

IN THE HIGH COURT OF JUDICATURE AT PATNA

3221
2/7/12

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ of 2012.

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

and

In the matter of :

Yogendra Kumar Das son of Parmashwari Das resident of
village-Rajni (Pekhar Tola) P.O. Rajni Goth, P.S. Murliganj
District-Madhepura. Petitioner.

- Versus -

1. The State of Bihar through the Principal Secretary
Education Department, Vikash Bhawan Patna.
2. The Principal Secretary Education Department Govt. of
Bihar Vikash Bhawan Patna.
3. The Joint Secretary, Education Department Govt. of Bihar
Vikash Bhawan Patna.
4. The Director Primary Education Govt. of Bihar Patna.
5. The District Education Officer, Madhepura, District-
Madhepura.

6. The Block Education Extension Officer, Mariganj Block

District- Magdhepura. Responsible.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.M.J.C.No. _____ of 2012.

Yogendra Kumar Das, ~~Respondent~~

- Versus -

The state of Bihar & others. ~~Respondents~~

- Versus -

RELIEFS : (i) For quashing the order dt.6.6.12 contained in memo no.1400 issued by the District Education Officer Madhepura whereby and whereunder the petitioner was dismissed from service with immediate effect without any show-cause and for a direction to them reinstate the petitioner in the service with back wages.

(ii) For any other necessary relief(s) for which he may found fit in accordance with law.

Facts of the Case.

Sl.No.	Date	Events	Signature
1.	13.10.11	These respondents have prepared a list for appointment of Assistant teacher for fill up 34,840 post train teachers, which was examined by the special officer appointed by the Apex court and the said was filed before the Apex Court in complainance of judicial order in Complaint petition no-(C) 207/07 which was accepted by the Apex court in which name of the petitioner was found place at sl.no.19182.	1

2. 15.2.12 The petitioner was appointed vide memo no

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C. W. J. C. No. _____ of 2012.

Yogendra Kumar Das. PETITIONER.

- VERSUS -

The State of Bihar & others. RESPONDENTS.
Sub: Termination, school service
non-granted :

- I N D E X -

<u>Sl. No.</u>	<u>PARTICULARS</u>	<u>PAGE Nos.</u>
1.	an application under Article 226 of the Constitution of India with Affidavit.	1 - 16
2.	Annexure-1 : A photocopy of the order dt. M.J.C.No.297/07	15 - 21
3.	Annexure-2 : A photocopy of the memo no.722 dt.15.2.12.	22
4.	Annexure-3 : A photocopy of joining letter dt. 15.3.12 and letter no.328 dt.17.2.12.	23-24
5.	Annexure-4 : A photocopy of memo no.1400 dt. 6.6.12.	25
6.	Annexure-5 : A photocopy of memo no.322 dt 9.5.12.	26 - 27
7.	Vakalatnama.	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C.No. _____ of 2012.

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

and

In the matter of :

**Yogendra Kumar Das son of Parmashwari Das resident of
village-Rajni(Pokhar Tola) P.O.Rajni Goth, P.S.Murliganj
District-Madhepura. Petitioner**

- Versus -

- 1. The State of Bihar through the principal secretary
Education Department Vikashk Bhawan Patna.**
- 2. The principal secretary, Education Department Govt. of
Bihar Vikash Bhawan Patna.**
- 3. The Joint secretary, Education Department Govt. of
Bihar Vikash Bhawan Patna.**

4. The Director Primary Education Govt. of Bihar Patna.
5. The District Education ~~Executive~~ Officer, Madhepura
District- Madhepura.
6. The Block Education Extension Officer, Nurliganj Block
District- Madhepura. respondents.

To

The Hon'ble Ms. Rekha M. Doshi the Chief Justice of
the High Court of Judicature at Patna and her
companion Justice 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 for
quashing the order passed by the District Education Officer
Madhepura contained in memo no, 1400 dt. 6.6.22 whereby and
where under the petitioner was dismissed from service with
the immediate effect without holding the regular proceedings
or even without making the show-cause and reasonable
opportunity of hearing to defend his case and show
briefly taking into consideration those facts that require
-ment of natural justice has not been followed as well as

obligation cast upon them under Article 311(2) of the Constitution of India as well as further prayer with respect to reinstatement in service with full back wages and for other necessary(s) for which he may found fit in accordance with law?

2. That the substantial questions of law involved in the present writ application are as follows :

(i) Whether the ^{respondent} authority have fail to appreciate that by virtue of appointment and acceptance of joining against the respective post of Assistant teacher the right of hearing accrued in his favour?

(ii) whether the authority concerned had fail to appreciate that the petitioner was appointed in terms of different order passed by the Apex court under the different proceeding including ^{(contempt) petition (C)} M.J.C.No. 297/07 and as such any interference by the authority will amount to be the violation of judicial verdict?

(iii) whether the authority concerned has fail to appreciate that in terms of different orders passed by the Apex Court, session wise integrated seniority list was prepared by them in which name of the

at Sl. No. 19182

petitioner has found place and subsequently verified and approved by the Special officer appointed by the Apex Court while sanctioning the said appointment, letter has been issued

(iv) whether the authority have fail to appreciated that seniorty/merit list was prepared and submitted by them before the Apex Court in compliance of the judicial verdict and in its course the said seniorty list was upheld by the Apex court and directed with respect to appointment from the said list and to comply the judicial order including the contempt proceeding ?

(v) whether the authority have fail to appreciate that from perusal of the appointment letter it appears that he was appointed in compliance of the contempt case no. 297^{petitioner} of 07 under the provision of Bihar Special Elementary teacher recruitment rule 2010 and Departmental letter no. 41 however the order of dismissal was passed without seeking any clarification in final order which is already taken its finality with the parties shall be gross contempt of the order of Apex Court.

(vi) whether the communication made by the Joint Secretary Education Deptt. Govt. of Bihar contained in memo

322 dt.9.5.12 shall be given effect with retrospective effect and right conferred by the judicial pronouncement, provision of rule and letter issued by the principal Secretary shall be cancelled even without show-cause ?

