

**(2021) 10 PAT CK 0003**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 3846, 10679 Of 2017, 718 Of 2019

Shyamanand Azad And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** Oct. 1, 2021

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 309
- Bihar Education Service Rules, 2014 - Section 25, 25(a), 26, 26(4), 27, 28, 28(1)(ii), 28(4), 38

**Hon'ble Judges:** Chakradhari Sharan Singh, J

**Bench:** Single Bench

**Advocate:** P.K. Shahi, Sanjeev Kumar, Subhash Chandra Mishra, Mrigank Mauli, Prince Kumar Mishra, Sanket, Shashi Bhushan Singh, Sanjay Pandey, Siya Ram Shahi, Kameshwar Kumar, .Sunil Kumar Singh, Prabhakar Singh, Shilpa Singh

**Final Decision:** Dismissed

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**Judgement**

1. Heard learned counsel for the parties.

2. The petitioners have filed these writ applications challenging an order of the Principal Secretary, Education Department, Government of Bihar

issued vide Memo. No. 465 dated 22.11.2016 whereby their representations for regularization/absorption of their services in the Research and

Training sub-cadre in the Bihar Education Service has been rejected. They want this Court to hold that they are entitled by way of right to be included

permanently in the said sub-cadre of Research and Training in Bihar Education Service, on the post of Lecturer/Teaching Educators, as they had been

earlier declared successful by a selection committee after a series of tests pursuant to an advertisement dated 17.05.2012 for the posts in question.

3. As material facts in these applications are parallel and they involve common issues, they have been heard together and are being disposed of by the present common judgment and order.

4. There are 102 petitioners in C.W.J.C. No.3846 of 2017, two in C.W.J.C. No. 10679 of 2017 and five in C.W.J.C. No. 718 of 2019.

5. Briefly stated, admitted facts, as has emerged from the pleadings and other materials on record are that the petitioners were appointed as Assistant

Teachers on different dates and in different years in different Government Primary and Secondary Schools. They held Postgraduate qualification of

M.Ed. or M.A. in Education, which according to them, is equivalent to M.Ed. The Research and Training Directorate of Education Department,

Government of Bihar had come out with a notice for preparation of a panel for posting, in various District Institutes of Education and Training (DIET),

Teachers Training Colleges and Primary Teachers Training Colleges, as Principals and Lecturers. For the said purpose, applications were invited from

the members of the Bihar Education Service, (Administrative Cadre), Subordinate Education Service Cadre and other Officers and Teachers working

in Government Primary, Secondary and Higher Secondary Schools. The said notice prescribed qualification for the aspirants willing to be empanelled

in the light of the said notice. It was clarified by way of a note at the bottom of the said notice that the applications were being invited only for the

purpose of empanelment of the officers and teachers having requisite qualification which did not mean that the applicants shall be posted in Training

Colleges. The petitioners submitted their applications for empanelment. 294 applicants including these petitioners were shortlisted. Thereafter, the

Director (Research and Training) Department of Education requested the Director, Primary Education to handover the services of the Teachers so

empanelled to the Research and Training Directorate. The shortlisted candidates were made to participate in a workshop of Development Needs

Analysis (hereinafter referred to as "the D.N.A. Test") for selection from the shortlisted candidates for deputation in the college of Teacher

Education, District Institute of Teachers Education and Primary Teachers Education Colleges. The workshop for D.N.A. was organized in two

stages. The petitioners were relieved to participate for the said D.N.A. Test. A total number of 170 eligible candidates were declared successful, including these petitioners and were thus empanelled. Thereafter, the Education Department, Government of Bihar issued a letter dated 05.06.2013 addressed to all the aspirants to the effect that a total of 170 Teachers had been identified for posting on the basis of deputation in Education Training Colleges. The candidates so identified were allowed to exercise three options for their posting against vacant posts, on the departmental website or by hand, within seven days. The petitioners exercised their options and accordingly a total number of 150 candidates were posted as lecturers on deputation basis in different District Education and Training Institutes and Primary Teachers Education College for a period of one year, by an officer order dated 23.07.2013 issued by the Education Department, Government of Bihar. It was clearly mentioned in the said letter that selected candidates were being posted on deputation basis and that decision to extend the period of deputation shall depend upon the satisfactory service of the deputed teachers.

