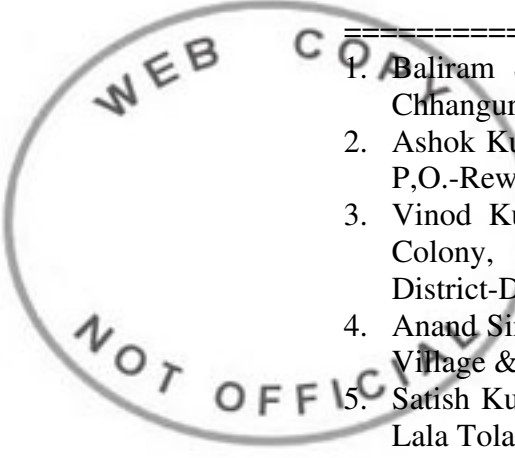


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22208 of 2013

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1. Baliram Singh Son Of Late Sudama Singh Resident Of Village-Paharpur Chhangur, P.O.-Kuchaikote, P.S.-Kuchaikote, District-Gopalganj
 2. Ashok Kumar Sinha Son Of Late Bhagwat Lal Resident Of Village-Mahudar, P.O.-Rewali, P.S.-Katkam Sandi, District-Hazaribagh (Jharkhand)
 3. Vinod Kumar Son Of Late P.C. Sharma, Resident Of 23-A/Cooperative Colony, Near Anand Clinic, P.O.-Koyalnagar Township, P.S.-Barwada, District-Dhanbad (Jharkhand)
 4. Anand Singh Choudhary Son Of Late Balbhadra Singh Choudhary Resident Of Village & PO.-Kharni, P.S.-Barwada, District-Dhanbad (Jharkhand)
 5. Satish Kumar Sinha son of Sri Tarakeshwar Prasad Sinha, Resident of Village Lala Tola (Kolhar), P.S. Tundi, District-Dhanbad (Jharkhand)
 6. Narendra Deo son of late Bijendra Deo, resident of village & P.O. Hilsa, (Near Dargah), P.S. Hilsa, District-Nalanda
 7. Gangadhar Mandal son of late Gaya Ram Mandal, resident of village Asanbani, P.O. Bhitia, P.S. Barwada, District-Dhanbad (Jharkhand)
 8. Md. Moiz Ansari son of late Md. Karimul Hoda Ansari, resident of village-Mogalpura, P.O. & P.S. Mehshi, District-East Champaran
 9. Satyanarayan Paswan son of late Acheche Lal Paswan, resident of village-Baletha, P.O. Mahua Bazar, P.S. Basnai, District-Saharsa
 10. Usman Mian son of late Chirkut Mian, resident of village-Sathi, P.O. & P.S. Sathi, District-West Champaran
 11. Umesh Baitha son of Bhanu Baitha, resident of village & P.O. Nonaura, P.S. Ghorasahan, District-East Champaran
 12. Radha Krishna Mishra son of late Lallan Mishra, resident of village Adhaila Mishra, P.O. Mahuwa Bajudih, P.S. Bijaipur, District-Gopalganj
 13. Swarnlata Fransis daughter of late J.D. Fransis, resident of H.No. 248, Ward No. 4, Samanto Kali Manda, Jhumri Tillaiya, P.S. Koderma, District-Koderma, Jharkhand
 14. Abdullah Kasmi son of late Jalil Ahmad, resident of village & P.O. Sons, P.S. Chano, District-Ranchi, Jharkhand.
 15. Rasik Murmu son of Late Munsi Murmu, resident of village-Pataithan, P.O. Machkhiya, P.S.-Dumka, District-Dumka, Jharkhand
 16. Prem Chand Choudhary son of late Rameshwar Choudhary, resident of village-Teja Tola (Bangali Para) P.O. & P.S. Katihar, District-Katihar
 17. Dinesh Chandra Manjhi, son of late Harinath Manjhi, resident of village & P.O.-Durgapur, P.S. Kasmar, District-Bokaro, Jharkhand
 18. Krishna Kumar Sharma son of late Niti Ram Sharma, resident of village & P.O.-Sudna, Sarweshwari Colony, P.S. Garhwa, District-Palamu, Jharkhand
 19. Vimla Devi wife of Sri Ram Naresh Sharma, resident of Magadh Colony, Road No. 7E, P.S. Magadh Medical College, Chandauti, District-Gaya
 20. Surya Prasad son of late Mangal Prasad, resident of village & P.O. Mehta Tola, P.S. Harsidhi, District-East Champaran
 21. Lalji Ram son of Late Lakhichand Ram, resident of village-Ajgari, P.S. Ajgarwa, P.S. Pakridayal, District-East Champaran
 22. Dilip Kumar Maity son of late Jaldhar Maity, resident of village-Kuldiha, P.S. Bahra Gora, District-East Singhbhum, Jharkhand
 23. Dashrath Singh Yadav son of Sri Lootan Singh Yadav, resident of village & P.O.-Besra, P.S.-Balumath, District-Latehar, Jharkhand
 24. Jawahar Lal Mandal son of late Nand Lal Mandal, resident of village & P.O.-