(vii) whether the authority have failed to appreciate that under the Transfer and Disciplinary rule 2002 communicated under notification no.540 dt.1.4.2002 the District Education Officer is no authority under the law either to initiate a departmental proceeding or to impose the major punishment to the teacher working in elementary school ?

(viii) whether the order passed by the District Education Officer Madhepura as stated above is unwarranted rather the same is without jurisdiction also because the name of the petitioner has found place in the seniority list ^{at Sl. No. 19182-} submitted by the Deptt. as well as District list ^{at Sl. No. 331} prepared by them ?

(ix) whether the action of the respondents are mala fide arbitrary without jurisdiction and abuse of power vested in them ?

(x) whether the order of the authority concerned is otherwise bad in law and it requires interference and

~~quashed~~

quashing the order under challenge in this case

reinstate him in service with back wages ?

3. That the petitioner is a citizen of India and he is residing within the territorial jurisdiction of this Hon'ble Court.

4. That it is stated that the state Govt. has decided to fill up the post of assistant teacher numerically 31,500 in compliance of the judicial verdict passed by the Apex Court in case of Mand Kishore Dja and others. In this regard rule was framed and application were called up having the qualification of Teacher's training under advertisement no. 210/10.

5. That it is stated that the petitioner and other having requisite qualification had filled up the application along with testimonial and other required papers before the competent authority. It is also submitted that after proper verification session wise integrated seniority list was prepared in respect of the advertisement no. 210/10. It is submitted that in pursuance to the direction issued by the apex court under M.F.C. No. 297/07 the disputes with respect to seniority, correctness or any defect were placed and duly

consider by the special officer appointed for the said purpose

-e It is further submitted that after settlement, panels were prepared by the respondents and were placed before the Apex court in which name of the petitioner has also found place at Sl. No. 19187 which was accepted by the Apex court and the Apex Court has directed them for appointment from the said list vide order dt 13/11/11 and the contempt proceeding was concluded finally

A photocopy of the order dt.

passed in M.J.C.No.297/07 is

annexed as Annexure-1 to this

application.

6. That it is stated that the respondents after completing process under the law allotted the District to the petitioner and on or after verification of relevant papers including testimonials he was appointed vide memo no.722 dt. 15.2.12. issued by the District Education Officer Mathapura. The letter of appointment itself reflects that the appointment letter was issued in teeth of the order in contempt proceeding provision of rule 2010 and Deptt. letter no.41.

A photocopy of memo no.722 dt.15.2.12
is annexed as Annexure-2 to this
application.

7. That it is stated that the petitioner was posted in
Ug-graded Middle school Murliganj Block Murliganj and on
that basis he has submitted his joining before the Block
Education Extension Officer Murliganj on 16.3.12 which was
accepted and necessary direction was issued by the Block
Education Extension Officer Murliganj vide letter no.326
dt.17.3.12.

A photocopy of joining letter dt
16.3.12 and letter no.326 dt.17.
3.12 are annexed as Annexure-3,
3/A to this application.

8. That it is stated that the District Education Officer
Madhepura has committed serious error of record and wrong
while dismissing the petitioner from service with immediate
effect vide order contained in memo no.1400 dt.6.6.12
even without show-cause and providing proper opportunity
of hearing which is the basis and elementary law.

A photocopy of memo no.1400 dt.

6.6.12 is annexed as Annexure-4 to
this application.

9. That once the State Govt. has decided to fill up the post
of an assistant teacher numerically 34,540 in compliance
of the judicial order as stated above and in the said list
list the name of the petitioner has found place at no ¹⁹¹⁸² 1
which was approved by the special officer, accepted by the
Apex Court then the District Education Officer has got no
power to dismiss him from service without permission of
Apex court.

10. That once the seniority list prepared by the respon-
dents has been examined by the special officer, thereafter
the said list was filed by the State Govt. in compliance
of judicial verdict which is accepted by the Apex court
and it was directed them to appoint only on the basis of
the aforesaid list and his name has found place at sl. no

^{at sl. no 19182 state list}
^{District list}
331 then without permission of the Apex court the
District Education Officer has got no power to dismiss

11. That as per Bihar Taken Over Elementary rule 2008
full fledged departmental proceeding may be required in
case of dismissal. In this connection it is relevant to

state that rule 20 deals with issue of suspension and departmental proceeding. It has been clarified that the Deputy Development Commissioner, ex-Executive officer on report of District Superintendent of Education place the teacher under suspension and initiated a departmental proceeding against him and in case of major punishment second-show-cause may be given thereafter decision may be taken by the District Education Establishment Committee, but in case of the petitioner neither the procedure has been follow nor decision of dismissal have been taken by the District Education Establishment Committee Muzbepura so the order of the District Education Officer Muzbepura is without jurisdiction and same is fit to be quashed by this Hon'ble Court.

12. That it is stated that the Joint Secretary Education Deptt. has issued order contained in memo no. 322 dt. 19.5.12 indicating that the appointment cannot be made on the post of assistant teacher on the basis of the certificate granted by Gandhi Hindi Vidyapath Allahabad. It is submitted that the said communication cannot be given effect with retrospectivity and benefit already accrued under the

p review decision, said judicial verdict may not withdraw.

It is also submitted that in the said communication neither it has been stated that the appointment which is already be made on the basis of the aforesaid certificate may be cancelled nor the order contained in memo no.41 issued by the principal Secretary Education Deptt. has been modified.

It is submitted that on the basis of the order contained in memo no.322 dt.19.5.12 dismissal order of the petitioner was issued by the District Education Officer Madhepura is also not sustainable in law and is fit to be quashed by this Hon'ble Court.

A photocopy of memo no.322 dt.19.5.

12 is annexed as annexure-5 to

this application.

13. That from the facts and stated above it appears that although the petitioner was appointed in compliance of judicial order, in tech of the provision under rule 2010 and Deptt. letter no.41 however the order under challenging was passed behind the back without observing the principal of natural justice under Article 311(2) of the Constitution of India as well as without leave from the

Apex court for interference in the orders of Apex Court. In the said background the order of dismissal of the petition as contained in memo no. 1400 dt. 6.6.12 issued by the District Education officer Malhapura is fit to be quashed by this Hon'ble Court.