6. The Bihar Education Service Rules, 2014 (hereinafter referred to as "the Rules") made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India came to be notified by the Education Department, Government of Bihar vide Notification No. 698 dated 12.02.2014. It came into force w.e.f. the date of its notification. The Rules stipulate that the Bihar Education Service shall have four sub-cadres namely (i) Administration Sub-Cadre, (ii) Training Sub-Cadre, (iii) Research and Training Sub-Cadre and (iv) An Isolated Sub-Cadre.

7. The claim of the petitioners to be a part of the third sub-cadre namely Research and Training sub-cadre on the strength of their posting on deputation on the basis of the said office order dated 23.07.2013 is the central issue involved in this case.

8. The Research and Training Sub-Cadre falls in part 4 of the Rules, which begins from Rule 25 and ends with Rule 38. The petitioners were admittedly working against the post of Lecturers in different district institute of Education and Training (DIET) and other Teacher Education Colleges

on posting on deputation basis. Rule 25 (a) of the Rules gives the list of the posts in the basic cadre of the Research and Training sub-cadre. Rule

26(4) of the Rules provides that the Officers recruited/promoted and already working on the above posts will be considered included in the sub-cadre.

Rule 27 of the Rules is the most significant provision under the Rules to determine the petitioners' claim, as noted above, which is being quoted

hereinbelow:-

“27. The Officers appointed/promoted and working on the above posts of this sub-cadre and having the prescribed qualification of these posts shall

give the option for inclusion in this sub cadre. In case of having no qualification or not giving option for inclusion in this sub cadre or in case of working

on deputation basis, they shall be reverted back to their own cadre. If they are appointed on these posts, they shall remain on their posts but they shall

not get the benefit of regular promotion in this sub cadre.”

9. The Bihar Public Service Commission (hereinafter referred to as “the Commission”) issued Advertisement No. 02 of 2016 and

Advertisement No. 06 of 2016 inviting applications for appointment on 478 posts of Lecturer through open competition and limited competitive

examination respectively. The advertisements were issued in 2016 whereas C.W.J.C. No. 3846 of 2017 was filed in March, 2017. The petitioners in

C.W.J.C. No. 3846 of 2017 filed an application seeking amendment in the writ petition vide I.A. No. 3223 of 2017 for challenging the advertisement

itself, as according to them, the selection process undertaken by the Commission would adversely affect their claim. The said I.A. was taken up by

this Court on 11.05.2017, when the following order was passed:-

“Re.: Interlocutory Application No. 3223 of 2017

8. The present Interlocutory Application has been filed seeking addition of the following reliefs in the writ petition:

“(i) The petitioners pray for issuance of a writ in a nature of certiorari for quashing advertisement no. 06/2016 inviting application for appointment

on the newly created 478 posts of lecturers through limited examination and advertisement no. 02/2016 inviting application for appointment on the

posts of lecturers through open competition issued by Joint Secretary-cum-Examination Controller, Bihar Public Service Commission. (ii) The

petitioners also pray for interim protection by staying the examination to be held on from 26.05.2017 to 29.05.2017 for the appointment on the aforesaid posts.â€

9. The petitioners were working as Teachers under the State Government and by way of a special drive to fill up posts in training institutions, eligible persons were given option to apply and pursuant thereto through a regular mode of selection, they were selected and appointed on such post and since then are working. In the meantime, they have also been sent for specified training required for such post.

10. Learned counsel for the petitioner submitted that though such appointment order mentioned deputation but it was for taking regular and continued work from the petitioners as teachers were not available to run those institutions and further that after joining they have also been sent at the cost of the Government for specialised training which they have acquired.

