

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1668 of 2020

1. Dr. Rajiv Ranjan, S/o Jagdish Prasad Singh, R/o Village Kalai, P.s. Harpur, Block- Tetiyabambar, District- Munger, Bihar, Pin- 813221.
 2. Sunil Kumar, S/o Late Brajesh Prasad Singh, R/o Dinkar Nagar, Mohanpur, Nalanda, P.s. Nalanda, District- Nalanda, Pin- 803111.
- Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Govt. of Bihar.
 2. Principal Secretary, Department of Education, Bihar, Patna.
 3. Director, Secondary Education, Department of Education, Bihar, Patna.
 4. Deputy Director, Secondary Education, Secondary Education, Department of Education, Bihar, Patna.
- Respondent/s
-
-

Appearance :

For the Petitioner/s : Mr.Mrigank Mauli, Sr. Adv.
Mr.Abhishek Anand, Adv.
For the Respondent/s : Mr.Kameshwar (Gp17)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :28-08-2024

Heard learned counsel for the petitioner and learned counsel for the State.

2. The present writ application has been filed for the following relief(s):-

“a) For issuance of writ in nature of Certiorari quashing the decision no.2 and 12 of the Executive Committee of the Simultala Education Society (hereafter referred to as ‘SES’) – under which Simultala Awasiya Vidyalaya, Simultala (hereinafter referred to as ‘SAV, Simultala’) functions – and as contained in the Minutes of the Meeting of the Executive Committee (hereinafter



referred to as 'EC') of the SES dated 31.08.2019 and issued vide Memo No.1321 dated 21/11/2019 – whereby the respondents have taken a decision to fill all the sanctioned posts of the SAV by holding fresh process of selection.

b) For issuance of writ in nature of mandamus directing and commanding the respondent authorities to not to disturb the tenure of the petitioners which is valid till their age of 60 years.”

3. The brief fact of the case is that, the petitioner no.1 is the Principal of the SAV and petitioner no.2 is the Vice-Principal of the SAV in the district of Jamui. The SAV was constituted pursuant to the decision of the Cabinet dated 17/11/2009 as a residential school at Simultala in the District of Jamui. The SAV was to be run by the 'SES' having a 'General Body' (headed by the Principal Secretary, Department of Education, Government of Bihar) and a School Management Committee' (headed by the District Magistrate, Jamui) for looking after the entire spectrum of affairs of the SAV.

4. The 'SES' is a society that is registered under the Societies Registration Act, 1860 having its own by-laws with regard to running the management of the affairs of the SAV (Annexure P/1 to the writ application).



5. Power and conduct of proceedings of the General Body, Executive Committee and that of School Management Committee has been provided for in the Rules and by-laws framed for 'SES' and registered under the Societies Registration Act, 1860. The Rule 33 of the bye laws provides that the Principal/Vice Principal shall be appointed on either through Deputation or on contract basis.

6. Pursuant to the decision of the State Cabinet dated 17/11/2009 that the process of appointment of Principal/Vice-Principal/Teachers was initiated by publication of an advertisement on 04/06/2010 which was published in the daily newspaper Hindustan and other leading dailies (Annexure-P/2).

7. The advertisement stated that all the posts notified in the advertisement shall be filled up on contract basis and that the retirement age of all the teachers and that of the Principal and the Vice-Principal shall be 60 years.

8. The petitioner no.1 applied for the post of Principal under the advertisement no. सू.ज.सं.वि. 5876 (शिक्षा) 11-12 बिहार in the month of September 2011 and the petitioner no.2 had applied for the post of Vice-Principal under the advertisement PR 2378 (Edu) 10-11 dated 04.06.2010 published by the Human Resource Development Department, Government of Bihar and



they were selected after following the due process prescribed in the advertisement. Copy of letters of appointment of petitioners is marked as Annexure-P/3 series.

9. Petitioner nos.1 and 2 are working as Principal and Vice-Principal for the last eight and nine years respectively in the SAV without any complaint regarding their conduct.