14. That the petitioner has got no other alternative or efficacious remedy other than to move before this Hon'ble Court for redressal of his grievances.

15. That the petitioner has not filed any application earlier like the present one before this Hon'ble Court.

It is there, prayed that your lordships may graciously be pleased to issue rule NISI calling upon the respondents with show cause as to why this writ application be not admitted or disposed of at the time of admission stage itself and after return of the rule and hearing the parties if no sufficient ground may be shown make the rule absolute and allow the prayer made in para no.1 to this writ application application.

and/or

May pass such other order(s) as your Lordships may
deem fit and proper.

~~AND FOR THIS THE PETITIONER PRAYS~~

And for this the petitioner shall ever pray.

- Affidavit -

I, Yogendra Kumar Das aged about 43 years son of Parmeshwari Das resident of village-Rajni(Pokhar Tola) P.O. Rajni Goth, P.S. Murliganj District-Nadepura do hereby solemnly affirm and state as follows :

1. That I am the petitioner in this case and as such I am well acquainted with the facts and circumstances of the case.

2. That the contents of this application have been read over and explain to me in Hindi which I have fully understood and the statements made in para nos. 3 to 4, 9 to

11, 13 to 15 — are true to my knowledge and those statements made in para nos. 5 to 8, 12 — are based on information derived from the relevant records of the case which may also be true and the rests are by way of submission before this Hon'ble Court.

3. That the annexures are photocopies of their originals.

CF NO.297/07

Annexure-1

-15-

CF NO. 297/07

COURT NO. 2

SECTION XVI

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CORAM PETITION (CF NO. 297/07 IN SLP(C) NO.22087/2004

RANDE KISHORE JHA

Petitioner(s)

VERSUS

ANUPAM KUMAR SINGH

Respondent(s)

(With appln.(s) for bringing on record the additional facts and directions and impleadment and intervention/impleadment and impleadment as petitioner and setting aside Order dated 17.6.2011 passed by the Ld. Special Officer Sh. S.K. Chattopadhyaya, Former Judge & for clarifying the order dated 12.05.2011 passed by this Hon'ble Court)
(For final disposal)

Date: 13/10/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE H.L. DATTA

For Petitioner(s)

IA 383,385,389,
401,406,441,454
455,459,461,502,
507,509,515,516,
518,520,522,523,
540 & 637-639

Mr. Rakesh Uttamchandra Upadhyay, AOR
Ms. Aarti Upadhyay, Adv.

For Respondent(s)

IA Nos.390-393,437
438,440,558 & 619,

Mr. Kailash Vasdev, Sr. Adv.
Mr. Manish Kumar, Adv.
Mr. Gopal Singh, AOR

Mr. S.B. Sanyal, Sr. Adv.

CF NO.297/07

Mr. N.N. Jha, Adv.
Mr. Ashok K. Sharma, Adv.
Mr. D.K. Mishra, Adv.
Mr. Rameshwar Prasad Goyal, AOR

2

IN IA 3, 385,
415-425

Mr. Vishnu Sharma, AOR
Ms. Anupama Sharma, Adv.
Mr. Amar Jyoti Sharma, Adv.

Mr. Anil Kumar Tandale, AOR

Mr. Shantanu Sagar, Adv.
Mr. T. Mahipal, AOR

IA 397,398,436,442,
452/09

Mr. Yugal Kishore Prasad, Adv.
Mr. Sunil Kumar Verma, AOR

IA No.399/09

Ms. Vandana Sharma, Adv.
Mr. Mahmood Alam, Adv.
Ms. Aruna Gupta, AOR

Mr. S.K. Sinha, AOR

IA 657,658,659 of
661/11

Mr. Sridhar Potaraju, AOR
Mr. Kailash Pandey, Adv.
Mr. Gaichu Li, Adv.
Mr. Ranjeet Singh, Adv.

Mr. Prakash Kumar Singh, AOR

160

IN IA 404, 405,
433, 434

Mr. Vijay Kumar, Adv.
Mr. Pankaj Kumar, Adv.
Mr. Vishwajit Singh, AOR

Mr. Rajiv Shankar Dvivedi, AOR

IA 407, 428, 429,
444

Mr. Sharad Pandey, Adv.
Mr. M.M. Singh, Adv.
Mr. S.K. Singh, Adv.
Mr. Dharmendra Kumar Sinha, AOR

Mr. Brahmajeet Mishra, Adv.
Mr. Akshay Shukla, Adv.
Mr. Ratan Kumar Choudhuri, AOR

IA 605, 621, 556,
566 & 410

Mr. Manoranjan Kr. Jha, Adv.
Mr. Pradeep Kar, Adv.
Mr. Tungesh Pandey, Adv.
Mr. B.J. Mishra, Adv.
Ms. Anita Pandey, Adv.

CP NO.297/07

Mr. Aniruddha P. Mayee, AOR

Respondent-in-Person

Mr. Mushtaq Ahmad, AOR

Mr. Subramonium Prasad, AOR

Mr. Abhay Kumar, AOR

Mr. Bijan Kumar Ghosh, AOR

/petitioner

Mr. L.N. Rao, Sr. Adv.
Mr. Santosh Kumar, Adv.
Mr. Rajeev Katiyar, Adv.

Mr. Mushtaq Ahmad, Adv.
Mr. R.K. Ranjan, Adv.
Mr. Amilendra Pandey, Adv.
Ms. Priya Kashyap, Adv.
Dr. Kailash Chand, AOR

Mr. Prem Sunder Jha, AOR

Mr. Lakshmi Raman Singh, AOR

Mr. Rakesh Uttamchandra Upadhyay, AOR

Mr. Milind Kumar, AOR

Mr. Rajiv Shankar Dvivedi, AOR

Mr. Chandan Ramamurthi, AOR

Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Ajay Kumar, Adv.
Mr. Kanhaiya Priyadarshi, AOR

Mr. Praneet Ranjan, AOR

IA 491/09

Mr. Syed Ali Ahmad, Adv.
Mr. Syed Tanweer Ahmad, Adv.
Mr. Mohd. Shah Nawaz Hasan, Adv.
Mr. Chanshyam Mishra, Adv.
Mr. B. Upadhyay, Adv.

