

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1552 of 1998

1. Girindra Mohan Mishra Paramhans Son of Sri Hari Kant Mishra Working as Headmaster of Gandhi Sanskrit Prathmik Sah Madhyamik Vidyalaya Kamla, Police Station- Ujiyarpur, District- Samastipur.
2. Ramesh Jha Son of Sri Sadanand Jha Working as Incharge Head Master in Khudreshwar Rajniti Prathmik Sah Madhyamik Vidyalaya, Morwa, P.S. Mushrigharari, Distt. Samastipur.
3. Deoki Nandan Jha Sopn of Ram Nand Jha at Present Headmaster Mahgu Sanskrit Prathmik Sah Madhyamik Vidyalaya, Radhour, P.S. Surashand, District- Sitamarhi.
4. Nagendra Choubey Son of late Chandrika choubey Assistant Teacher, Swami Sachidanand Sanskrit Prathmik Sah Madhayamik Vidyalaya, Majhariya, Police Station- Vairoganj, District- West Champaran.
5. Binod Sharma Vatsayan Son of Rameshwar Sharma Headmaster , Bani Bhushan Sanskrit Prathmik Sah Madhyamik Vidyalaya, Rampur Chai, Police Station- Karpi, District- Aurangabad(Jehanabad).
6. Gouri Kant Jha Son of Sri Adhitha Jha Assistant Teacher, Janta Sanskrit Prathmik Sah Madhyamik Vidyalaya, Dakharam, Police Station- Bahera, District- Darbhanga.
7. Jyotendra Kumar Verma Son of Sri Kapildeo Prasad Verma Assistant Teacher, Bhagirath Sanskrit Prathmik Sah Madhya Vidyalaya, Chainpur, Police Station- Sishwan, District- Siwan.
8. Vidyanand Singh Son of late Raj Nandan Singh Headmaster of Dalmian Anant Vashkar Sanskrit Prathmik Sah Madhyamik Vidyalaya, Raghapur, Police Station- Bihta, District- Patna.
9. Daya Shankar Mishra son of late Shyam Sundar Mishra Headmaster of Sri Narayani Sanskrit Prathmik Sah Madhyamik Vidyalaya, Madhubani, Via- Bagaha, District- West Champaran.
10. Chiranjib Mishra Son of Sri Ram Chandra Mishra Incharge Headmaster of Ram Bhawan Sanskrit Madhyamik Vidyalaya, Bikrakha, Police Station- Maharajganj, District- Sitamarhi.
11. Chandra Shekhar Pandey Son of Sri Bishwanath Pandey Headmaster of Vaiyapar Mandal Sanskrit Uchch-Vidyalaya, Fatuha, Police Station- Fatuha, District- Patna.
12. Ganesh Shankar Jha Son of Sri Kulanand Jhaq Headmaster , Sarda Sanskrit Prathmik Sah Madhya Vidyalaya, Chanur, Police Station- Manigachi, District- Darbhanga.
13. Bishak Sen Upadhyaya Son of late Ramashish Upadhyay Assistant Teacher of Sri Niwas Gopal Ramanuj Jachya Sanskrit Prathmik Sah Madhyamik Vidyalaya, Barakhatta , Police Station- Arah Nawadah, Distt. Bhojpur.
14. Sanjay Kumar Mishra Acting Headmaster M.K.P. Sanskrit Primary Cum High School Katai, P.S. Tiar, District- Bhojpur.
15. Anil Kumar sinha Acting Headmaster of Anglo Sanskrit Primary -Cum-High School P.S. and District- Nawada.

