

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17010 of 2023

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Babita Kumari S/o Pashupati Prasad, R/o Vill. Andhra, P.O. Andhra, P.S. Andhrathari, Dist. Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Director (Primary Education), Education Department, Government of Bihar, New Secretariat, Patna.
4. The Director (Secondary Education), Education Department, Government of Bihar, New Secretariat, Patna.
5. The District Magistrate, Madhubani.
6. The District Education Officer, Madhubani.
7. The District Programme Officer (Establishment), Madhubani.
8. The Block Education Officer Andhrathadhi, Madhubani.
9. The Panchayat Secretary, Gram Panchayat Raj Rakhbari, Andhrathadhi, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar
For the Respondent/s : Kumari Amrita (GP3)
Mr. Naresh Dixit, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 01-02-2024

1. The petitioner, who has been selected by the B.P.S.C. as a teacher and was issued provisional appointment letter dated 02.11.2023 has approached this Court for quashing the order dated 13.11.2023 as contained in Annexure-1 issued by the District Education Officer, Madhubani whereby provisional appointment letter has been cancelled on the ground that the



petitioner formed an association namely, Madhyamik Evam Uchchatar Madhyamik BPSC Adhyapak Sangh and accordingly violated the Bihar Government Servant's Conduct Rules, 1976 (hereinafter referred to as "Rules, 1976) read with Rule 17 (vii) of the Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023 (hereinafter referred to as the "Rules, 2023").

2. The factual matrix of the case in brief is that pursuant to the advertisement no. 26 / 2023 published by the Bihar Public Service Commission for appointment of teachers in Primary, Secondary and Higher Secondary Schools, the petitioner applied under EBC category. The petitioner participated in the competitive examination and was declared successful and after counselling and verification of documents, provisional appointment letter dated 02.11.2023 as contained in Annexure-6 was issued in her favour.

3. On 11.11.2023 a press communique was issued by the Education Department whereby strict warning was given to the teachers selected by the Bihar Public Service Commission not to form any union(s) / association(s) and not to get the pad of the association printed, failing which, provisional appointment letter would be cancelled. On the same day vide



Memo No. 3826 dated 11.11.2023 a show cause notice was issued to the petitioner by the respondent no. 6 in the light of the press communique dated 11.11.2023 stating therein that after being selected in the examination and provisional appointment letter having been issued, the petitioner formed an association namely, Madhyamik Evam Uchchatar Madhyamik BPS Adhayapak Sangh. As its State President petitioner submitted a letter to the Director, Secondary Education, Bihar Patna and has raised a question mark on the functioning of the Department / Government with an intention to defeat the ambitious policies of the Government. Accordingly, the petitioner was required to submit her explanation within twenty four hours as to why provisional appointment letter of the petitioner be not cancelled.

4. Within twenty four hours on the same day i.e. on 11.11.2023 petitioner gave her reply to the show cause in which she has denied the allegation and has stated that the petitioner is innocent and has neither given any application / memorandum to the Director, Secondary Education nor is the State President of any association. She has further stated that some unknown person has given application on the letter pad by using her name.

5. Learned senior counsel for the petitioner argues that



the impugned letter is grossly arbitrary, unreasonable and is against the tenets of the Constitution of India. The impugned letter of the respondent no. 6 is erroneous and is based on assumption only. He further argued that petitioner was only issued provisional appointment letter and from the date of joining in school probation period shall start as per Rule 10 of the Rules, 2023 but without submitting her joining and without being given posting in any school any action taken under the Bihar Service Condition Rules read with Rules, 1976 shall be in violation of the law as the rules would not be made applicable before joining and commencement of probation period.

6. Service Condition Rules and Service Conduct Code are not enforceable against the petitioner without issuance of appointment letter by the Department. The provisional appointment letter cannot be said to be the appointment letter. He also argued that forming an association is not *per se* illegal and even if it is assumed for the sake of argument that Rule, 1976 is applicable in the case of the petitioner, Rule 7 of the Rules, 1976 is not attracted against the petitioner which says that “no government servant shall join, or continue to be a member of association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of



India or public order or morality”. The alleged letter dated 08.11.2023 brought on record by the respondents by way of second counter affidavit at Annexure – R/1 by no stretch of imagination can be said to be prejudicial to the interests of the sovereignty and integrity of India or public order or morality.

7. On the other hand, Mr. Naresh Dixit, learned Advocate along with Ms. Kumari Amrita, learned Government Pleader-3 appearing for the respondents argued that by forming an association after receipt of provisional appointment letter, the petitioner has violated Rules, 1976 read with Rules, 2023 inasmuch as the moment the petitioner accepted provisional appointment letter, she became a “government servant” and as such, Rule 7 of the Rules, 1976 is attracted in the case of the petitioner. The petitioner on the letter pad of “Sangh” wrote a letter to the Director, Secondary Education, Government of Bihar on 08.11.2023 in the capacity of State President of the “Sangh” and raised four issues regarding the selected teachers. Referring to paragraph no. 6 of the counter affidavit filed in pursuance of the order dated 18.12.2023 passed by this Court, learned counsel further submits though the petitioner was selected as a teacher, before her joining she put pressure upon the Officers of the Government pressurizing them to succumb to



her demand. It is surprising that the petitioner has denied the formation of “Sangh” as well as writing any such letter in the capacity of State President of the “Sangh” inasmuch as Government Officials talked to the petitioner over telephone and she confirmed that she has in fact formed a “Sangh” and she happened to be the State President of the said “Sangh”. This conduct of the petitioner leaves no iota of doubt that the petitioner has not approached this Court with clean hands. The respondent / authority after considering the explanation submitted by the petitioner by the impugned order has rightly cancelled the provisional appointment letter of the petitioner.