10. On 31.08.2019, under the Chairmanship of the Additional Chief Secretary, Department of Education, Government of Bihar, the Executive Committee held its meeting whereby it took momentous decisions with regard to the strength and appointment of the teaching and non-teaching staffs. The decision of the Executive Committee was recorded in the form of minutes of the meeting and the same was signed by the Director, Secondary Education, Government of Bihar and Member Secretary EC-SES and the Additional Chief Secretary, Department of Education, Government of Bihar and Chairman EC-SES on 21/11/2019 (Annexure-P/4).

11. In the meeting dated 31.08.2019 it was decided that the sanctioned posts of teachers and non-teaching staff will be filled up by way of a fresh selection procedure and the posts of Principal/Vice Principal shall be filled up afresh through Bihar Public Service Commission (hereinafter referred to as BPSC).



12. Against the post created, a process of appointment, through an open competitive examination, shall be initiated. The task of appointment was assigned to competent Authority and it was decided that the serving employees of the SAV including the working Principal and the Vice -Principal would be bound to compete afresh against the posts that would be advertised against the created posts and they would be entitled to an age relaxation of 10 years.

13. Learned Senior Counsel for the petitioners submits that the decision of the Executive Committee, dated 31/08/2019, directing the existing/serving employees of the SAV to participate in the selection process that it intends to initiate for the various posts of the SAV is highly unjust and arbitrary. The bye laws of the 'SES' states that on the basis of contract and decision of the Executive Committee to fill up all the posts of the serving employees afresh amounts to replacing the serving contractual employees with another set of employees – in absence of any allegation of inefficiency or misconduct- is highly unjust and arbitrary as well.

14. It is submitted that the institution, SAV, has achieved great repute across the State and the Nation, as a result of the hard work of the petitioners and teachers, which shall be



completely negated if the respondents are allowed to replace the entire set of teachers/employees/Principal/Vice-Principal by a new set of employees. The School has been ranked as the best Government boarding School in the Country during the year 2019-20 and 2016-17 and has remained amongst the top 5 (3rd in the year 2018-19) for last several years since its inception (Annexure-P/5 series) and instead of rewarding them by giving permanency, they are being penalised by asking to face open competitive examination for continuing as Principal and Vice-Principal.

15. It is submitted that the advertisement under which they had been appointed states that their retirement age would be 60 years even though they were to be appointed on contract basis. The advertisement never stated that they shall be subjected to further test for continuing in the institution and that there continuity in the school up to the age of 60 years was protected by the word “minimum” prescribed against tenure and retirement age-60 being mentioned in the advertisement. The continuity of their services was approved by letter no.671 dated 08.09.2015 (Annexure-P/7) and they were given an annual increment of 3% in the year 2012 vide letter no.63 dated 10.01.2012 (Annexure-P/8).



16. It is further submitted that the General Body had initiated the process of creating the Service Rules for the teachers, including Principal and Vice- Principal, appointed on contractual basis, in the year 2011 itself. It is stated that "Simultala Education Society Teaching and Non-Teaching Employees Service Condition and Disciplinary Rules, 2017" was drafted and the draft rule was even circulated for obtaining objections - but instead of approving the service rules the respondents have decided to, in effect, terminate the services of the petitioners - by asking the petitioners and their likes to appear in another open competitive examination for continuing in their posts (Annexure-P/9).

17. It is next submitted that in the instant writ application, this Court vide order dated 16.07.2020 has granted a stay in the matter on the pretext that one contractual appointment cannot be replaced by another contractual appointment and pursuant to the stay granted, the Director, Secondary Education, Government of Bihar, Patna sent a requisition to the Secretary, Bihar Public Service Commission, Patna on 22.08.2023 for conducting a process of regular appointment in relation to the post of Principal, Vice Principal and other teachers. They have also amended the SES bylaws and pursuant to that, requisition was



sent.

18. Pursuant to the requisition, the BPSC issued an advertisement for the post of Principal and Vice Principal in SES, Jamui, last date of filling the form was 21.05.2024.