CP NO.297/07

Mr. Mohan Pandey, AOR

IA 439

Mr. Md. Izhar Alam, Adv.
Mr. Kazim Ali S., Adv.
Mr. Ajay Mandayal, Adv.
Mr. Mohan Pandey, AOR

Mr. Brij Bhusan, AOR

IA 467 & 471/10
 Mr. Arup Banerjee, AJP
 Mr. B.K. Choudhary, Adv.
 Mr. Ranjit Sharma, Adv.
 Mr. E.C. Vidya Sagar, AOR
 Mr. Abhijit Sengupta, AOR

IA 468, 472, 476,
 544, 474
 Mr. Dharmendra Kishor, Adv.
 Mr. Pravin Kumar Rai, Adv.
 Mr. Mithilesh Kumar Singh, AOR
 Ms. Kirti Kumar, Adv.
 Mr. Devashish Bharuka, AOR

IA 551, 552, 554, 559,
 565, 567 & 577
 Mr. Dinesh Kumar Tiwary, Adv.
 Mr. Chandan Kumar, Adv.
 Mr. Vibhu Shankar Mishra, Adv.
 Ms. Ritu Upadhyay, Adv.
 Ms. Shama Sharma, Adv.
 Ms. Chandrashekhar, Adv.
 Mr. Santosh Kumar Tripathi, AOR

IN IA 486/09
 Mr. Ajit Kumar, Adv.
 Mr. Ajay Kumar Singh, Adv.
 Mr. Prahlad Kumar, Adv.
 Mr. S.K. Sabharwal, AOR
 Mr. A.N. Singh, Adv.
 Mr. Dharam Bir Raj Vohra, AOR

I.A. NOS.556&564
 Mr. Prashant Chaudhary, AOR
 Mr. Shashi Bhushan Kumar, AOR
 Mr. P.V. Yogeswaran, AOR
 Mr. Ambhoj Kumar Sinha, AOR

CP NO.297/07

5

Mr. Amit Pawan, AOR
 Mr. Shekhar Prit Jha, AOR

IA 514
 Mr. Rahul Singh, Adv.
 Mr. K. Sita Rama Rao, Adv.
 Mr. Shree Pal Singh, AOR
 Mr. Ram Ekbal Roy, Adv.
 Mr. M.P. Jha, AOR
 Mr. Neeraj Shekhar, Adv.
 Mr. Ashutosh Thakur, Adv.

IA 485, 487 &
 649/2000
 Mr. Sanjeev Kumar, Adv.
 Mr. Jitender Pandey, Adv.
 Mr. Venkateswara Rao Anumolu, AOR
 Mr. Jitendra Kumar, AOR
 Mr. Subhro Sanyal, AOR
 Mrs. Revathy Raghavan, AOR
 Mr. Gaurav Agrawal, AOR
 Mr. Mohit Kumar Shah, AOR
 Ms. Kumud Lata Das, AOR

IN IA 655/11
 Mr. K. Rama Murti, Sr. Adv.
 Mr. Sunil Malhotra, Adv.
 Mr. Abhishek Puri, Adv.
 Mr. Dhiraj, Adv.
 Mrs. Reeta Dewan Puri, Adv.
 Mr. P.N. Puri, AOR

IN IA 542 & 476
 Mr. Dharmendra Kishor, Adv.
 Mr. Kirti Kumar, Adv.
 Mr. S.N. Rai, Adv.
 Mr. K.N. Rai, AOR
 Mr. Barun Kumar Sinha, Adv.

Mrs. Pratibha Sinha, Adv
 Mr. Ravi Ranjan, Adv.
 Mr. B.K. Satija, AOR

CP NO.297/07

6

18

IA NO.664,665,666/11 Mr. M.N. Krishnamani, Sr. Adv.
 Mr. Ajay Rai, Adv.
 Mr. Debasis Misra, AOR

Mr. D.K. Thakur, Adv.
 Mr. Sushil Kumar, Adv.
 Devendra Jha, Adv.

Mr. Abhishek Atrey, AOR

Mr. Anil Kumar Jha, AOR
 Mr. Samrendra Kumar, Adv.
 Mr. Sharad Chandra Jha, Adv.

Mr. Abhishek, AOR

IA 601,602,603/09 Mr. P. Chandra, Adv.
 Mr. J.K. Jha, Adv.
 Mr. Amit Kumar, AOR

Mr. R.P. Bhatt, Sr. Adv.
 Mr. Mohit Kumar Shah, AOR
 Mr. Niranjana Kumar, Adv.

Mr. Aabhas Parimal, Adv.
 Mr. Goodwill Indeevar, AOR

I.A. 465,468,493,
 535 & 538/09 Mr. C.P. Yadav, Adv.
 Mr. R.C. Aggarwal, Adv.
 Mr. Syeed Md. Rafi, Adv.

IN IA NO.451 Mr. Kamalendra Mishra, Adv.
 Mr. A.K. Singh, Adv.
 Mr. M. Tripathi, Adv.

Mr. Ashok Kr. Upadhyay, Adv.

For intervenor Mr. Ashok Kumar Tiwary, Adv.
 Mr. R.D. Upadhyay, Adv.

Ms. Firasat Ali, Adv.
 Mr. Ram Swarup Sharma, Adv.

CP NO.297/07

7

UPON hearing counsel the Court made the following
 O R D E R

Contempt Petition (C) No.297 of 2007, filed in S.L.P. (C) No.22882 of 2004, arose out of an alleged breach of undertaking said to have been given on 18th January, 2006, by the State of Bihar and the order passed on the basis thereof on 23rd January, 2006, by this Court in S.L.P. (C) No.22882-22888 of 2004. As we have indicated in our order dated 9th January, 2009, a number of writ petitions had been filed against the State of Bihar, raising issues relating to recruitment of teachers in primary schools. At one stage, it was brought to our notice that on account of changes in the policy, trained teachers who were in place at the time when the undertakings were given, could not be accommodated. Accordingly, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts, should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement which had been published for recruitment of primary school teachers and took the number of available vacancies to be 34,540.

