

(2018) 01 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 613 Of 2018

Commissioner, Kendriya Vidyalaya Sangathan And Ors

APPELLANT

Vs

Rajesh Kumar And Ors

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

Citation : (2018) 1 PLJR 618

Hon'ble Judges : Ajay Kumar Tripathi, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Kumar Ravish, S.D. Sanjay

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J

Kendriya Vidyalaya Sangathan is the petitioner before this Court aggrieved by the order dated 21.07.2017, passed in OA 359/2014 by Central

Administrative Tribunal, Patna Bench, Patna.

The OA application of the private respondent, who was applicant before the Tribunal, stands allowed and a direction has been issued to appoint the

private respondent on the post of Upper Division Clerk.

The private respondent was the successful candidate. However, his claim for such appointment was rejected on the ground that the four years

working experience on a post of Lower Division Clerk was on contract, and, therefore, such experience earned by the private respondent could not be

taken into consideration as he was not working on a substantive post.

The Tribunal after considering the stand of the petitioners came to a conclusion that nowhere in the advertisement it was indicated that such applicant

had to be working on a substantive post and not on contract basis. The requirement was working experience for a period of three years as a Lower Division Clerk.

The Tribunal has held as under:

“The above documents clearly show that the applicant’s entry in contract appointment is through an open selection process akin to

regular appointment on a regular pay scale. The authorities involved in decision making are the State Government of Bihar and DDC of

Bhojpur District. In the light of this, it is clear that the appointment has been given a nomenclature of “contract” only for the sake of

legal form and for all purposes it is in the nature of the work of an LDC as far as the experience is concerned. We cannot lose sight of the

fact that in government systems, such contract appointments are resorted to for the sake of convenience, avoidance of legal complications

and lowering down the cost. Such contract appointees have no right of security of service. Still they accept such poorly paid jobs because

of the unemployment in the society. In the light of this, it would be severely harsh and morally unjustified if in a direct competitive

examination even their working experience is not counted as “experience”.

11. The applicant had initially come on contract appointment through an open competition. He worked for more than four years when he

applied in response to the advertisement issued by the respondents KVS. He submitted the experience certificate-cum-NOC signed by DDC.

He succeeded again in the written test. It is gross injustice that he has not been selected on a technical ground and persons below him in the

merit list have been selected. Our sense of substantive justice compels us to hold that delisting him by wiping out all his experience is unfair.

12. In conclusion, the OA is allowed. We hold that the experience certificate submitted by the applicant is valid as “experience”

mentioned in the notification. The applicant shall be appointed and shall be given notional benefits with respect to the persons next below in

the merit list who was appointed, but without back wages. No order as to costs.”

Since rejection of the claim of the private respondent for appointment was irrational and arbitrary. The decision of the Tribunal to appoint him and

gave him notional benefits etc. is not required to be interfered with.
Writ is dismissed.