

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22467 of 2013

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1. Radha Govind Choudhary Son Of Late Mukti Narayan Choudhary Resident Of Village- Lagama, P.O. & Via- Lohana Road, P.S.- Rambhadrapur, District- Darbhanga. Assistant Teacher In (Rajya Samposit) Shivji Sanskrit Uchcha Vidyalaya, Beigani, Bahera, District- Darbhanga
 2. Nand Kumar Choudhary Son Of Late Mahesh Kant Choudhary Resident Of Village- Mahrail, P.S.- Jhanjharpur, District- Madhubani. Assistant Teacher In (Rajya Samposit) Shivji Sanskrit Uchcha Vidyalaya, Beigani, Bahera, District- Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Cum Commissioner Human Resources Development Department, Government Of Bihar, Patna
3. The Special Director, Secondary Education, (In Charge Sanskrit), Education Department, Government Of Bihar, Patna
4. The Bihar Sanskrit Shiksha Board Through Its Secretary, East Boring Canal Road, Patna
5. The District Education Officer, Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Jha, Advocate
For the Respondent/s	:	Mr. Yogendra Pd. Sinha, AAG-7
		Mr. Rakesh Ambastha, AC to AAG-7
For respondent no.4	:	Mr. S.S. Sundram, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 03-08-2018 Heard learned counsel for the petitioners and the counsel appearing on behalf of the State as well as Sanskrit Shiksha Board.

Pursuant to the order dated 23.12.2014 counter affidavit has been filed on behalf of the Sanskrit Shiksha Board as well as the State.

From the counter affidavit of Special Director, it



appears that 429 Sanskrit schools were taken over by the ordinance dated 18.12.1989.

On behalf of the Board a stand was taken in para 10 and 11 that salary with effect from January 1995 to 28.02.2013 has been paid to the petitioner by the concerned authority i.e. District Education Officer, Darbhanga.

The issue with regard to lapse of the ordinance with regard to take over of 429 Sanskrit Schools was taken up to Apex Court and in the case of **Krishna Kumar Singh Vs. State of Bihar & Ors. reported in (2017) 3 SCC 1** the Special Bench of the Apex Court has already decided the issue. 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 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 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 Ordinances and its repromulgation by subsequent Ordinances. I agree that the fourth Ordinance and subsequent Ordinances should be struck down.

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.”

Considering the judgment of the Apex Court referred to above particularly paragraphs 177 to 181, the writ petition is disposed of with direction to the respondent to consider the case of the petitioner in the light of aforesaid judgment of the Apex Court and take final decision with regard to claim of the petitioner within a period of four months from the date of receipt/production of a copy of this order.

Learned counsel for the petitioner submits that in addition to the judgment of the Apex Court aforesaid, the petitioner's claim is based on other decision of the Government statute and all other material on which petitioner may rely.

Considering the aforesaid submissions liberty shall be available to the petitioner to agitate his grievance before the



appropriate authority with regard to revised pay scale and rely upon the relevant governmental decision-statute or materials.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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