

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8083 of 2013

1. Radha Raman Mishra S/O Late Devendra Mishra Resident Of Village P.O- Harinagar, P.O- Kusheswar Asthaan, District- Darbhanga.
2. Santosh Kumar S/O Late Ramjanam Ram Resident Of H/N- 173, Shaileshpuri Khojaimli, P.O- Anishabad, P.S- Phulwari Sharif, District- Patna.
3. Nagendra Kumar S/O Ram Lagan Paswan Resident Of Mitra Mandal Colony, Phase No. 2, P.O- Anishabad, P.S- Beur, District- Patna.
4. Shankar Thakur S/O Late Shree Hari Thakur Resident Of Village- Mohalla- Rajputna Yaarpur, Gardanibagh, Patna Road No. 1
5. Hare Krishna Mishra S/O Bindeshwar Mishra Resident Of Nehru Nagar Near Grend Apartment, P.S- Patliputra, Distt- Patna.
6. Rameshwar Singh S/O Late Shiv Nandan Singh Resident Of Village- Chhama, P.O- Below, District- Munger
7. Ashok Kumar Singh S/O Jai Gopal Singh Resident Of Mohalla- Dashekhpora , Anchal Belchi, P.O- Saksorha, District- Patna.
8. Raj Kishore Singh S/O Late Ram Lakhan Singh Presently Residing At Village- Naamideh, P.O- Ghataro, P.S- Laalganj, District- Vaishali.
9. Sudheer Kumar Jha S/O Shree Narmeen Kumar Jha Resident Of R.M.S. Colony, Road No. 3, B. Kankarbagh Colony, District Patna.
10. Suresh Sharma S/O Shree Jagdeesh Sharma Presently Residing At Village P.O- Nauaawan, P.S- Sakurabaad, District- Jehanabad
11. Prakash Prasad Sinha S/O Late Rajnath Prasad Resident Of Vit Vibhag Colony Phase Ii, Khajpura, Patna.
12. Sadhna Kumari D/O Raameshwar Prasad Singh Resident Of Mohalla- Shri Krishna Nagar, P.S- Budh Colony, P.O- G.P.O, District- Patna.
13. Daya Shankar Mishra S/O Late Uma Shankar Mishra Resident Of Krishna Vihar Lane No. 8, Near Bank Colony, Bailey Road, Bhola Road, Danapur, Patna, District- Patna.
14. Umesh Nath Singh S/O Hari Ballabh Prasad Singh Village Navtol, P.O- Bhawanipur, P.S- Virol, District- Darbhanga.
15. Kamal Nath Singh S/O Hari Ballabh Prasad Singh Village Navtol, P.O- Bhawanipur, P.S- Virol, District- Darbhanga.
16. Ashim Kumar Sarkar S/O Late Abni Kant Sarkar Resident Of Pranab Apartment, Kadam Kuan, District- Patna.
17. Dashrath Mandal S/O Late Akkal Mandal Resident Of Vishnupura Pakri, P.O P.S- Anishabad, Ioc Road, Sipara Patna, District- Patna.
18. Dinesh Pandey S/O Late Ram Nath Pandey Village- Mirjapur Bharpura, P.O- Bharpura, P.S- Sonpur, District- Chapra Saran
19. Krishna Valabh P Rasad Gupta S/O Late Jageshwar Prasad Resident Of 485, Nehru Nagar, Near Gran Apartment, Patliputra, Patna- 800013
20. Manoranjan Tiwari S/O Late Avadh Bihari Tiwari Resident Of Village-



Lodipur Dheer, P.O- Patori, District- Samastipur., Patna.

... .. Petitioner/s

Versus

1. Bihar School Examination Board
2. The Chairman, Bihar School Examination Board, Patna.
3. The Secretary, Bihar School Examination Board, Patna.
4. The Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
5. The Director, Secondary Education, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Sidharth Prasad Mr. Binodanand Mishra
For the State	:	Mr. Y.P. Sinha, AAG-7
For the B.S.E.B.	:	Mr. Manish Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 23-08-2018

The present writ petition has been filed for quashing the office order dated 12.09.2012 insofar as the same relates to the petitioners herein, whereby and where under the petitioners have been reverted to the Class-IV post of *Padchar* from the post of Assistant held by them since the last more than one decade.

