitioner was appointed as full time teacher on or after completing the process required under the law by the Vidyalay Siksha Samittee to Kasturba Gandhi Girls School Madhaili Bazar,

Shankarpur within the district of Madhepura. It is submitted that her selection was communicated under letter no. 25...dated. 05.06-08.

The photo copy letter no. 25...dated. 05.06-08 is annexed herewith and marked as Annexure-1 to this writ petition.

5. That it is stated and humbly submitted that on the strength of a letter of selection/engagement she submits the joining against the respective post on 05.06.2008 and since then she is rendering the service to the satisfaction of the concern authorities. It is pertinent to mention at this stage that her joining was accepted by the concern/competent authority and allow performing the duties instructed to her.

The photo copy of ~~joining~~
Experience certificate
~~letter~~ is annexed herewith and marked as Annexure-2 to this writ petition.

6. That it is stated and humbly submitted that the authorities have chosen to send the petitioner under the different courses and she completed the courses and the necessary certificates were issued. It is relevant at the juncture to submit that at the different levels the certificates were issued which disclose the work performance and her efficiency in the works. The petitioner craves to leave the Hon'ble High Court to refer/produce the certificates granted by the concern authority at the different times and different levels.
7. That it is stated and humbly submitted that the District Programme Officer, Madhepura had committed the serious error of records while issuing the Memo No. 599 Madhepura dated 07.09.2012 addressing the Headmaster-cum-co-ordinator of the school in question pertaining to the cancellation of her appointment with the immediate effects and furnished the compliance report and the said copy was forwarded by the Headmaster to the petitioner. In the said letter the references have been given to letter no. 4112 dated 21.08.12 in support of

the order of cancellation but the ratio decided and communicated through the said letter not followed.

The photo copy of memo no. 599 Madhepura dated 07.09.2012 is annexed herewith and marked as Annexure-3 to this writ petition.

8. That it is stated and humbly submitted that the references have given by the District Programme Officer to the letter communicated by the directorates bearing letter no. 4112 dated 21.08.2012 but the ratio referred as a pre-conditions on or before the adverse order was completely ignored and the order impugned was passed without explanation and without approval of the District coordinator as directed and suggested as letter no. 4112 dated 21.8.12.

The photo copy of letter no. 4112 dated 21.08.12 is annexed herewith

and marks as Annexure-4 to this writ petition.

9. That it is stated that the communication dated 21.08.2012 it appears that the reference was given that the conducting organization had made the appointment without following the communications issued by the directorates and as such the directions were given for holding the meeting of Block Selection Committee and to take the necessary actions to removal or the cancellation of the appointment as well as the necessary action may be taken against the co-ordination also, but in the case in hand the condition or the pre-condition has referred not followed. In the said background it appears that the process adopted are vitiated and the order impugned is an abinitio void and otherwise bad in law and facts.
10. That it is stated that the light reflected through the communications made by the learned Director under letter dated 21.08.2012 it appears that the power was vested for the adverse order under the Block Selection Committee and not in the District Programme Officer and as such the order passed by

the said Officer is absolutely incorrect whimsical and without jurisdiction.

11. That it is stated and humbly submitted that the law is quite clear and well established with the extend that under the statute power was delegate to a particular Officer must be exercise by the same authority and manner as suggested under the statute itself. It is submitted that no other process and manner is applicable or acceptable rather the same is violative of the law.
12. That it is stated and humbly submitted that the command of the constitution is the binding precedent for all including the government officials keeping in mind that the State will run on the provision of law enacted by the government through registration and not by a musele and whim of the government officials. In view of the law settled and under the command of the constitution, no one can be condemned or adverse order may be passed without affording the reasonable opportunity of hearing than the said power can be exercise by the District Programme Officer. In facts the process adopted by vitiated and the order under challenge is an abinitio void liking the

jurisdiction as well as the non observance to the requirement of the natural justice which is the basic and the elementary law.

13. That it is stated and humbly submitted that the learned District Programme Officer had failed to appreciate the basic principle of the law that the appointment made by the organizations who entered in the agreement for conducting the affairs of Kasturba Gandhi Girls school which is the private for nature may be cancelled by the State Officials, who has no nexus with the alleged work.
14. That it is stated that for the better appreciation and just decision it is pertinent to mention at this state at the any level either at the directorates or the District Programme Officer had issued the show cause providing the opportunity of hearing before the adverse order and as such the said order attracts the requirement of the natural justice as well as the command of the constitution and its dictate. In the said background the demand of the law requires the interference with extend to the relief as sought for reversing the order affecting the petitioner's right and her reinstatement for service with full back wages.