11. Learned counsel submitted that the Bihar Education Service Rules, 2014 (hereinafter referred to as the â€Rulesâ€™), which was notified on

12.02.2014 stipulates that persons appointed/promoted and working on such posts would be automatically be deemed to come into the sub-cadre of

such posts. Learned counsel submitted that in view of the same, at least, the posts held by the petitioners cannot be filled up by any other mode of

recruitment, including the one initiated and under challenge in the present writ application.

12. Learned counsel for the Bihar Public Service Commission submitted that in view of the order passed by a Division Bench in a Public Interest

Litigation relating to filling up of posts of teachers, the exercise has been undertaken. However, on merits, he prays for time to assist the Court.

13. Learned counsel for the State also prays for time to file detailed counter affidavit.

14. Having considered the matter, in the tentative view of the Court, since the petitioners were appointed in the year 2012, may be by any

nomenclature including deputation, they would come under the category of having been â€appointedâ€™ on the post and they continuing on the said

post would obviously be covered under Rule 26(4) of the Rules.

15. In view of the aforesaid, the Court deems it appropriate to pass interim order. Accordingly, though the process, including examination may continue, but the petitioners shall not be disturbed from working on the posts held by them and further the posts on which they are working shall not be filled up from the process which is under challenge, until further orders of the Court.â€

10. With the aforesaid order, in my opinion, I.A. No. 3223 of 2017 stood disposed of though not specifically mentioned therein. Most of the petitioners are said to be working on the strength of the aforesaid interim order. It deserves to be noted at this juncture that Rule 28 under Part 4 of the Rules dealing with Research and Training sub-cadre lays down, inter alia, the process of appointment against post of basic grade of the said sub-cadre. It provides that 50% posts of the basic grade of the sub-cadre shall be filled up by direct appointment and rest 50% shall be filled up on the basis of limited competitive examination from amongst the Teachers working in Government Schools at least for three years and having requisite qualification for the post. Through Advertisement No. 06 of 2016, applications were invited from eligible candidates for appointment as Lecturers in different Government Education Training Colleges on the basis of limited competitive examination evidently under Rule 28 (1) (ii) of the Rules. Advertisement No. 02 of 2016, on the other hand, was issued by the Commission for filling up the posts on the basis of direct recruitment, as stipulated under Article 28 (1) (i) of the Rules. Admittedly, some of the petitioners had applied pursuant to the said advertisements, which fact was not disclosed in the writ petition. This fact has emerged from I.A. No. 05 of 2020 wherein it has been stated that the petitioners no. 33, 39, 42, 50, 55, 70, 89, 90 and 95 had applied against the Advertisement No. 02 of 2016, who have been declared successful and subsequently appointed on 30.06.2020. In the wake of their selection, they filed I.A. No. 05 of 2020 seeking withdrawal of the writ petition to the extent they are concerned. It is shocking for the Court to learn that the petitioners obtained an interim order from this Court on 11.05.2017 against the selection process in question to the extent the same related to posts against which they were working without disclosing their own participation pursuant to the advertisement. It is yet not known as to how many

petitioners had in fact participated in the process of selection pursuant to the Advertisement No. 02 of 2016 and Advertisement No. 06 of 2016 in the absence of an honest disclosure in this regard.

11. Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioners of C.W.J.C. No. 3846 of 2017 has submitted that when the State was in dire need to have qualified persons for running Teachers Education Institutes in the State of Bihar, an exercise was undertaken to select from the existing employees in Bihar Education Service. He has taken me to the relevant provisions of the guidelines issued by the Ministry of Human Resource Development, Government of India in respect of District Institutes of Education and Training (DIET), apropos requirements, procedures, eligibility criteria and cadre management. He has submitted that it was in consonance with Clause 3.1.2. of the said guidelines that a special selection process was initiated with the issuance of the notice by the Directorate of Research and Training, Government of Bihar inviting applications from eligible candidates. He has further referred to Clause 3.3. of the guidelines thereof which provided that the State Government would have to evolve an appropriate mix of alternative modes of recruitment. He has submitted that the petitioners were made to undergo a rigorous process of selection pursuant to the said notice, at two stages namely D.N.A. 1 and D.N.A. 2 whereafter they were empanelled. He has further submitted that by operation of Sub-Rule 4 of Rule 26 of the Rules, the petitioners stood included in Research and Training sub-cadre. In support of his submission, he has relied on the Supreme Court's decision in case of Dr. Gagan Inder Kaur and Ors. v. Union Territory of Chandigarh reported in 1995 (6) SCALE 581 wherein the Supreme Court has held that since the procedure required under the Rules relevant at the time of appointment were strictly followed, though such appointments were described as ad hoc, they were really in the nature of appointment on regular basis.