8. I have heard learned counsel for the parties and have gone through the materials on record including the impugned order. From perusal of the impugned order it transpires that the respondent no. 6 in his order has come to the finding that after having received provisional appointment letter on 02.11.2023 the petitioner formed an association within a week on 08.11.2023 and started giving statement. The petitioner before allotment of school and before submitting her joining and started teaching was indulged in the formation of an association.

9. Impugned order further says that after submission of joining the probation period commences and thereafter payment



of salary begins. Since the petitioner has neither submitted her joining nor her probation period started therefore, Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 [hereinafter referred to as the “Rules, 2005”] shall not apply in her case. Contrary to the aforesaid finding and with the same breath the respondents arrived at further conclusion that by forming an association and writing a letter to the Government on the pad of the association, the petitioner has violated Rule 17 (vii) of the Rules 2023. Sub Rule (vii) of Rule 17 of the Rules, 2023 clearly states that Rules, 1976 shall apply to school teachers and relevant rules of Rules, 1976 does not permit formation of association by which pressure can be imposed upon the Government.

10. Upon careful reading of the impugned order it appears that on the one hand the authority has come to the conclusion that since the petitioner has not joined and has not started teaching and getting salary, the Rules, 2005 shall not apply in her case but at the same time has held that Rules, 2023 is attracted in the case of the petitioner which prevents formation of association and the petitioner violated the conduct rules and accordingly her provisional appointment letter has been cancelled.



11. I closely examined the provisional appointment letter also. Provisional appointment letter issued to the petitioner dated 02.11.2023 appears to have been issued under Rule 9 (i) of the Rules, 2023. Clause (2) of the same clearly stipulates that this cannot be treated as an appointment letter and appointment letter shall be issued by the Department after completion of verification of certificates / testimonials and other formalities. Clause (4) of the letter stipulates that salary would be payable from the date of joining in the school. Clause (5) says that after submission of joining probation period shall start and after completion of probation period the services of the petitioner shall be confirmed. Rule 9 (i) of the Rules, 2023 deals with verification of certificates which says that it shall be the duty of the appointing authority that they shall get the educational / training qualification and experience related certificates and other certificates verified, as necessary, before issuing appointment letter. It further says that however provisional appointment letter may be issued in the interest of work and the certificates may be verified within the time limit fixed by the Department. Rule 10(i) of the Rules, 2023 says that probation period for school teachers appointed by direct recruitment shall be two years from the date of “contribution”.



12. Upon close reading of the terms of the provisional appointment letter, Rule 9 (i) & 10 (i) of the Rules, 2023 it is clear that provisional appointment letter was issued for the purpose of verification of certificates / testimonials and other details etc. and cannot be said to be an appointment letter and at best can be said to be an intention of the respondents to appoint the petitioner on the post of teacher. This can be a stage short of the appointment letter, as such, I do not find force in the argument of learned counsel appearing for the respondents that after issuance of provisional appointment letter the petitioner became government servant.

13. Further more, the definition of “government servant” as defined in Rules, 1976 means “any person appointed to serve in connection with the affairs of the State, in respect of whom the Governor of Bihar is empowered to make Rules under Article 309 of the Constitution of India, whether for the time being such person is serving in connection with the affairs of the Government of India or of any State, or is on leave”. Thus, according to the conduct rules a person can be said to be a government servant if such person is serving in connection with the affairs of the Government. Rule 10 of the Rules, 2023 also talks about the probation period of the teachers from the date of



“contribution” meaning thereby that one can be said to be a teacher from the date of joining and rendering his / her services. Accordingly, I am of the view that merely by issuing appointment letter, a person does not become a “government servant” unless he / she has submitted his / her joining and started serving in connection with the affairs of the Government. Since the petitioner was not issued appointment letter and was not allotted any school and started rendering her services as a teacher, she cannot be termed as a “government servant” as such, Rule 7 of Rules, 1976 shall not be attracted against the petitioner in the facts of the present case.

14. I agree with the argument of learned senior counsel appearing for the petitioner that forming an association is not *per se* illegal and right to form associations or unions is guaranteed under Article 19 (1)(c) of the Constitution of India. It is settled law that exercise of fundamental rights like the right to form associations or unions; right of speech and expression, right to assemble peacefully and without arms; right to move freely throughout the territory of India; right to practice any profession or to carry on any occupation, trade or business cannot be made subject to discretionary control of administrative or executive authority which can grant or



withhold permission to exercise such rights at its discretion. The guaranteed freedoms cannot be abridged or abrogated at the exercise of discretion of the state officials.

15. Article 19(1)(c) of the Constitution of India where the right to form associations or unions is guaranteed is subject to reasonable restriction. As per Article 19 (4) of the Constitution of India this right is subject to reasonable restriction in the interest of the public order or morality or sovereignty and integrity of India.

16. Rule 7 of the Rules, 1976 also prescribes that “no government servant shall join, or continue to be a member of association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality”.

17. In view of the aforesaid discussions on facts and law even assuming for a moment that petitioner formed an association prior to her becoming a “government servant” in order to put pressure upon government officials the same is not violative of Rule 7 of the Rules, 1976. It is not the case of the respondents that objects or activities of the association are prejudicial to the interest of the sovereignty and integrity of India or public order or morality, as such, I am of the considered



opinion that the impugned order is arbitrary, unreasonable, whimsical and has been passed in colourable exercise of power.

18. In the result, the writ application is allowed.

19. Memo No. 3836 dated 13.11.2023 as contained in Annexure -1 is hereby set aside.

20. The respondent no. 6 / District Education Officer, Madhubani is directed to issue appointment letter to the petitioner, allotting her school within a period of one month from the date of receipt / production copy of this order.

21. There shall be no order as to cost.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	16-01-2024
Uploading Date	01-02-2024
Transmission Date	NA