We had directed that the said vacancies be filled up

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with the said number of trained teachers as a one-time measure to give effect to the undertakings which had been given on 18th January, 2006 and 23rd January, 2006. Accordingly, without issuing a Rule of Contempt, we had

CP NO. 297/07

8

directed that the said vacancies be filled up from amongst the trained teachers, who are available in order of seniority.

Subsequently, however, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

As a result, the State of Bihar, was directed to bring out a fresh list in terms of the orders which we had passed on 9th December, 2009 and 12th May, 2010, in order of seniority, incorporating the names of each and every candidate and the category to which they belonged. As the lists prepared were disputed, we thought it fit that in order to resolve the anomalies, a neutral person should be entrusted with the work of settling the list over which the dispute had arisen and, accordingly, by the said order we appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta of the responsibility of acting as the Special Officer, we appointed Mr. Justice S.K. Chattopadhyay, a

CP NO. 297/07

9

retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list.

Subsequently, several sessions were held by the learned Special Officer, at which the parties and the institutions were duly represented by counsel and His Lordship, thereafter, submitted a finalized list of the eligible candidates in order of seniority, taking into consideration the various institutions and the certificates produced by the candidates concerned. On the basis of the said list, we had requested the State of Bihar to prepare a Roster for the purpose of reservation of seats according to the different reserved categories. Such exercise has also been undertaken and completed and the list prepared in terms of the Roster has also been produced in the Court in a sealed cover.

Today, when the matter is taken up, Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, has raised some issues, which need to be clarified.

The first issue relates to the claim of one Shri Abhinesh Kumar, s/o Shri Babua Nand Pandey, that his case has not been considered by the learned Special Officer on account of the fact that he was not a party to the proceedings. On 13th July, 2011, Mr. Rama Murti, learned senior Advocate, submitted that Shri Abhinesh Kumar had, in fact, been impleaded as a party and, accordingly, we had directed the State of Bihar to consider his place in the seniority list as well. Today, we are informed by Mr. Kailash Vasdev that his position stands at serial number 62,551, which is far beyond the number of vacancies to be

CP NO. 297/07

10

filled up. Accordingly, nothing further is required to be said at the present, as far as his claim is concerned.

20

The second issue which has been raised by Mr. Kailash Vasdev is with regard to the examination of the certificates and other documents that may be produced by the candidate concerned at the time of counselling and appointment. In the event, during scrutiny it is found that any of the documents do not conform to the requirements, the concerned authorities will be at liberty to take appropriate steps regarding the said candidate.

The third issue raised was with regard to the candidates, who are to retire at the age of 60 by 31st January, 2012, within which period they would have attained the age of 60 years. It is no doubt true that this matter has been pending for a long time and there is possibility of some candidates being adversely affected on account of such delay, but at the same time we cannot also overlook the fact that a person cannot be allowed the benefits of appointment without serving the institution for at least some length of time. Accordingly, the cases of the candidates who will be retiring on or before 31st January, 2012, need not be considered for appointment.

Fourthly, the Special Recruitments Rules, which have been framed by the State for the purpose of appointment of primary teachers in these vacancies, shall be deemed to have been modified to the extent of the directions which have been issued by this Court from time to time and also by this order.

CP NO.297/07

There is yet another group of candidates, who claim to be adversely affected by the deliberations and the findings of the learned Special Officer while preparing the list of eligible candidates. It has been claimed by some of the candidates that their institutions have been shown to be unrecognized/fake, whereas from the very same institution other candidates have been found eligible, although, this has not been admitted by Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, we feel if that is the case, such candidates should not be deprived of an opportunity in future. Accordingly, we direct that such candidates will be at liberty to apply to the Bihar Staff Selection Commission for reconsideration of their status and the status of their institutions in respect of which objections have not been considered by the Special Officer. If such representations are made, the same should be considered and disposed of by the Commission, after giving the candidates an opportunity of hearing and placing their cases before the Commission and if it is found that their cases are genuine, the said candidates should be considered in future vacancies, when other vacancies are available, in order of seniority.

There is one more issue, which has been raised by Mr. Kailash Vasdev, and that will be evident from the chart which has been submitted by him showing the distribution of posts. According to the requirement of the posts for Physical Education Teachers, the number shown is 1084, whereas in terms of the distribution of the number of vacancies amongst 34,540 candidates, the figure shown is 4,972, which means that there is an excess number of posts vis-a-vis the number of candidates actually required. On

CP NO.297/07

the other hand, as far as Urdu as a subject is concerned, while the requirement is 12,862 in terms of the distribution of posts, the figure has been shown as 1,509, which falls far short of the required number of candidates. Accordingly, Mr. Vasdev has submitted that the excess number of posts in the Physical Education Subject category may be allowed to be shifted to the Urdu Subject category, which would compensate the Urdu Subject category to some

extent. We feel that there is substance in such a submission and, accordingly, we allow such prayer as well. The State Government will be at liberty to transfer the excess vacancies in the Physical Education Group to the Gida Subject category.

- 21

This brings us to the end of a long and arduous journey regarding the appointment of trained teachers in terms of the undertaking given in this Court by the State Government.

We would like to express our deep sense of appreciation to Justice S.K. Chattopadhyay for having undertaken the tedious and painstaking exercise of finalising the list of eligible candidates to be considered for filling up the 34,540 vacancies identified during these proceedings.

We are informed that nothing remains to be paid to the learned Special Officer on account of his remuneration.

We also express our appreciation to all the counsel who appeared and helped us to resolve this matter for the CP NO.297/07

benefit of the large number of trained teachers in Bihar who were waiting for appointment all these years.