15. That it is stated and humbly submitted that the Headmaster of the school had not passed in order which adversely affect her rights and title till date, but the communications made by the District Programme Officer on 07.09.2012 was communicated to her under letter no. 112 dated 10.10.12 and not allowed to put the signature in the attendance register by the treating her removal from the service. It is submitted that the fact of the records explain that the order of the cancellation had not be issued till date rather the direction was issued for cancellation and to submit its compliance report.
16. That it is stated that point which are crops up for the determination and adjudication before the Hon'ble High court is whether the District Programme Officer who is no authority under the law had justify to pass the order under challenge by directing for the cancellation of her appointment and furnish the compliance report even in absence of the show cause and the reasonable opportunity of hearing is justify or not? The complete answer of the question is in negative and law did not

permit to ignore the barrier of law enacted by the State Government and to satisfy the whim.

17. That it is stated that on the basis of the material available on the record and close analysis it appears that the order under challenge in the writ petition is not sustainable in the eye of law and as such on or after it is setting aside she may be reinstated in service with full back wages for which she is entitle in accordance with law.
18. That the writ petitioner has no other efficacious and/or alternative remedy except to move this Hon'ble Court in writ jurisdiction which would be more adequate and proper.
19. That the writ petitioner has not moved this Hon'ble Court, earlier for the grant of relief as mentioned in paragraph no.1 to this writ application.

It is accordingly prayed that your Lordships may graciously be pleased to admit this application issue Rule NISI calling upon the respondents to show cause as to why the relief prayed for in

paragraph no.1 be not granted and after
return of the rule and hearing the parties
be further graciously be pleased to make
the Rule absolute.

And/or

Pass such other order or orders as your
Lordships may deem fit and proper.

And for this the petitioner shall ever pray.

Affidavit

I, Manju Kumari, aged about ~~44~~ years, W/o Sri Brahamdeo Prasad Yadav, C/o Sri Brahamdeo Prasad Yadav, Advocate, resident of Mohalla – Anandpuri, P.O.- Madhepura, P.S. - Madhepura...Ward No. 04, East of Block, District Maghdpura, do hereby solemnly affirm and state as follows :-

1. That I am petitioner of the case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read by me which I have fully understood.
3. That the statement made in para nos. 1, 3, 6, 9, 19.....are true to my knowledge and those mentioned in para nos. 4, 5, 7, 8.....are true to information derived from the records and rest are by way of submission of this Hon'ble Court.
4. That the annexures are true/photo copies of their respective originals.

कार्यालय - विद्यालय शिक्षा समिति, माध्यम विद्यालय मधौली
बाजार, अंचल- अंकरपुर जिला- मधौपुरा ।

पत्रांक - 25

दिनांक 05.06.08

कार्यालय आदेश

कस्तूरबा गाँधी आवासीय बालिका विद्यालय मधौली
बाजार अंचल- अंकरपुर जिला मधौपुरा में शिक्षिका व
कमी के कारण पठन-पाठन की समस्या के मद्देनजर
श्रीमति मंजू कुमारी, पति- श्री ब्रह्मदेव यादव, मधौपुरा वार्ड
नं०-4 जिला- मधौपुरा की नियुक्ति अस्थायी रूप से
विद्यालय शिक्षा समिति के निर्णय की प्रत्याज्ञा के
दिनांक 05 जून 2008 से की जाती है। इन्हें उक्त
तिथि से विभागा द्वारा निर्धारित वेतन देय होगा।

यह नियुक्ति तत्काल अस्थायी
है, विद्यालय शिक्षा समिति द्वारा लिया गया निर्णय
सर्वोपरि होगा।

सूर्य कुमार
05-06-2008
सचिव

21/6/08

प्रधानाध्यापक सह संचालक
क० गाँधी आवासीय बालिका
मधौली बाजार, अंकरपुर

विद्यालय शिक्षा समिति
मधौली बाजार
अंकरपुर, मधौपुरा

कार्यालय का 2

मूल प्रति प्राप्त

डू -
अमित कुमार

02/06/08
15/06/08

अनुभव-प्रमाणपत्र

प्रमाणित किया जाता है कि श्रीमती मंजू कुमारी, पति श्री प्रहमदीप यादव, ग्राम - पटौरी पोस्ट - पटौरी, थाना सिंहसैक्टर, जिला मधेपुरा दिनांक 5 जून 08 से आज तक कस्तूरबा गाँधी आवासीय जालिका विद्यालय मदीली बाजार अंचल - अंकरपुर, जिला - मधेपुरा में पूर्णकालिक शिक्षिका के रूप में कार्यरत हैं। पठन-पाठन में इनका कार्य सराहनीय है। इनका वेतन मुगतान उक्त विधि से आज तक विद्यमान हो रहा है। खाता सं०-04660, अंतर दिहार नगरीय बैंक स्टेशन रोड मधेपुरा द्वारा इनका मुगतान हो रहा है।

