

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11161 of 2014

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1. Sanjay Kumar S/o Late Jagganath Prasad R/o Village Hathiaul, P.O- Dhanauji, P.S- Pakari Dayal, District- East Champaran, presently posted in Primary School Bhawanipur Jirat, Motihari, District- East Champaran.
 2. Sunil Prasad S/o Late Bachcha Prasad R/o village Jasauli Jamunia, P.S- Kesaria, District- East Champaran, Presently posted in Middle School Rajapur Mathia, Kotwa, East Champaran.
 3. Rakesh Kumar S/o Late Surendra Prasad S/o Village Panchpokhariya, P.O- Tikulia, District- East Champaran, presently posted in Sri Mahavir Middle School Luathanan, Motihari, East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Director (Primary Education), Government of Patna, Patna.
5. The District Magistrate, East Champaran, at Motihari.
6. The District Education Officer, East Champaran, at Motihari.
7. The District Programme Officer (Establishment), East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar

For the Respondent/s : Mr. SC23 KUMAR PRIYA RANJAN

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 01-05-2015

The age old Circular No. 11505 dated the 28th November, 1956, issued by the Government of Bihar, the then Appointment Department, is reproduced herein below:

“In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, and in supersession of previous order on this subject the Governor of Bihar hereby makes the following Rules.

Where the State Government are satisfied that the operation of any rule regulating the conditions of service

of State Government servants, or any class of such Government servants, causes undue hardship in any particular case, they may by order dispense with or relax the requirement of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner.”

2. Yet another notification which clarifies the above circular is dated 20th November, 1959, which is also reproduced herein below:

“Subject.- Relaxation of rule in certain cases of exceptional hardship.

The undersigned is directed to invite your attention to Appointment Department’s Notification No.III/RI-2010/55a- 11505, dated the 28th November, 1956(copy published above) on the above subject and to say that the power of the Government to relax any rule should be invoked only in very exceptional cases where the operation of any rule causes undue hardship to any Government servant.

2. Before any order of relaxation is passed, the Department concerned should consult the Appointment Department and Finance Department and also take the approval of the Council of Ministers. While full justification for the relaxation should be given on the file itself, the reasons should be briefly mentioned in the formal order issued by the Department concerned in this behalf. The order should be authenticated as an order of the Governor in accordance with the requirement of Article 166(1) of the Constitution.”

3. The reason why the above circulars have been reproduced is because it is the stand of the counsel for the petitioners that it is the inaction on the part of the State all along which has put the petitioners in a piquant situation. Petitioners are appointees as Assistant Teachers between the years 1992-1994. It

is their case that the State authorities did not send them for training for a very long time. Pick and choose was done, which has created undue hardship with regard to their right to claim pay-scale. If the problem has been created by the State, the solution has to be found by the State.

4. Counsel further also draws the attention of this Court to the observation given by a Division Bench in the case of Kameshwar Tiwary Versus The State of Bihar and another, which was LPA No. 774 of 2013, decided on 22.01.2014. The relevant paragraph of the said decision is also reproduced herein below:

“The finding in CWJC No. 1513 of 2000 aptly invites the maxim “no man can take advantage of his own wrong” for which we may appropriately refer (1996) 6 SCC 342 (Ashok Kapil v. Sana Ullah) holding as follows:

“7..... But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim “Nullus commodum capere potest de injuria sua propria” (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.”

5. In the light of the above, the Court does feel that there is an obligation upon the Principal Secretary of the Department of Education, Government of Bihar, to consider the claim of these petitioners, which may be a test case as well because these three petitioners may not be the only ones to fall in the category of candidates who were never sent for training earlier for no reason or fault attributable to them. What is required to be done with regard to such cases is for the Principal Secretary to consider in light of the circular of the State and the observation of the Division Bench reproduced herein above.

6. The Court will expect a decision in this regard, which will be a policy decision, within a period of three months from the date of filing of an

application with a copy of this order.

- 7. No recovery will be effected till such decision is taken.
- 8. Writ application is disposed of with above observation.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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