The brief facts of the case according to the petitioners are that for the purpose of brining uniformity in the Intermediate Education in the State of Bihar and to separate the Intermediate Education from the University, the Bihar State Intermediate Education Council (hereinafter referred to as the 'Council') was



established. The petitioners are stated to have been appointed on Class-IV post of Peon in between the year 1988-1991 in anticipation of sanction of post and they were finally regularized in the services with effect from the date of sanction of the post i.e. 23.09.1991. Subsequently, the Chairman of the Council vide Office Order dated 06.04.1991 constituted a Three Men Committee for holding a limited test for the purpose of appointment of eligible Class-IV employees to the post of Routine Clerk. The Committee held the limited test examination on 15.05.1994 and had then submitted its recommendation to the Chairman/Secretary of the Council. Thereafter, by Office Order dated 02.07.1994, 30 eligible Class-IV employees including petitioners no. 1, 6, 10 to 17 & 19 were appointed on the post of Routine Clerk with effect from 23.09.1991. The Chairman of the Council had then by an Office Order dated 04.08.1999 constituted a Committee to consider the matter of promotion of employees of the Council. The petitioners herein were then promoted to the post of Assistant vide Office Order dated 06.10.2001. In the meanwhile the Council was abolished by the Bihar Intermediate Education Council (Repealed Act), 2007 and the functions of the Council was to be discharged by the Bihar School Examination Board. The State Government, in



terms of the Repeal Act, 2007, by notification dated 02.07.2007 constituted a Three Men Committee which had then submitted its action plan report. The Bihar School Examination Board had thereafter constituted a Five Member Committee vide Memo dated 17.05.2012 to identify the employees of the Council who were working on the date of its abolition i.e. on 19.04.2007 and to recommend absorption of those who were fit. The said Committee had then submitted its report, however, the Committee had recommended only 208 persons for absorption though there were 260 posts of Assistants resulting in the petitioners being reverted to the Class-IV post. The Bihar School Examination Board had then published the provisional list of absorption on the website inviting objections and the petitioners had submitted their objections on 24.08.2012 stating that similarly situated employees of their cadre had been absorbed, however, the petitioners have been discriminated against. The Bihar School Examination Board did not consider the objections and in a mechanical manner and against the guidelines of the Government directed for adjustment of the services of the petitioners (except petitioners no. 2 & 3) on the Class-IV post vide Office Order dated 12.09.2012 while the petitioners no. 2 & 3 were directed to be absorbed on the post of



Routine Clerk.

The learned senior counsel for the petitioners has submitted that a Six Member Sub-Committee was constituted vide order dated 29.04.2013 to consider the case of absorption of employees who have been reverted in pursuance to the recommendations of the Five Men Committee and the said Committee had submitted its report in favour of the petitioners herein and others, finding illegality and irregularity in the recommendations of the Five Men Committee. The said Six Men Committee also recommended for absorption of the petitioners on the post of Assistant. The learned senior counsel has also referred to a judgment rendered by a Division Bench of this Court dated 20.03.2017 passed in L.P.A. No. 658 of 2013, whereby the learned Division Bench of this Court has held that the provisions of the Scheme has to be interpreted in a manner so as to make it in harmony with the statutory provisions which is the 2007 Repealing Act, hence said proceedings cannot be unsettled now since the employees who have already been appointed or promoted and allowed to continue on such posts for decades together cannot be disturbed. The learned Division Bench has further held that the recommendations made by the group of Secretaries which now forms the basis of demotion etc.



is impermissible. The learned senior counsel further submits that the said judgment dated 20.03.2017 has been upheld by the Hon'ble Apex Court in S.L.P. (C) No. ... 2017 (Diary No. 24923 of 2017). The learned senior counsel has further submitted that the original writ order dated 19.12.2012 passed in CWJC No. 18473 of 2012, as upheld by the learned Division Bench and the Hon'ble Supreme Court squarely covers the present case inasmuch as the same impugned order dated 12.09.2012 was quashed as far as the writ petitioners of that case were concerned. It would be useful to reproduce paragraph nos. 11,12,16,17,20,21,24,25,26,27,28,29,30,31,33,39,41 and 42.

“11. The grievance of the petitioners is that without considering the objections filed by the petitioners and contrary to the direction issued by the State Government in its resolution dated 12.07.2012, the Board issued the impugned office orders dated 12.09.2012 (Annexures 13 & 13/1) adjusting the services of petitioner no.1 on the post of Assistant and the services of petitioner no.2 on the post of Routine Clerk in the Board merely on the basis of the report of the Committee, which was proved to be illegal by the petitioners in their objections.

12. Learned counsel for the petitioners argued that no reason at all was given by the authorities concerned for passing the impugned order, which appears to be only on the basis of frivolous assumptions that the petitioners lacked qualification and experience for the concerned posts, but both the assumptions were absolutely frivolous and misconceived and the same have come after 29 years of the petitioners' services and after 20 years of their working as Section



Officers.