Let the original Roster, as well as the seniority list, which have been produced before us in a sealed cover and is at present lying in the custody of Mr. Gopal Singh, learned Standing Counsel for the State of Bihar, be sent to the Human Resource Department, Government of Bihar, for implementing this order. We make it clear that since the Roster, as well as the seniority list, have been prepared in terms of the order of this Court, no Court shall entertain any other objections or applications with regard to the same.

The contempt petition, as well as the pending interlocutory applications are also disposed of by this order.

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar

T. P. 10/11

अनुसूची- 2

कार्यालय जिला शिक्षण पदाधिकारी, मधेपुरा

{रक्षापना धारा}

आदेश

सामुचीय तयारी न्यायालय नई दिल्ली द्वारा अध्यापनापद संख्या- 297/2007 में पारित आदेश के अनुपालन में राज्य सरकार द्वारा प्रख्यापित विद्यार्थी प्रारंभिक शिक्षक नियुक्ति नियमावली, 2018 तथा विभागीय निर्देश {संक्र 4/ दिनांक- 01.01.2012} के अलोक में जिला के लिए अनुशिक्षित सामान्य विषय के शिक्षक के निम्नलिखित अभ्यर्थियों को प्रारंभिक विषयों में उहायक शिक्षक के पद पर पे-सी-2 के पे-4200 में योगदान करने की तिथि से नियुक्त करते हुए उनके नाम के सामने अंकित विषयों में पदस्थ आपित किया जाता है :-

श्री अभ्यर्थी का नाम	पिता/पति का पञ्चायत	पदस्थापित विद्यालय का नाम
01-जसवीर प्रो दाह	स.0 राधाकृष्ण दाह दाह	ग्राम-बयरा मपुर गांधी नगर पार्स न.-10 मुरलीगंज मधेपुरा
02-योगेन्द्र कुमार दाह	श्री परमेश्वरी दाह	ग्राम-राज्जी पोखर लोहा भाया- बिहारीगंज जि 1-मधेपुरा
03-सुधीर राऊ दाह	दाह	ग्राम-डील्हाकपट्टी पो.-रघुनाथपुर भाया-वीरलीगंज जिला-मधेपुरा

नियुक्ति संबंधी शर्तें:-

1. यह नियुक्ति पूर्णतः अस्थायी होगी। उम्मीदवारों के लिए निर्धारित वेतनावलीन प्रीक्षाएँ पूरा करने तथा प्रमाण पत्रों की जांच के उपरान्त निम्नलिखित एक साल की सेवा अधीन पूरा होने के उपरान्त ही वेतन सुधार की जायेगी।
2. उम्मीदवारों की आयु की शरीरकता आयोग द्वारा अनुभाषित शरीरकता सूची के अन्तर्गत होगी।
3. विद्यार्थी ~~अनुभाषित~~ कर्मकारी ध्यान हायम द्वारा यदि किसी अनुभाषित उम्मीदवार के संबंध में कोई प्रतिकूल अनुभाषित प्राप्त होती है तो तदनुसार उम्मीदवार की शरीरकता एवं नियुक्ति प्रभावित होगी।
4. नियुक्ति पत्र निर्गत होने के 15 दिनों के अन्तर्गत पदस्थ अभियंत विभाग में योगदान करना होगा।
5. नियुक्ति शिपक का वेतनमान् एवं सामान्य सेवा शर्तें वहीं होगी जो पूर्व के विभा संघर्ष के नियुक्ति शिपक के हैं। किन्तु पेंशनार्थ हेतु के शिपक राज्य सरकार के अंदादायी पेंशन योजना से अधीनित होंगे।
6. हणोगदान के समय लिखित तर्ज के तार से निर्गत स्वास्थ्य प्रमाण पत्र देना होगा। संबंधित विभाग प्रधान अभियंत स्व से नियुक्ति पत्र आ तत्काल अन्तर्गत के योगदान की तिथि से एक सप्ताह के अंदर कराना सुनिश्चित करेंगे।

7. प्रमाण पत्रों के जांच के उपरान्त प्रमाण पत्र फर्जी गलत पाये जाने पर निम्नलिखित रद्द करते हुए भुक्तान की नयी राशि की 50 मुद्रत चकूली की प्र की जायेगी एवं जानूनी कारणार् भी की जायेगी।
8. जांच के दौरान संस्था को अमान्य पाये जाने अथवा संस्थान द्वारा निर्गत प्रमाण पत्र की मान्यता नहीं होने अथवा प्रमाण पत्र के फुर्जी होने की स्थिति में निम्नलिखित को रद्द कर दिया जायगा।
9. यह निम्नलिखित पूर्णतः औपवीकृत है ऐतम भुक्तान शीक्षणक संस्थाओं के मान्यता एवं एते निर्गत प्रमाण पत्रों के सत्तापन के उपरान्त ही किया जायगा।

ED/ जिला कार्यक्रम पदाधिकारी (स्था 3) मधेपुरा

ED/ जिला शिक्षा पदाधिकारी, मधेपुरा

आपॉक-722(वि.) दिनांक- 15/2/2

प्रीतिरतम :- संवीधा अन्धी/ संवीधा रिगत्य के प्रधानाध्यापक/ प्रभारी प्रधानाध्यापक/ संवीधा निवासी एवं व्यक्त पदाधिकारी/ संवीधा शिक्षा पदाधिकारी एवं जोधगार पदाधिकारी, मधेपुरा को सूचनायं एवं आग्रयक का कार्य प्रीका।

ED/ अस्पष्ट, 14/2
जिला कार्यक्रम पदाधिकारी (स्था 10)
मधेपुरा

ED/ जिला शिक्षा पदाधिकारी, मधेपुरा

TYPE (187)