12. Mr. Prabhakar Singh, learned counsel appearing on behalf of the petitioners in C.W.J.C. No. 718 of 2019 while adopting broadly the submissions made by Mr. P.K. Shahi, learned Senior counsel, has submitted that under the Rules, options were required to be invited from those also who were on

deputation including these petitioners for retention in the sub-cadre in question. He submits that the said exercise was not done. He has urged that representation of these petitioners ought to have been treated as their exercise of option, within the meaning of Rule 27 of the Rules.

13. Mr. Siya Ram Shahi, learned counsel representing the petitioners in C.W.J.C. No. 10679 of 2017 has added that Rules 26 and 27 of the Rules need to be read conjointly to give a purposeful meaning, which would make the legislative intent clear. According to him, the said provisions manifestly suggest that the services of the persons working against the posts which fall now in the sub-cadre of Research and Training were to be retained as part of the sub-cadre.

14. In C.W.J.C. No. 10679 of 2017 also an Interlocutory Application has been filed seeking withdrawal of the writ petition to the extent the same relates to petitioner no. 1 on the ground that he has been selected against Advertisement No. 02 of 2016 and appointment letter has been issued on 30.06.2020. In the writ petition, which was filed on 27.07.2017, there is no mention of the participation of the petitioner(s) in the process of selection.

15. Per contra Mr. Subhash Chandra Mishra, learned SC 16 has argued that in the notice inviting application itself it was mentioned that a panel was being prepared for posting of qualified Teachers in Government Teachers Training Institutions. The empanelment of the petitioners does not give them any right to be included in the sub-cadre constituted by subsequent framing of statutory rules. He has further argued that it is evident from Annexures 6 and 7 of the writ application that the petitioners were posted on the basis of deputation and it was within the knowledge of the petitioners that they were being posted on deputation basis. He has further submitted that Rule 27 of the Rules clearly prescribes that such persons who were working on deputation basis on the post falling in the sub-cadre shall be reverted back to their own cadre. He contends that the petitioners do not have any right to continue on the basis of deputation and it is the mandate of Rule 27 of the Rules that they are reverted back to their own cadre. He has also submitted that the petitioners deliberately suppressed material facts about their participation in the selection process from this Court. He has drawn my attention



to the statement made in paragraph 27 of the supplementary counter affidavit filed on behalf of the respondent no. 4 wherein it has been specifically stated that some of the petitioners had participated in the limited competitive examination conducted by the Commission, furnishing the list of some of them who had participated in the examination against either or both of Advertisement No. 02 of 2016 and Advertisement No. 06 of 2016. He has urged that since the petitioners have not approached this Court with clean hands, this writ application deserves to be dismissed on the said score alone.

16. Curiously, another I.A. No. 07 of 2021 has been filed for withdrawal of writ application (C.W.J.C. No. 3846 of 2017) to the extent the same relates to petitioners no. 29, 32, 44, 87 and 103, though no reason has been assigned as to why the said petitioners are no more interested in this matter. It is not clear, as to whether they are also such candidates who had participated in the process of selection conducted by the Commission and for that reason they are not interested in pursuing this matter, because of their selection.

17. Intervention Applications have been filed in C.W.J.C. No. 3846 of 2017 registered as I.A. No. 06 of 2020 and I.A. No. 08 of 2020 seeking impleadment in the writ application on behalf of those who are applicants pursuant to the said Advertisement No. 02 of 2016 and Advertisement No.