Sidhap-Parsahi, P.S. Ladania, District-Madhubani.

25. Sidheshwar Mochi son of late Biltu Mochi, resident of village-Choti Nawada, P.O. Katauna, P.S. Khusrupur, District-Patna
26. Jagdish Paswan son of late Biltu Paswan, resident of Mohalla-Laxmi Sagar, P.S. L.N.Mithila University, District-Darbhanga
27. Mukhtar Ahmad son of Md. Safiuddin, resident of village-Barhampura, P.O. Pohaddi Bela, P.S. Ghanshyampur, District-Darbhanga
28. Manzoor Alam son of late Maswood Alam, resident of Masjid Road, Belsand, P.O. & P.S. Belsand, District-Sitamarhi
29. Hanuman Pandey son of late Dharnidhar Pandey, resident of village & P.O. Barharwa, P.S. Barharwa, District-Sahebganj, Jharkhand
30. Dineshwar Pathak son of Setubandh Pathak, resident of village-Bargo, P.O. Jodiya, P.S. Ramnagar, District-West Champaran
31. Madhuri Kumari wife of Sri Shiv Kalyan Thakur, resident of village & P.O. Raghauli, P.S. Visfi, District-Madhubani
32. Pusp Lata Choudhary wife of late Sudhansu Shekhar Choudhary, resident of Mohalla-Shahganj Baton, P.O. D.M.C.H., Laheriasarai, P.S.-Laheriasarai, District-Saharsa
33. Mira Sinha wife of Sri Jagmohan Prasad Singh, resident of village & P.O. Dighi Kalan, P.S. Hajipur, District-Vaishali
34. Naznin Rahma wife of Syed Mazhar Ekbal, resident of Mohalla-Khangah Chowk, P.O.-Lalbag, P.S. Laheriasarai, District-Darbhanga
35. Mala Jha wife of Eshwar Chand Choudhary, resident of village-Pinda Ruch, P.O. Pinda Ruch, P.S. Kamtaul, District-Darbhanga
36. Usha Prasad wife of Madan Kishore Prasad, resident of village-Belwaganj, P.S. Laheriasarai, District- Darbhanga
37. Satyanarayan Prasad Rai, son of Late Khum Lal Rai, resident of village-Dengadih, P.O. Ghoranji, P.S. Devri, District-Giridih, Jharkhand

.... Petitioners

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Education Department, Government of Bihar, Patna
5. The Principal Secretary, Department of Welfare, Government of Bihar, Patna
6. The Principal Secretary, Food & Civil Supplies Department, Government of Bihar, Patna
7. The Director, Directorate of Mass Education, Department of Secondary, Primary and Adult Education, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate

Mr. Raju Giri, Advocate

For the Respondent/s : Mr. Anuj Kumar, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-08-2016

Heard learned counsel for the petitioners and learned counsel for the State.

In this case, the petitioners are seeking relief for payment of salary for the period from 01.10.2001 to 03.07.2007.