सेवा में,

श्रीमान् प्रकृष्ट शिक्षा पदाधिकारी मुरलीगोष

विषय :- योगदान के सम्बन्ध में।

महाशय,

नीचलिखित निवेदन है कि बिहार विधायक प्रारोक्त शिक्षक नियुक्त

नियुक्ति नियमावली 2010 विभागीय निर्देशा फार्म 4। फिनांक-1-1-12 के

अनुसार में जिले के लिए अनुसूचित सामान्य विधायक के शिक्षक पद पर वे

में वे 4200 में भेरी नियुक्ति की गई है।

यह जिला शिक्षा पदाधिकारी, मधेपुरा तथा जिला शिक्षा
कार्यक्रम पदाधिकारी [स्था0] मधेपुरा के आर्पांक- 722 स्था0 दिनांक-
15-2-2012 के आदेशानुसार उभरीय0 भन्नी प्रकृष्ट मुरलीगोष में तहायक
सामान्य शिक्षक पद पर पदस्थापित किया गया है आज दिनांक- 16-3-12
के पूर्वार्द्ध में तहायक सामान्य शिक्षक पद पर प्रकृष्ट संतोष केन्द्र मुरलीगोष
में में अना योगदान दे रहा है।

अतः श्रीमान् से नम्र निवेदन है कि भेरा योगदान स्वीकृत करते
हुए उच्चधिकारी को भी सूचित करने के कृपा की जाय।

अनुलग्नक :-

- [1] नियुक्त पत्र की छाया प्रतित
- [2] नियुक्ति की छाया प्रतित
- [3] मीटिंग का मूल प्रमाण पत्र
- [4] मीटिंग का डी प्रमाण पत्र
- [5] प्रशिक्षण प्रमाण पत्र

आपका विश्वासभाजन
है- लीगेन्द्र कुमार दास
तहायक सामान्य शिक्षक
प्रकृष्ट संतोष केन्द्र मुरलीगोष
प्रकृष्ट मुरलीगोष
जिला-मधेपुरा

80/3/12

16/3/12

Typical copy -

कार्यालय-प्रखंड शिक्षा पदाधिकारी, मुरलीगंज, मधुपुरा।

पत्रांक- 328

प्रकः- प्रखंड शिक्षा पदाधिकारी
मुरलीगंज।

सेवा में,

प्रधानाध्यापक

उ० म० वि० भूतनी

मुरलीगंज, दिनांक- 17/3/12

विषय:- विरमण के संबंध में।

महाशय,

उपर्युक्त विषयक संबंध में कहना है कि श्री योगेन्द्र कुमार दास पिता श्री परमेश्वरी झंदा ग्राम- रजनी पोखोला जिला-मधुपुरा जिला- शिक्षा पदाधिकारी, मधुपुरा के शापान-722 नि० दिनांक- 15/02/2012 आलोक में दिनांक- 16/03/2012 के कार्यालय में अधोहस्ताक्षरी कार्यालय में योगदान कर किस्स। आज दिनांक- 17/03/12 के उपरान्त में पदस्थापित विनालय में योगदान हेतु निम्नादिक्त किया जाता है।

इस अधीन में ये सभी कार्योदयत पर उपरि यही रहे हैं।

विश्वासभाजन

BU/- अस्पष्ट 17/3/12

प्रखंड शिक्षा पदाधिकारी

मुरलीगंज, मधुपुरा।

कार्यालय जिला शिक्षा पदाधिकारी, मधेपुरा

(स्थापना शाखा)

कार्यालय - आदेश

माननीय सर्वोच्च न्यायालय, नई दिल्ली द्वारा अवमाननावाद सं० 297/2007 में पारित आदेश के अनुपालन में राज्य सरकार द्वारा प्रख्यापित "बिहार विशेष प्रारंभिक शिक्षक नियुक्ति नियमावली 2010 तथा विभागीय निदेश पत्रांक 41 दिनांक 01.01.2012 एवं निदेशक, प्राथमिक शिक्षा बिहार के पत्रांक 99 दिनांक 02.02.2012 तथा पत्रांक 124 दिनांक 10.02.2012 के द्वारा प्राप्त निदेश "कि राज्य के अंदर अथवा राज्य के बाहर वैज्ञानिक संस्था जिसकी मान्यता संदिग्ध हो, से निर्गत शैक्षणिक/प्रशैक्षणिक प्रमाण पत्रों के आधार पर नियुक्ति इस शर्त के साथ दी जा सकती है कि जांच के दौरान संस्था को अमान्य पाये जाने अथवा संस्था द्वारा निर्गत प्रमाण पत्रों की मान्यता नहीं होने अथवा प्रमाण पत्र के फर्जी होने के स्थिति में नियुक्ति को रद्द कर दिया जायेगा" के आलोक में अधोहस्ताक्षरी कार्यालय के ज्ञापांक 722 नि० दिनांक 15.02.2012 के द्वारा श्री योगेन्द्र कुमार दास, पिता- श्री परमेश्वरी दास, ग्राम - रजनी पोखर टोला, भाया- बिहारीगंज, जिला- मधेपुरा की नियुक्ति श्री योगेन्द्र कुमार दास द्वारा दिये गये शपथ पत्र के आलोक में उक्तमि मध्य विद्यालय भलनी, प्रखंड- मुरलीगंज में सहायक शिक्षक के पद पर औपबंधित रूप से नियुक्ति की गई थी।

संयुक्त सचिव शिक्षा विभाग, बिहार सरकार के ज्ञापांक 322 दिनांक 09.05.2012 के द्वारा गांधी हिन्दी विद्यापीठ इलाहाबाद/प्रयाग उत्तर प्रदेश के द्वारा प्रदत्त प्रमाण पत्र शिक्षक पद पर नियुक्ति हेतु न्यूनतम प्रशैक्षणिक अर्हता नहीं है, के कारण श्री योगेन्द्र कुमार दास की नियुक्ति रद्द की जाती है।

जिला कार्यक्रम पदाधिकारी,
स्थापना, मधेपुरा

जिला शिक्षा पदाधिकारी,
मधेपुरा

ज्ञापांक...1499...मधेपुरा, दिनांक...06/06/12

प्रतिलिपि: संबंधित शिक्षक/संबंधित विद्यालय प्रधान/संबंधित निदेशिका एवं न्यूनतम पदाधिकारी/संबंधित प्रखंड शिक्षा पदाधिकारी एवं कोषागार पदाधिकारी मधेपुरा को सूचनाार्थ एवं आवश्यक कार्याार्थ प्रेषित।