19. Thereafter, the respondents filed an I.A. for vacating the stay order granted by this Court vide order dated 06.07.2020 but it was not pressed and no order was passed but the respondents have committed contempt of Court by proceeding with the selection process without taking order of vacating the stay order.

20. It is further submitted that in the advertisement it is clearly stated that the age limit for the post of principal and vice principal will be 40 years on the minimum side and 55 years on the maximum side. The retirement age fixed is 60 years. It is further submitted that the Principal of the college, who is the petitioner no.1 herein, has already attained age of fifty four and a half years and the vice principal, who is the petitioner no.2 herein, has attained the age of 57 and half years. It is highly irrational that a person of more than 55 years of age has to compete with a person who is of 40 years of age in the selection process which basically erodes the entire selection process. It erodes the principle of right to equality enshrined in article 14 of the Constitution of India and further erodes the principle



enshrined in article 21 of the Constitution of India.

21. Assuming but not conceding that age relaxation has been given along with some weightage in the entire selection process to the petitioners who are at present working on contractual basis but this age relaxation and giving of weightage is not in tune with the spirit of the selection process as the respondents are doing regular appointment for the above post.

22. It is further submitted that 'by the newly amended rules in the Simultala Education Society bylaws it has been stated in rule 05 that post of contractual teaching and not non teaching employees shall be dying post. The said post shall be automatically come to an end upon the retirement. It is further stated that it was clearly mentioned in the rules that the said post shall automatically come to an end upon retirement. In the earlier advertisement which was issued by the Bihar Public Service Commission, Patna the retirement age for the post of principal and Vice principal was fixed for 60 years and hence going by the newly amended laws this post of principal and vice principal could have become vacant after attaining the age of 60 years. Hence the advertisement and the requisition issued as per now is totally fit to be set aside. Petitioners are at the verge of retirement and they should be allowed to continue on the post



and any selection, if is to be done, the same should be done after their retirement.

23. A counter-affidavit is filed on behalf of the State, in which at para-8, it is stated that SES framed a Rule namely Simultala Education Society Teaching and non-teaching Employees Contract and Service Condition and Discipline Rules, 2021 vide notification no.369 dated 18.03.2021. The main objective of framing these Rules was to appoint teaching and non-teaching staffs in the said school in place of contractual appointments made earlier. Under Rule 5 of the said Rules, it was provided that the post of contractual teaching and non-teaching employees shall be dying post. The said post shall be automatically come to an end upon the retirement or any other reasons.

24. At this stage, one post of Principal, one post of Vice-Principal, 62 teachers, 63 non-teaching employees i.e. total 127 posts were created vide Resolution No.1355 dated 14.12.2021 issued by the Education Department, Bihar, Patna and a requisition was sent to the BPSC to initiate selection process after providing age relaxation as well as preference to the post of Principal, Vice-Principal, teachers of Senior Secondary and Secondary Teachers in the examination under the provisions of



Resolution No.1003 dated 22.01.2021 who were already working against the said post on contract basis in SES, Jamui. Since, it is the policy decision, petitioners have no locus standi to challenge the same and the petitioners are being given weightage and age relaxation in appointment against permanent post.

25. From perusal of advertisement dated 04.06.2010, it is explicit that the engagement of the petitioners on the post of Principal and Vice-Principal were purely on contract basis for a fixed emolument of Rs.50,000/- and 37,800/- respectively for a period of three years only. The petitioners being fully aware of the facts that their engagement are being made on purely contract basis on a fixed remuneration and for a particular period applied for the same and were engaged as per terms and conditions laid down in the advertisement and thus they have got no locus standi to say that they should be allowed to continue on their post on permanent basis.

26. The decision dated 31.08.2019 of the Executive Committee notified on 21.11.2019 contained in clause-12 of the Memo No.1321 (Annexure-P/4) it has been provided to grant 10 years of age relaxation to their staffs who have already been engaged in the school and hence the petitioners have got



opportunity to participate in the selection process. As such, there is no infirmity in the impugned decision of the executive committee to hold selection process for regular appointment through open competition.