विद्यालय प्रमुख
कस्तूरबा गाँधी आवासीय जालिका विद्यालय
मधेपुरा
17/12/10

कार्यालय जिला शिक्षा पदाधिकारी, मधेपुरा

(शाखा-सर्व शिक्षा अभियान)

पत्रांक...5.23.../

प्रेषक : जिला कार्यक्रम पदाधिकारी
प्रा० शि० एवं सर्व शिक्षा अभियान
मधेपुरा।

सेवा में,

✓ प्रधानाध्यापक -सह-संचालक
कस्तुरबा गाँधी बालिका विद्यालय, शंकरपुर, मधेपुरा।

मधेपुरा, दिनांक 27.09.2012

विषय : अवैध नियोजन को रद्द करते हुए वैधिक कार्रवाई के संबंध में।
महाशय,

उपर्युक्त विषयक संदर्भ में अंकित करना है कि राज्य परियोजना निदेशक, पटना के पत्रांक 4112 दिनांक 21.08.2012 के आदेश के आलोक में दिनांक 27.09.2007 के उपरंत कस्तुरबा गाँधी बालिका विद्यालय में नियोजन विज्ञापन प्रकाशित कर परीक्षा के माध्यम से किया जाना था। किन्तु आपके द्वारा 27.09.2007 के उपरंत विभागीय निदेश की अवहेलना कर नियोजन कर लिया गया है जो नियम के विपरीत है।

अतः निदेश दिया जाता है कि कस्तुरबा गाँधी बालिका विद्यालय शंकरपुर में नियोजित शिक्षिका श्रीमति मंजू कुमारी का नियोजन तत्काल प्रभाव से रद्द करते हुए इस आशय की सूचना अद्योहस्ताक्षरी को दी जाय।

विश्वासभाजन

जिला कार्यक्रम पदाधिकारी

प्रा० शिक्षा एवं सर्व शिक्षा अभियान
मधेपुरा।

दिनांक .../ मधेपुरा, दिनांक 2012

प्रतिलिपि : पूर्व प्रधानाध्यापक -सह- संचालक कस्तुरबा गाँधी बालिका विद्यालय, शंकरपुर / प्रखंड शिक्षा पदाधिकारी, शंकरपुर को सूचनार्थ एवं अनुपालनार्थ प्रेषित। पूर्व प्रा० अ० सह संचालक को प्रा० बा० वि० शंकरपुर को निदेश दिया जाता है कि अपना स्पष्टीकरण 24 घंटे के अन्दर अद्योहस्ताक्षरी कार्यालय को सुपुर्द करें अन्यथा उनके पेंशनदि की भुगतान पर रोक लगा दी जायेगी।

जिला कार्यक्रम पदाधिकारी
प्रा० शिक्षा एवं सर्व शिक्षा अभियान
मधेपुरा।

ज्ञापक...../ मधेपुरा, दिनांक 2012

प्रतिलिपि : जिला शिक्षा पदाधिकारी, मधेपुरा को सादर सूचनार्थ समर्पित।

जिला कार्यक्रम पदाधिकारी
प्रा० शिक्षा एवं सर्व शिक्षा अभियान
मधेपुरा।

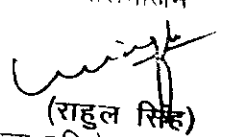
विश्वाराज्य परिषद
राज्य परिषद
राज्य परिषद
राज्य परिषद

Bihar State Planning Council
State Planning Office

दिनांक: 01/04/2012
प्राईवेट

समाप्त सरथाओ द्वारा उपरोक्त नियोजन विहित प्रक्रिया से नहीं किए जाने के
अवधि में प्रखंड चयन समिति की बैठक आहूत कर उपरोक्त कर्मियों को पदमुक्त
नियम का निर्माण के तथा समाप्त पर इस अवधि कृत्य हेतु स्पष्टीकरण पृष्ठों हुए अध्यक्ष, जिला
कार्यकारी समिति के अनुमोदनोपरान्त वैधिक कार्रवाई करना सुनिश्चित करें। इस बिन्दु की भी
समीक्षा कर कि सर्वाधिक संभाग प्रभारी द्वारा इन अवधि नियोजनों का जिला कार्यक्रम समन्वयक के
समक्ष ससमय अवगत कराया गया या नहीं और यदि नहीं तो उनकी सलिप्तता की समीक्षा करें
एवं आरोप गदित कर राज्य कार्यालय को संसूचित करें।

विश्वाराज्य


(राहुल सिंह)

राज्य परियोजना निदेशक

दिनांक: 21/08/2012

ज्ञापक - KGBV 4112
प्रतिलिपि - जिला कार्यक्रम पदाधिकारी(SSA), औरंगाबाद, गोपालगंज, मधुपुरा, सहरसा एवं पश्चिम
मण्डल को सूचनाएं एवं आवश्यक कार्यादेश प्रेषित।



राज्य परियोजना निदेशक