It appears from the records of the case that during the period in between 1979 to 1983, several advertisements were published, inviting the applications from intending candidates to be appointed as Supervisors in the Adult Education, Government of Bihar. During the period of 1981-1987, the petitioners being eligible, possessing the requisite qualification, applied for their respective appointments. After scrutiny, the petitioners were appointed as Adult Education Supervisors in different phases.

The Ministry of Human Resources Development Department, Government of India, revised the scheme and suggested the State Government to bring about the parity both with regard to the numbers of projects and centers under the Rural Functional Literacy Projects and the State Adult Education Projects. The State Government in view of the direction of the Central Government abolished 771 posts of Adult Education Supervisor after adjusting them suitably to different posts. The remaining 367 Supervisors, they continued to perform their duties until abolition of the posts in the year 1991.

In pursuance thereof, the services of the petitioners were



terminated vide orders dated 01.06.1992, 16.06.1992 and 17.06.1992. These orders were challenged by the Association of the petitioners, i.e. the Bihar State Adult and Non-Formal Education Employees Association along with some terminated Supervisors, which were registered as ***C.W.J.C. No. 5036 of 1992 as reported in 1996 (2) PLJR 394***. In the said judgment, the Court found that their appointments were made after the advertisement following the due process of law. It is not so that there is allegation that they entered into services through the back doors. At the same time, the petitioners were appointed following the prescribed standard provided by the State Government and modality for appointment, after making advertisement in the daily newspapers. There is no allegation that such appointments were illegal or on pick and choose basis and also the fact that the petitioners had worked continuously for more than 10 to 14 years and it cannot be ignored that the family members of the petitioners have settled down with the financial assistance.

In the aforesaid case reliance was placed to the case of State of Haryana & Ors. Vs. Piara Singh & Ors. reported in 1992 S.C. 2130, where the Court has taken into consideration the long services rendered by the persons and administrative instruction directed to take steps for absorption of their services and allowed the writ application with the direction mentioned in para-33 of the

said judgment is as follows:-

33. “But it cannot be ignored that having regard to the long services rendered by the petitioners, administrative authorities had suggested steps for their absorption even in other departments. Therefore, having taken to consideration entire facts and circumstances of the cases, I dispose of the writ petitions with the following direction to the respondent- authorities (a) to allow the petitioners and interveners to continue against these 771 posts, against which they were adjusted in terms of the letter of the concerned department, dated 19th December, 1990. But such adjustment is to be made as per their seniority OR (B) in case those posts have also been abolished, take steps to absorb/adjust the petitioners along with the interveners in a similar manner, the employees of Consolidation Department were adjusted OR (c) if for any justified reason condition nos. (a) or (b) are not possible, take a decision similar to the State of Uttar Pradesh, which I have already indicated in paragraph no. 18 of this order and adjust/absorb them accordingly. But in the facts and circumstances of the case, I could not persuade myself

to quash the impugned order.”

It is not a disputed fact that the order passed by the Division Bench was carried to Supreme Court for judicial scrutiny which failed, in such view of the matter, the Division Bench's order attained finality. When the order of the Division Bench was not complied, a contempt application was filed before this Court vide MJC No. 2844 of 1996 and ultimately, vide order dated 15.03.1998 as contained in Memo No. 412 dated 15.03.1998 and vide order dated 02.05.1998 as contained in Memo no. 718 appointed the petitioners in the Non Formal Education Scheme / Adult Education Scheme. As they were given the employment in a lower pay scale on lower post without examining the past service, the petitioners filed a writ application bearing C.W.J.C. No.7074 of 2000 (Baliram Singh & Ors. Vs. The State of Bihar &Ors.) and while the matter was pending to this Court, the petitioners were again terminated from services by the Secondary, Primary-cum-Adult Education Department, Government of Bihar, Patna vide letter No. 2284 dated 12.09.2001 on the ground that the State Government has decided to wind up the Non Formal Education Scheme.

