

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16311 of 2014

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Boua Kant Jha Son of Late Upendra Jha resident of village - Kaithahi (East Tola), P.O. Kaithahi, Via - Rampatti, P.S. Raj Nagar, District - Madhubani, at present working as an Assistant Teacher, Bhaiyo Baji Badan Sanskrit High School, Garhiya, P.O. Dittuar, P.S. Lohat, District - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner cum Secretary, Education 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, Madhubani
6. The Headmaster, Bhaiyo Baji Badan Sanskrit High School, Garhiya, P.O. Dittuar, P.S. Lohat, District - Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Jha
For the Respondent/s : Mr. P.K. Verma

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 03-08-2018 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State as well as Sanskrit Shikha Board.

2. The grievance of the petitioner is non payment of current salary and arrears.

3. Considering the judgment of Apex Court reported in 2017 (I) SCC, 1 particularly paragraph 177 to 181 which is quoted below for ready reference:-

“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 Bihar². 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 Ordinances, the State of Bihar has not justified their



promulgation. They are, therefor, 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,,

4. The present writ petition is disposed of with liberty to the petitioner to approach the District Programme Officer Madhubani who shall examine the claim of the petitioner keeping in mind the judgment of the Apex Court referred to above.

5. Final decision on the claim of the petitioner may be taken by the respondent within a period of four months from the date of receipt/production of this order and also ensure the consequential relief to the petitioner within a time framed indicated hereinabove.

(Anil Kumar Upadhyay, J)

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