

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 658 of 2013

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1. Bihar School Examination Board, Patna through its Secretary.
 2. The Chairman, Bihar School Examination Board, Patna
 3. The Secretary, Bihar School Examination Board, Patna

.... Appellant/s

Versus

1. Abhay Nath Jha Son Of Shri Bishwanath Jha, Resident Of Village- Karnpur, Police Station- Andhrathari, District- Madhubani.
2. Uma Nath Jha Son Of Late Laxmmi Kant Jha, Resident Of Village- Harari, Police Station- Andhrathari, District- Madhubani.
3. The Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna.
4. The Director, Secondary Education, Government Of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Piyush Lall
For the State :		Mr. Ajay Bihari Sinha, G.A.-8
		Mr. Neeraj Raj, AC to GA -8
For the Respondent 1-2:		Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Binoda Nand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 20-03-2017

The appeal is by the Bihar School Examination Board, directed against the order, dated 19.12.2012, passed by the Learned Single Judge in C. W. J. C. No. 18473 of 2012. Since relief has been granted to the petitioners, who are private-respondents no. 1 and 2 in the present memo of appeal the Examination Board has decided to assail the order, because according to the counsel representing the Examination Board, the order of the Learned Single Judge has the effect of taking away the effect of the provisions of the Bihar



Intermediate Education Council Repeal Act of 2007 and the scheme, which has been put in place by the State Government on the recommendation of a group of Secretaries in matters of absorption of the employees of the erstwhile Intermediate Council under the Bihar School Examination Board (hereinafter referred to as the Board).

In a rather detailed kind of submission, which has been made on behalf of the Board, the Court was taken through the Repealing Act, the scheme, the report of the Five Member Committee, based on which the absorption of various employees has been done and the interpretation which is required to be given to the various provisions of the Act and the scheme.

With due reverence to the learned counsel representing the Bihar School Examination Board, if the submissions made on his behalf is accepted then the Court will have to strike down the scheme for many a reasons, which has been notified by the State Government and is Annexure-7 to the writ application. If nothing-else, the minimum, which this Court is required to do is to interpret the provisions of the scheme to make it in harmony with the statutory provision, which is the 2007 Repealing Act and declare that settled things cannot be unsettled now since the employees, who have already been appointed or promoted and allowed to continue on such post for decades together. By applying certain yard-stick, which are prevalent as of now they cannot be demoted or posted in



positions detrimental to their interest and right.

A reading of Section 3 of the 2007 Repealing Act, in the opinion of this Court, leads to the only interpretation that the appointment and continuance of the employees of the erstwhile Intermediate Council has to be on “as is where is basis” and only minor tweaking and adjustments are permissible by virtue of Section 3. The recommendations made by the group of Secretaries which now form the basis for demotions etc. is impermissible. It is not open to the authorities to dig in into the past and examine the validity of their initial appointment to lower them in rank while doing the exercise of absorption since it will be hit by statutory provision i.e. section 3 (1) of the Repeal Act, 2007.

The Court has no hesitation to observe that a lot of adhocism was prevalent in the erstwhile Intermediate Council and may be the government was not very satisfied with the way it was being run or delivering in matters of conduct of intermediate level examination. That was the reason why the original Council was dismantled and got vested in the State of Bihar. Then again it was constituted as a statutory body and then again dissolved by the Repeal Act of 2007 and merged with Bihar School Examination Board.

What is past is past. The rights, which have already accrued to the employees of the erstwhile Intermediate Council, cannot be taken away by reworking or adjusting the employees on



any inferior posts or on posts, which has a negative connotation or fall out upon the perks and privileges already given.

The Learned Single Judge considered the entirety of the scheme and the history, therefore, allowed the writ application and set aside the order of reversion of the two petitioners on subordinate posts. Such order or decision of Learned Judge, in the opinion of this Bench, cannot be said to be erroneous. Any interference with such decision would be doing violence to the right, which has already accrued to the private-respondents and was protected under Section 3 of the 2007 Repealed Act.

The appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

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CAV DATE	
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