The aforesaid order caused prejudice to a large number of persons of Adult Education Department and one similarly situated person namely Smt. Ram Laxmi Mishra whose services

was also terminated on the similar ground, challenged the action of the department, in C.W.J.C. No. 1712 of 2002. This Court after examining the facts and circumstances of the case quashed the order of her termination dated 1st April, 2001 and allowed the writ petition.

In view of the said judgment, the petitioners were adjusted on the post of Supervisors against the vacant posts available in subordinate education service, Welfare Department, Panchayati Raj Department and also Food & Supply Department.

The State Government aggrieved with said order passed by the Hon'ble Single Judge in the case of Smt. Ram Laxmi Mishra, challenged the same in L.P.A No. 137 of 2006, which was dismissed. Again, the same was challenged before the Supreme Court in Special Leave to Appeal (Civil) No. CC9401 of 2008 which was also dismissed.

In such view of the matter, as per the order of the learned Single Judge, Smt. Ram Laxmi Mishra was granted relief of reinstatement with entire back wages has been affirmed up to the Supreme Court and accordingly, Human Resources Department, Government of Bihar, vide letter dated 31.01.2011 passed the order in her favour granting her relief of reinstatement with entire back wages.

The order dated 03.07.2009 of State of Bihar caused



prejudice as given continuity of services but excluded the period from 1992 to 1998, which was challenged by some of the writ petitioners in Baliram Singh & Ors. Vs. State of Bihar & Ors. for giving continuity of past services which came for consideration before this Court, after considering the entire facts and circumstances placed reliance on Rule 103(D) of the Bihar Pension Rules, 1950 granted the relief to the extent that the petitioners and other supervisors would be entitled for salary for the period as aforesaid and shall not also claim any seniority over the other Government Servants. The said period shall be counted in the service only for the personal monetary benefits and nothing more. It will be relevant to quote the paragraphs 16 and 17 of the judgment is as follows:-

“16. In the circumstances, the impugned order of the Principal Secretary dated 29.03.2010, as contained in Annexure-5, is unsustainable in law and the same is quashed. Respondents are directed to consider petitioners as continuing in service between 1992 to 1998 on notional basis only for the purpose of grant of monetary benefits from 1998 onwards and post retrieval monetary benefits.

17. It is made clear that petitioners and other Supervisors shall not be entitled for salary of the period

in any manner and shall not also claim any seniority over other Government servants. The period shall be counted in the service only for personal monetary benefits of the petitioners and nothing more.”

The present case is related to the period 01.10.2001 to 03.07.2007, placing reliance on the case of Smt. Ram Laxmi Mishra, has submitted that the petitioners were terminated from services in 2001 and they were brought to the service in 2007, in view of the judgment of Smt. Ram Laxmi Mishra case, they are also entitled to the back wages for the aforesaid period.

The learned counsel for the State has filed a counter affidavit for resisting the claim of the petitioners and stated that the Apex Court in a similar case has refused the grant of relief of the back wages in the case of State of Bihar Vs. Arun Kumar.

The counsel for the petitioners has submitted that the facts of that case is totally different to the facts of the present case, where the persons did not enter into service properly as in that case advertisement was not published and no selection process was adopted and their entry itself was not a proper on that account the Hon'ble Supreme Court has refused to grant the relief of back wages but in the present case, in terms of the Division Bench Judgment, where it has been recorded that the entry of the

petitioners cannot be said to be illegal as they were appointed after following due process of law inasmuch as the case of the present petitioners are identical to the case of Raj Laxmi Mishra.

The learned counsel for the State is not in a position to point out differences with the facts of Raj Laxmi Mishra's case as both are similar. The judgment passed in the case of Raj Laxmi Mishra has been affirmed up to the Hon'ble Supreme Court as has not interfered with the order of Division Bench.

Under the circumstances, this Court has no other way but to grant the relief as has been given to Raj Laxmi Mishra and accordingly, the petitioners are entitled to the payment of salary for the period 01.10.2001 to 03.07.2007. Accordingly, this writ application is allowed.

(Shivaji Pandey, J)

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