

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19951 of 2014

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1. Shiv Shankar Singh, S/o Late Ram Sagar Singh, Resident of Village-Phulwariya, P.S.-Mahua, District-Vaishali.
 2. Krishna Mohan Kumar, S/o Late ram Kishore Sharma, resident of village-Kushhar, P.O.+P.S.-Mahua, District-Vaishali at present posted as an Assistant teacher of Kaushlya Sanskrit High School, Mahua, District-Vaishali.
 3. Most. Shanti Devi, W/o Late Phool Jha, Resident of Village-Mahrail, P.S.-Andhradharhi, District-Madhubani.
 4. Most. Malti Devi, W/o Late Gaya Prasad Singh, Resident of Village-Akhtiyarpur, P.O.-Bhanbhorahan, P.S.-Mahua, District-Vaishali.
 5. Most. Jaikala Devi W/o Late Sitamber Jha, Resident of Village-Ramapur Maheshpur, P.O.+P.S.-Tajpur, District-Samastipur.
 6. Brahma Nand Mishra, S/o Late Bishwanath Mishra, Resident of Village-Gaddopur, P.O.+P.S.-Mahua, District-Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Government of Bihar, New Sachiwalay, Patna.
2. The Special Director (Sanskrit), Secondary Education, Government of Bihar, New Sachiwalay, Patna.
3. Bihar Sanskrit Shiksha Board through its Secretary, East Boring Canal Road, Patna.
4. The Chairman, Bihar Sanskrit Shiksha Board, East Boring Canal Road, Patna.
5. The Secretary, Bihar Sanskrit Shiksha Board, East Boring Canal Road, Patna.
6. The District Magistrate, Vaishali.
7. The District Education Officer, Vaishali.
8. Smt. Asha Prasad, the head Mistress, Kaushalya Sanskrit High School, Mahua, District-Vaishali.
9. The Managing Committee of Kaushalya Sanskrit High School, Mahua, District-Vaishali through its Secretary, Mr. Md.Moin Ansari, resident of Chakka Jinijam, P.S.-Mahua, District-Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushil Kumar Jha, Adv.
For the Board : Mr. Satyam Shivam Sundaram, Adv.
For the Intervenor : Mr. Baidya Nath Thakur, Adv.

For the Respondent/s : Mr. VIVEK PRASAD-GP18.
Smt. Rooma, A.C. to G.P.-7.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 07-08-2018



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

This writ petition has been filed for commanding the respondent to release arrears of salary to the husband of petitioner No.3 to 5 and current and arrears of salary to petitioner No.2 and petition No.6.

The learned counsel for the petitioner submits that the petitioners have approached this Court for enforcement of the order passed by the Special Director. It has been held out by this Court that the Special Director being the Member of the Board is incompetent to hear the appeal against the decision of the Board and as such, the decision of Special Director is held to be without jurisdiction.

In view of the aforesaid order of the Special Director dated 26.12.2013 cannot be enforced. In addition thereto recently the issue of 429 sanskrit school was taken to the Apex Court and the Apex Court has decided the issue in the case of Krishna Kumar Singh reported in (2017) 3 SCC 1 where the Apex Court has observed in following manner. For ready reference, para 177 to 181 of the aforesaid judgment is 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 re-promulgation 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 re-promulgation of an Ordinance that is prohibited by [*D.C. Wadhwa v. State of Bihar*](#). There is no universal or blanket prohibition against re-promulgation of an Ordinance, but it should not be a mechanical re-promulgation and should be a very rare occurrence. Additionally, a responsibility is cast on the Governor of a State by the Constitution to promulgate or re-promulgate an Ordinance only if he is satisfied of the existence of circumstances rendering immediate action necessary. There could be situations, though very rare, when re-promulgation 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 re-promulgation 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 re-promulgation 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 Ordinances, 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.

In view of the above order as contained in Annexure '11' cannot be sustained, however, liberty shall be available to the petitioner to approach the Special Secretary, Education Department who is now designated as Appellate Authority, who shall pass appropriate order on the appeal in accordance with law keeping in



mind the observation made by the Hon’ble Apex Court in the case of ***Krishna Kumar Singh (Supra)***.

Fresh decision in this regard be taken on appeal by Special Secretary, Education Department within a maximum period of four months from the date of receipt / production of a copy of this order after hearing the parties likely to be adversely affected by the outcome of such appeal.

With the aforesaid direction, this writ application is disposed of.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30/08/2018
Transmission Date	NA