10

-26-

Annexure 5

बिहार सरकार
शिक्षा विभाग।

आदेश

पटना, दिनांक- 25/05/12

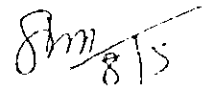
संख्या- 7/वि03-18/12.392 / माननीय सर्वोच्च न्यायालय, नई दिल्ली के द्वारा अवमाननावाद संख्या- 297/2007 में दिनांक 13.10.2011 को पारित आदेश के आलोक में राज्य के विभिन्न जिलों के प्रारंभिक विद्यालयों में 34,540 सहायक शिक्षकों की नियुक्ति करने का निदेश निर्गत किया गया। नियुक्ति के क्रम में कतिपय जिलों के जिला शिक्षा पदाधिकारियों के द्वारा कुछ शिक्षण/प्रशिक्षण महाविद्यालयों/संस्थाओं की मान्यता एवं उन संस्थाओं से प्राप्त प्रमाण पत्रों की वैधता के संबंध में मार्गदर्शन की माँग की गयी।

विभाग के द्वारा इस विषय पर निर्णय लेते हुए निदेशक, प्राथमिक शिक्षा के पत्रांक 99 दिनांक 02.02.2012 एवं पत्रांक 124 दिनांक 10.02.2012 के द्वारा निदेश दिया गया कि राज्य के अन्दर अथवा राज्य के बाहर वैसी संस्था जिसकी मान्यता संदिग्ध हो, से निर्गत शैक्षणिक/प्रशैक्षणिक प्रमाण पत्रों के आधार पर नियुक्ति इस शर्त के साथ की जा सकती है कि जांच के दौरान संस्था को अमान्य पाये जाने अथवा संस्था द्वारा निर्गत प्रमाण पत्रों की मान्यता नहीं होने अथवा प्रमाण पत्र की फर्जी होने की स्थिति में नियुक्ति को रद्द कर दिया जायेगा। साथ ही, उक्त अभ्यर्थियों के वेतनादि का भुगतान शैक्षणिक संस्थाओं के मान्यता एवं उससे निर्गत प्रमाण पत्रों के सत्यापन के उपरांत ही किया जायेगा।

जिलों के द्वारा राज्य के बाहर के लगभग 19 संस्थाओं की मान्यता एवं उनके द्वारा प्रदत्त प्रमाण पत्रों की वैधता के संबंध में मार्गदर्शन की माँग की गयी। मार्गदर्शन के आलोक में निदेशक, प्राथमिक शिक्षा के स्तर पर प्रत्येक संस्थान की मान्यता एवं उनके द्वारा प्रदत्त प्रमाण पत्रों की वैधता के संबंध में जांच हेतु तिथि निर्धारित की गयी। जांच के क्रम में विभागीय पदाधिकारी तथा जिला के पदाधिकारी संगत अभिलेखों के साथ उपस्थित हुए। जिलों के द्वारा अभ्यर्थियों को भी उक्त जांच के क्रम में उपस्थित रह कर अपना पक्ष रखने हेतु सूचित किया गया।

उपर्युक्त प्रक्रिया से जांच के क्रम में अररिया जिला के द्वारा "गांधी हिन्दी विद्यापीठ, इलाहाबाद/प्रयाग, उत्तर प्रदेश" के द्वारा प्रदत्त प्रमाण पत्र की मान्यता के संबंध में मार्गदर्शन के निमित्त संस्था की मान्यता एवं प्रमाण पत्रों की वैधता की जांच दिनांक 27.04.2012 को की गयी। उपस्थापित किये गये अभिलेखों एवं प्रमाण पत्रों की जांच से यह स्पष्ट हुए कि गांधी हिन्दी विद्यापीठ, इलाहाबाद/प्रयाग उत्तर प्रदेश द्वारा प्रदत्त बेबी टीचर्स ट्रेनिंग का प्रमाण पत्र शिक्षक पद पर नियुक्ति हेतु न्युन्तम प्रशैक्षणिक अर्हता नहीं है।

अतः विभागीय निर्णय के अनुसार "गांधी हिन्दी विद्यापीठ, इलाहाबाद/प्रयाग, उत्तर प्रदेश" के द्वारा निर्गत बेबी टीचर्स ट्रेनिंग के प्रमाण पत्र के आधार पर अभ्यर्थियों की नियुक्ति राज्य के विद्यालयों में शिक्षक के पद पर नहीं की जा सकती है।



(के० के० राय),
संयुक्त सचिव।

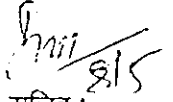
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ज्ञापक:-7/वि03-18/12-322/

पटना, दिनांक:-25/05/17

प्रतिलिपि:- निदेशक, प्राथमिक शिक्षा/निदेशक, माध्यमिक शिक्षा/निदेशक, शोध एवं प्रशिक्षण/सं
क्षेत्रीय शिक्षा उप निदेशक/सभी जिला शिक्षा पदाधिकारी/सभी जिला कार्यक्रम पदाधिकारी/ सभी सदस्य
जिला शिक्षक नियोजन अपीलीय प्राधिकारी एवं सभी प्रखंड शिक्षा पदाधिकारी को सूचनार्थ एवं आवश्यक
कार्यार्थ प्रेषित।


संयुक्त सचिव।

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ of 2012.

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

and

In the matter of :

Yogendra Kumar Das son of Parmeshwari Das resident of
village-Rajni (Pokhar Tola) P.O. Rajni Goth, P.S. Murliganj
District-Madhepura. petitioner.

- Versus -

1. The State of Bihar through the Principal Secretary
Education Department, Vikash Bhawan Patna.
2. The Principal secretary Education Department Govt. of
Bihar Vikash Bhawan Patna.
3. The Joint Secretary, Education Department Govt. of Bihar
Vikash Bhawan Patna.
4. The Director Primary Education Govt. of Bihar Patna.
5. The District Education Officer, Madhepura, District-
Madhepura.

6. The Block Education Extension Officer, Narliganj Block

District- Maghepura. respondents.