... .. Petitioner/s



Versus

1. The State of Bihar
2. The Secretary, Prathmik, Madhyamik and Adult Shiksha Vibhag, Department of Education Bihar Vikas Bhawan, Patna.
3. The Additional Secretary, Prathmik Madhyamik and Adult Shiksha Vibhag, Bihar , Vikash Bhawan,Patna.
4. The Special Director Secretary, Education , Incharge, Sanskrit Education, Bihar Prathmik, Madhyamik and Adult Shiksha Vibhag, Vikash Bhawan, Patna.
5. The Bihar Sanskrit Shiksha Board, Bihar, Patna, through its Secretary.
6. The Chairman, Bihar Sanskrit Shiksha Board, Patna, Boring Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Suresh Kumar Ishwar, Advocate.
For the Respondent/s : Mr. S.S. Sundram, Advocate,
: Mr. Shashank Shekhar Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

15 11-09-2018

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

2. The present writ petition was filed in the year 1998 by the petitioners for a direction to the respondents to pay salary to the petitioners and others. The school in question is one of 429 school. The matter with regard to takeover of 429 school under the ordinance was adjudicated by the Apex Court in the case of **Krishna Kumar Singh Vs. State of Bihar reported in (2017) 3 SCC 1**. Paragraph 177 to 181 of the said judgment is clinching on the point of benefit available to the teachers of 429 school. Para 177 to 181 of (2017) 3 SCC 1, are quoted below:-

“ 177. All the Ordinances have
ceased to operate and nothing done under



them now survives after they have ceased to operate. The validity of the first three Ordinances was not challenged by the employees. There is no material before us, one way or the other, to hold that the promulgation of the first Ordinance and its repromulgation by the second and third Ordinances is invalid. Therefore, one can only assume that the first three Ordinances are valid and the employees are entitled to the benefits under them till the date these Ordinances ceased to operate and not beyond, since these Ordinances were not replaced by an Act of the State Legislature. I may mention, en passant, that it is not every repromulgation of an Ordinance that is prohibited by D.C. Wadhwa V. State of Bihar. There is no universal or blanket prohibition against repromulgation of an Ordinance, but it should not be a mechanical repromulgation and should be a very rare occurrence. Additionally, a responsibility is



cast on the Governor of a State by the Constitution to promulgate or repromulgate an Ordinance only if he is satisfied of the existence of circumstances rendering immediate action necessary. There could be situations, though very rare, when repromulgation is necessary, but it is not necessary for me to delve into this issue insofar as the first three Ordinances are concerned.

178. Only the fourth and subsequent Ordinances were challenged by the employees. As far as the fourth and subsequent Ordinances are concerned, their promulgation and repromulgation was not adequately justified by the State of Bihar despite a specific challenge. There was no immediate action required to be taken necessitating the promulgation of the fourth Ordinance and its repromulgation by subsequent Ordinances. I agree that the fourth Ordinance and subsequent Ordinances



should be struck down.

Relief:-

179. In the absence of any challenge to the first three Ordinances and since I have assumed that these three Ordinances are valid, the benefit given to the employees (such as salary and perks) by these Ordinances till they ceased to operate, are justified. However, these three Ordinances did not and could not grant any enduring or irreversible right or benefits to the employees and the employees did not acquire any enduring or irreversible right or benefits under these three Ordinances. Any right or benefits acquired by them terminated when the Ordinances ceased to operate.

180. Despite a specific challenge made to the fourth and subsequent Ordinance, the State of Bihar has not justified their promulgation. They are, therefore, struck down.

181. The directions given by the



High Court for payment of salary (if not already paid) and interest thereon need not be disturbed. The reference is answered accordingly.”

3. From order dated 18.12.2009, it appears that this case was adjourned by this Court awaiting the judgment of the Supreme Court in Civil Appeal No. 5875 i.e. Krishna Kumar Singh case (Supra). After the Judgment of the Apex Court in the Krishna Kumar Singh case (Supra). This case is required to be disposed of in the light of the adjudication by the Apex Court in the Krishna Kumar Singh case (Supra), the respondents are hereby directed to take appropriate decision in the light of the judgment of the Apex Court in the Krishna Kumar Singh case (Supra), particularly in paragraph No. 177 to 181 referred to above and final decision may be taken by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

4. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

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