06 of 2016 to oppose the writ petition. It is their case that because of the interim order passed by this Court, 102 posts have been kept reserved. In

I.A. No. 08 of 2021, it has been stated that it would be meaningless for the candidates, particularly the teachers of Social Science like the intervenors to participate in the examination as most of the posts would be treated to be filled up by the Teachers on deputation, if the claim of the writ petitioners is accepted.

18. Mr. Mrigank Mauli, learned Senior counsel representing the intervenors has argued that the petitioners were admittedly deputationists, who have no right to hold the post after coming into force of the Rules. He has submitted that there being no ambiguity in the language of Rule 27 of the Rules, the State respondents have no other option but to revert the petitioners back to their own cadre. He contends that the said Rules having been framed

in exercise of power under the proviso to Rule 309 of the Constitution of India is binding on everyone. He has further submitted that in any case, the conduct of the petitioners in suppressing material facts from this Court in relation to participation of some of the petitioners in the process of selection which they have challenged in the present writ application, dis-entitles them from consideration of their case in a proceeding under Article 226 of the Constitution of India which is a discretionary and equitable remedy. According to him, this writ application deserves to be dismissed on the said score alone. He has further contended that the petitioners acquiesced to accept the post of Lecturer in DIET by posting on deputation basis and now it is not open for them to canvass that they were appointed for being regularized or absorbed against those posts.

19. I have perused the pleadings and materials available on record and I have given anxious consideration to the rival submissions made on behalf of the parties including the intervenors.

20. It is the most fundamental principle of law relating to public service that statutory rules framed, if any, dominate in determining the process of selection, condition of service, classification and control. The proviso to Article 309 of the Constitution of India empowers the State to make rules regulating the recruitment, conditions of service of persons appointed to such service. The rules framed in exercise of power under proviso to Article 309 of the Constitution have force of law. There is no gainsaying that though service of a person in a Government establishment begins with something akin to contract but once appointed to a post under the Government service, he acquires a status. A statute or statutory rules which may be framed in relation to such service would, determine his rights and obligations. It is also well settled that legal position of a Government servant is more of a status than of contract. The terms of his service are governed by statutory rules, which may even be unilaterally altered by the Government.

21. As has been noticed above, the State of Bihar has framed rules in exercise of power under the proviso to Article 309 of the Constitution of India determining recruitment, promotion and service conditions of Bihar Education Services namely Bihar Education Service Rules, 2014. Part 4 of the said

Rules deals with Research and Training sub-cadre of Bihar Education Service. Sub-Rule 4 of Rule 26 of the Rules states that the Officers

recruited/promoted and working prior to the above post will be considered included in the sub-cadre. Rule 27 of the Rules, in quick succession,

provides that the officers appointed/promoted on the post in the sub-cadre and having prescribed qualification shall give option for inclusion in the sub-

cadre. It further states unambiguously that such persons shall be reverted back to their own cadre who:-

(i) have no qualification for the post in sub-cadre.

(ii) have not given option for inclusion in sub-cadre.

(iii) in case of working on deputation basis.

22. In case, it is concluded that the petitioners were working on deputation basis against the posts falling in Research and Training sub-cadre, they, by

operation of Rule 27 of the Rules will have to be reverted back to their own cadre. To determine this aspect, the notice inviting applications for

empanelment and the documents through which they were posted, on the basis of which the petitioners intend to establish their claim as raised in these

applications, need consideration. The notice has been brought on record by way of Annexure 1 of C.W.J.C. No. 3846 of 2017. A plain reading of the

said notice leaves no room for doubt that it was only for the purpose of preparation of a panel for posting as Principal/Lecturer in various District

Institutes of Education and Training, Teachers Training Colleges, Primary Teachers Training Colleges in the State, if they held the requisite

qualification, as prescribed therein. It is manifest that the State Government intended to post Officials/Teachers working in Bihar Education Service

