

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13146 of 2015

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Shashi Nath Jha, S/o Late Deo Krishna Jha, resident of Village- Bhachchhi,
P.S.- Sadar, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Chairman, Bihar SAnskrit Shiksha Board, Bihar, Patna.
4. The Secretary, Bihar Sanskrit Shiksha Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Jha
For the Respondent/s : Mr. Anshuman Singh- Gp24

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 28-11-2018 1. Heard learned counsel for the petitioner and
counsel appearing on behalf of the State.

2. In view of the judgment rendered by the Apex
Court in the case of **Krishna Kumar Singh Vs. State of Bihar**
reported in (2017) 3 SCC 1 particularly 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. 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. However, liberty shall be available to the petitioner to file representation before the respondent if similarly circumstanced any other teacher have been granted the benefit of payment of salary the same may be extended to the petitioner as discrimination is impermissible in the matter of grant of benefit.

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

(Anil Kumar Upadhyay, J)

T.Kr./-

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