

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.102 of 2018

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1. Krishna Prasad Singh S/o Late Faujedar Singh Resident of Village - Pandeypur, Post - Neura, Bihta, Dist. - Patna, Presently Pradesh Sangathan Mantri Sah (Cum) Pradesh Pravakta, Bihar Arajkiya Prathmik Shikshak Sangharsh Samittee.
 2. Vindeshwar Singh S/o Late Ramesh Chandra Singh Resident of Village - Mahinawan Ward No. 15, P.S.+P.o. Maner, Dist - Patna presently Joint Secretary of Samittee.
 3. Upendra Kumar Son of Late Amika Prasad Sinha resident of village - Sauwan, P.S. - Chawdi, Dist. - Nalanda, Present address Maurya Vihar Colony, Transport Nagar, Patna - 800001 Presently Member of Samittee.
 4. Ram Janam Sharma S/o Late Ram Charitar Sharma Resident of Village - Katari, P.O. - Ekbalganj Misarpura, P.S. - Bikram, Dist. - Patna Presently Member of Samittee.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Education Department, New Department, New Secretariat, Patna.
3. The Director of Primary Education, Education Department, New Secretariat, Patna.
4. The Principal Secretary, Financial Department, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Maya Shankar Mishra, Advocate
For the Respondent/s : Mr. MADANJIT KUMAR-GP20

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 09-03-2018

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. The present writ petition has been filed by the petitioners for a direction to the respondents to quash the order contained in memo no. 1124 dated 16.6.2017.

3. Learned counsel for the petitioners submits that the respondents have acted arbitrarily in the matter and they have not



provided opportunity of hearing to the petitioner before passing the order impugned dated 16.6.2017. The petitioners are claiming to be the representative of teaching and non-teaching staff of 390 recognised elementary schools left over schools of total 54000 elementary schools which were taken over under the control of the State Government vide notification no. 763 dated 9.2.1973.

4. Learned counsel for the petitioners submits that the petitioners' schools ought to have been taken over under the scheme of Bihar Non-Government Elementary Schools (Taking over of control) Act, 1976 and as a consequence of such take over, the teaching and non-teaching employees are entitled to regularization of their services and consequential benefits of payment of salary. He submits that for the purpose of take over, a committee was constituted and that committee had recommended favourably but notwithstanding favourable report, the case of the petitioners was rejected by the respondents.

5. The matter of take over of the schools is in the realm of policy decision of the Government under the Take Over Act, 1976 which enables the State Government to take over the schools but it does not create indefeasible right in favour of the petitioners. In Section 3(1) of the Act there is provision for automatic take over of the schools recognized upto 1st of January, 1971. The other



categories of schools are enumerated in clauses 2 and 3 of Section 3. Unlike Section 3 (1) of the Act, the take over of other schools is dependent upon various factors and ultimately lies within the realm of the Government to decide whether the Government proposes to take over the school or not. Under the aforesaid circumstances, no mandamus can be issued for take over of the school as the court cannot usurp the Government functions which are discretionary and in terms of the policy decision action has to be taken on uniform basis.

6. Since 1993 itself the State Government took a decision not to take over any school in addition thereto the State Government introduced a new scheme for appointment of teachers in the name of Panchayat Shikshak and Block Shikshak and pursuant to the amendment in the Constitution and introduction of Article 21A of the Constitution and the Right to Compulsory Education under the Act of 2009, the State has decided not to take over of any existing school. Instead, in order to spread education in furtherance to the constitutional obligation under Article 21A and the Right to compulsory Education Act, 2009, they have appointed over lacks of teachers in different schools to cater the need and under that situation, the Court is unable to issue any positive direction for take over of the schools.



7. In that situation, the Court does not find any infirmity in the order as contained in Annexure-24.

8. The writ petition is, accordingly, dismissed as devoid of any merit.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.03.2018
Transmission Date	

