

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.521 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 12647 of 2006

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Someshwari Rashmani Kanya Madhya Vidyalaya Fulwariya Anchal Kishanpur,
District Supaul through the In-Charge Headmaster Mohan Mandal, Son of Late
Dhanpati Mandal, Resident of Village Mahasimar, P.O. Singiyawan, P.S.
Kishanpur, District Supaul.

.... Appellant/s

Versus

1. The State of Bihar
2. The Education Secretary, Primary and Secondary Education, New Secretariat,
Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Superintendent of Education, Saharsa
5. The District Superintendent of Education, Supaul

.... Respondent/s

with

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Letters Patent Appeal No. 523 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 12826 of 2006

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Phuleshwari Kanya Madhya Vidyalaya Garahiya through the Headmaster Sri
Maheshwari Prasad Yadav Son of Late Ram Prasad Yadav, Resident of Village-
Barhari, P.O. Singheshwar, P.S. - Gamharia, District- Madhepura

.... Appellant/s

Versus

1. The State of Bihar
2. The Education Secretary, Primary and Secondary Education, New Secretariat,
Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Superintendent of Education, Saharsa
5. The District Superintendent of Education, Supaul

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund, Advocate.

For the State : Mr. Dhurjati Kumar Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-08-2016

This order shall dispose off these two Letters Patent Appeals arising out of an order passed by the learned Single Bench on 28.01.2014 whereby the writ applications filed by the appellants were dismissed.

The claim of the appellants is for issuance of writ of mandamus directing the State to take over the school of the appellant under the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976.

The matter stands concluded by a recent Division Bench judgment of this Court in L.P.A. No. 1726 of 2012 (Harinandan Prathmik Vidyalaya, Kaushalipatti Vs. The State of Bihar & Ors.) decided on 21.04.2016, wherein the Court held to the following effect:

“Sub-sections (1), (2) and (3) are types of schools which are automatically taken over. They are all basically related to schools run by local self Government. When we come to sub-section (4) they are private schools. The provision is clear that a Committee has to be formed to examine the feasibility of take over. Thus, there is a discretion on the State in the matter of take over. Discretion itself implies one or the other decision. Both of which are correct. Thus, as noticed above, when the State having examined the facts have now taken a decision not to take over any school, it cannot be compelled. The statute does not create a duty and consequently if discretion is exercised on valid considerations it is not open for the Courts to interfere and issue a mandamus in policy matters. It is beyond the powers of the court.”

In view of the above judgment, the Letters Patent Appeals stand dismissed for the same reason as are recorded in L.P.A. No. 1726 of 2012.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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