27. It is well settled law that fixing eligibility criteria or mode of appointment is the exclusive domain of the appropriate authority and the same cannot be questioned by the candidate concerned as has been held by the Apex Court in the case of *State of Gujarat Vs. Arvind Kumar T. Tiwari* reported in *(2013) 3 PLJR 558*. Since the petitioners accepted the terms and conditions laid down in the advertisement for their engagement as Principal and Vice-Principal of the said School, they cannot deviate from the same.

28. It is clearly stated that process of framing Simultala Education Society Teaching & Non-Teaching Staffs Contract Service Condition and Discipline Rules, 2021 was going on and after having its final shape the same has come into operation vide its Notification dated 18.03.2021 contained in Memo No.369 and thus the Service condition of the employees of the SES shall be governed from the aforesaid Rules (Annexure-A to the supplementary counter-affidavit).

29. The notification no.369 dated 18.03.2021 described the



mortal post at point 5, whereby it is said that posts of Principal, Vice- Principal, Teaching and Non-Teaching Staffs working on contract will be mortal. On being vacant on account of retirement and other reasons, these posts shall, automatically extinct.

30. A rejoinder has been filed on behalf of the petitioner and it is stated that the advertisement specifically adverted the minimum period of contract and the fact that the age of retirement was declared, specifically, as 60 years. It would be apparent from the Simultala Education Society Teaching and Non-Teaching Service Conditions and Disciplinary Rules-2017, that the post of Principal and Vice-Principal has been converted into tenure based post and that they would be on contractual engagement for a period for 5 years with option given to the Executive Committee to extend the same for a maximum of one more tenure.

31. It is submitted on behalf of the petitioner that the Rules don't provide any age relaxation in the case of Principal and Vice-Principal nor does it give weightage for the past service unlike that has been provided for the 'Teachers' and the statement made, with regard to age relaxation is contrary to the Rules. Though the State has right to fix terms and conditions of



the service but it cannot resile from the terms of the advertisement whereby the petitioners had been appointed till the age of 60 years.

32. Considering the facts and circumstances of the case and on perusal of the record, it is not in dispute that the petitioners were appointed on contractual basis. It is the plea of the petitioners that they have been appointed after undergoing a selection process conducted through open advertisement and competition. However, this Court is of the considered view, here the dispute is not that the contractual arrangement is being substituted by another set of contractual arrangement rather it is going to be a regular appointment, which is the right remedy in terms of Rules framed by the State Government. At any stage, the selection process cannot be withheld for the petitioners, being engaged on contract basis, to attain the age of 60 years.

33. Furthermore, Rule 5 of Simultala Education Society Teaching and Non-Teaching Employees Contract and Service Condition and Discipline Rules, 2021 itself provides that the post of contractual teaching and non-teaching employees shall be dying post. The petitioners have been given weightage and age relaxation in appointment against permanent post, hence, I do not find any infirmity in the impugned decision of the



Executive Committee to hold selection process for regular appointment on substantive basis through open competition. And normally, this Court, under Article 226 does not interfere with any policy decision of the State.

34. The co-ordinate Bench of this Court by order dated 06.07.2020 directed the respondent to not proceed further on the basis of the said decision of the Executive Committee of the Society issued through notification dated 31.08.2019. Further, a contractual arrangement cannot be substituted by another set of contractual arrangement as held by the Hon'ble Apex Court in the light of series of decisions. But, in the case in hand, on bare perusal of the notification dated 31.08.2019, there is no such provision/clause mentioned stating that the initial contractual arrangement to be substituted by another set of new contractual arrangement.

35. The writ application is accordingly dismissed.

36. Pending application, if any, stands disposed of.

(Anjani Kumar Sharan, J)

pallavi/-

| | |
|-------------------|------------|
| AFR/NAFR | NAFR |
| CAV DATE | 13.08.2024 |
| Uploading Date | 28.08.2024 |
| Transmission Date | NA |

