

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1524 of 2014  
IN  
Civil Writ Jurisdiction Case No. 10147 of 2013**

- =====
1. The State of Bihar through the Commissioner and Principal Secretary of Education, Human Resources Department, New Secretariat, Patna.
  2. Director, Higher Education, Human Resources Department, Government of Bihar, New Secretariat, Patna.

.... .... Appellants

Versus

1. Nagendra Prasad Sinha S/o Late Babban Prasad Sinha Resident at 1, Shefali Apartment, Dr. A.K. Sen path, Kajipur, P.S. Kadam Kuan, District Patna.
2. Bhojpuri Academy through its Director, Shastri Nagar, Patna, P.S. Shastri Nagar, District Patna.

.... .... Respondents

=====

**Appearance :**

For the Appellants : Mr. Niraj Kumar Sinha, AC to PAAG 2  
For the Respondents : Mr. A.B.Ojha, Senior Advocate  
Mr. L.K.Tiwari, Advocate  
Mr. Anil Kumar, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI  
and  
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 09-05-2017

Heard counsel for the parties.

2. The reason for preferring the present Letters Patent Appeal against the order dated 25.03.2014 passed in C.W.J.C. No. 10147 of 2013 is neither being appreciated nor being understood despite a detailed hearing, which has been given to the counsel for the State over a period of two days.

3. Bhojpuri Academy, established by the State of Bihar, is 'State' under Article 12 of the Constitution of India as it is not only under the direct but even pervasive control of the State of Bihar



as has been held to be so in the case of *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Others*, reported in (2002) 5 SCC 111.

4. The other aspect, on which this Court has not been provided any clarity, is whether there is some kind of rule or regulation governing the service conditions of the employees of the Academy. There seems to be none, even though it has been in existence for almost four decades now. In fact, it seems from the Memorandum of Association, which was drawn up on 20<sup>th</sup> March, 1977, by the State of Bihar, the terms and conditions of service was required to be laid down by the State Government, which has not been done till date.

5. If this is the situation it shows complete lack of good governance and performance or decision making with regard to such vital issue. The employees of the Academy cannot be left in the vacuum and lurch. There has to be some kind of rule/regulation, which will govern their service conditions right from entry till superannuation.

6. Therefore, by deeming fiction, in absence of any rule having been laid down by the State or the Academy, the service conditions, which are applicable to State Government employees, will be applicable to the employees of the Academy and they will be



treated to be the State Government employee till a rule is put in place.

7. If in this background, the learned single Judge has observed about the entitlement of the private respondent for which a direction has been given to the State Government for taking appropriate steps for not only framing the rule, but also to grant benefit to the private respondent it cannot be said to be erroneous.

8. It is a classic case where the State has got dragged down due to its own non-delivery and non-decision making mode, which is evident from the passage of four decades of inaction on their part.

9. Appeal has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

Pawan/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 11.05.2017 |
| Transmission Date | N/A        |