(Administrative cadre), Subordinate Education Service cadre and other Officers and Teachers working in Government Primary/Secondary and Higher

Secondary Schools. Annexure 2 dated 09.08.2012 is a letter written by the Director, Research and Training, Education Department, Government of

Bihar addressed to the Director, Primary Education making a request to make available services of those who were empanelled pursuant to the notice

(Annexure 1) for the purpose of their posting in Teachers Training Colleges. Through letter dated 05.06.2013 addressed to aspirants, issued by the

Deputy Director, Research and Training Education Department, Government of Bihar, they were asked to exercise three options for purpose of their

posting on deputation basis. The petitioners knew that they were being posted on deputation basis after their empanelment with their lien intact with

their posts which they substantively held. The office order dated 23.07.2013, whereby the petitioners and other similarly situated persons were posted

(Annexure 7) clearly indicated that the petitioners were being "posted on deputation basis". The petitioners themselves have stated in paragraph

19 in C.W.J.C. No. 3846 of 2017 that a total number of 150 candidates were posted as Lecturers on deputation basis at different District Education

and Training Institutes and Primary Teachers Education Colleges. It is, thus, not in dispute that the petitioners were posted on deputation basis through

a process of empanelment of such persons already in service, who held the requisite qualification and were willing for such deputation.

23. Having concluded so, in my opinion, the provision under Rule 27 of the Rules comes into play, which unambiguously states that the persons

working on deputation basis shall be reverted back to their own cadre. It is the mandate of the statutory rule that requires repatriation of the persons

who were working on deputation basis. The language of Section 27 is unambiguous. It is evident on reading of the said provisions that the rule making

authority was conscious of the factual position that there were persons working on deputation basis against different posts falling in Research and

Training sub-cadre under the Rules and it was intentionally decided to repatriate them back to their own parent cadre. Having concluded thus, in my

opinion, there is no infirmity in the impugned order no. 465 dated 22.11.2016 passed by the Principal Secretary, Department of Education, Government

of Bihar rejecting the claim of the petitioners for their regularization/absorption in Research and Training sub-cadre of the Bihar Education Service.

24. Further, it is quite disturbing for this Court to note that on the one hand some of the petitioners were admittedly participating in the process of

selection conducted by the Bihar Public Service Commission in accordance with the provisions under Rule 28 of the Rules; suppressing this fact they

approached this Court by filing these applications and challenged the process of selection itself. On the one hand, they wanted benefit of their

presence on deputation against the posts in question in order to claim their absorption/regularization and challenged the process of selection through direct recruitment/limited competitive examination conducted by the Commission; on the other hand, at the same time, they participated in the same process of selection. Some of them got selected. They ventured to seek an interim order from this Court, which was granted by an order dated 11.05.2017, by concealing a material fact that many of them had participated. Till last hearing of these matters, the petitioners have not clearly come out with any specific statement as to which petitioners had participated in the process of selection undertaken through Advertisement No. 02 of 2016 and 06 of 2016. Only those, who got selected in the process of selection, filed applications before this Court for expunction of their names, which have been allowed. In my opinion, the petitioners obtained interim order from this Court dated 11.05.2017 by misrepresentation and suppression of material facts.

25. Further, had Rule 27 of the Rules been brought to the notice of this Court probably the interim order dated 11.05.2017 would not have been passed. This Court in paragraph 15 of its order dated 11.05.2017 had directed that the posts, on which, the petitioners were working shall not be filled up from the process which is under challenge, until further orders of the Court. After having obtained the interim order to the aforesaid effect, some of the petitioners after their selection have informed this Court that they have been selected and appointed also. The conduct of the petitioners is highly reprehensible. They apparently approached this Court with unclean hands, misled this Court on facts and obtained interim order, as has been noticed above.

26. For the reasons discussed hereinabove, these writ applications deserve to be dismissed and are accordingly dismissed.

27. All Interlocutory Applications stand disposed of.

28. There shall be no order as to costs.