16. *Learned counsel for the respondents asserted that in the year 2007 while the petitioners were working as Section Officers in the Council, the Act of 1992 Act was repealed vide Repeal Act of 2007 and the existence of the Intermediate Council ceased with effect thereto. Section 3 of the Repeal Act of 2007 provided for conditions of employees, for which a Committee was to be constituted to prepare Scheme, which, after approval of the State Government, would attain statutory effect. This provision did not show that the employees of the Council would be taken or absorbed in the Board on the same post even if they did not fulfil the required criteria and if such absorption is made, it would be a fresh appointment, for which their education and experience have to be seen as per the requirement.*
17. *Apart from the aforesaid provision of the Repeal Act, learned counsel for the respondents also referred to paragraph 2 of the Scheme formulated by the Committee, which was issued vide resolution dated 12.07.2012, published in the Bihar Gazette (extra ordinary). It was specifically provided in the Scheme that only if the criteria fixed were fulfilled by an employee, he could be appointed on a comparable post. The said Committee relying upon the decision of the Apex Court in case of Secretary, State of Karnataka & Ors. vrs. Uma Devi, reported in (2006) 4 S.C.C. 1, pointed out in Clause 2(x) that such employee would be considered in the service of the Board from the date of his absorption and would be entitled to the emoluments available to the employees of the Board. Clause 3(i) and (iii) of the said report of the Committee provided that the employees appointed strictly according to the provisions of law would be given preference to irregular appointees and if an employee of the Council is found eligible, he would be absorbed on the equivalent post with equal pay scale and if such equivalent post is not available then to the immediate lower scale post.*
20. *Learned counsel for the respondents stated that although the qualification for the post concerned as required at the time of advertisement in 1982 was Intermediate, which the petitioners had*



already acquired, but vide resolution dated 02.01.1985(Annexure 'E'), the State Government had decided to enhance the required qualification of Assistants to Bachelor and the petitioners were appointed on the posts of Assistant much thereafter on 29.02.1986, which is not disputed by the petitioners. Hence the petitioners' qualifications for Assistants at the relevant time i.e. in 1986 were not proper.

21. *Learned counsel for the respondents averred that since the petitioners' appointment in 1986 was without following the prescribed procedure and they did not fulfil the criteria fixed, they were not fit to be absorbed in the service of the Board, but the authorities took a lenient view and adjusted the petitioners on the posts of Assistant and L.D.C., respectively. Learned counsel for the respondents claimed that even Clause 5.1 of resolution no. 2215 dated 11.02.1985 issued by the Personnel and Administrative Reforms Department, Government of Bihar was not followed and hence the Screening Committee was quite justified in examining the petitioners' case in view of the decision of the Apex Court in case of Uma Devi (supra) after considering all the relevant points raised. When the petitioners did not have even the basic qualification for the post concerned, they cannot be appointed on the posts claimed by them, specially when it is their fresh appointment in the Board. Hence, they cannot now claim their adjustment on the same posts.*
24. *Considering the averments made by learned counsel for the parties and the materials on record, it transpires to be undisputed that vide advertisement no. 4 of 1982 was issued by the Council inviting applications from candidates seeking posts of Assistants in the pay scale of Rs.248-570/- and for them the minimum qualification fixed was Intermediate with five years' experience. However, the petitioners applied in the prescribed format but they were not appointed on the regular posts of Clerks, rather they were appointed merely as daily wage clerks vide order of the Council dated 21.01.1983 and since then the petitioners continued working in the Council regularly.*
25. *It is also not in dispute that vide Ordinance no.8 of 1985, promulgated on 20.05.1985, the Council*



was superseded and its assets, liabilities and functions vested in the State Government and immediately thereafter the State Government took a decision to appoint the petitioners and other similarly situated persons on the sanctioned posts of Assistants in the scale of Rs.284-372/- with effect from 01.06.1985 vide order dated 21.02.1986. This step of the State Government appears to be a policy decision taken by the authorities concerned and there is no occasion for either this Court or any one else to differ with the said policy decision of the State Government, specially when the Council was made functional vide Bihar Ordinance of 1989 and it granted senior selection grade in the rank of Assistants to the petitioners with effect from 01.06.1990 vide office order dated 05.10.1991.

26. *Thereafter, promotions were also granted to the petitioners with effect from 02.06.1992 vide office order dated 04.07.1994 on the sanctioned posts of Section Officers, which were created by the Council and had already been approved by the State Government and on which posts the petitioners continued functioning in the Council till the Council was abolished in the year 2007 as the Act of 1992 was repealed by the Bihar Intermediate Education Council (Repeal) Act, 2007. All the aforesaid steps were taken and orders were passed by the competent authorities and hence in the said circumstances neither the authorities of the Board nor the authorities of the State Government nor any one else can legally and justifiably raise any objection to the petitioners' appointments, promotions and working in the Council till it was abolished in the year 2007.*

27. *So far the position of the petitioners in the Board after abolition of the Council by Repeal Act of 2007 is concerned, section 2 of the Bihar Intermediate Education Council (Repeal) Act, 2007 specifically provided that the Act of 1992 was repealed, whereas, section 3 thereof provided for adjustment of the employees of the Council in the Board. The said provision reads as follows :-*

“3. Adjustment of employees of the Bihar Intermediate Education Council-

(1) On and from the date of repeal of the



Bihar Intermediate Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowance as was payable on the date of repeal of the Act till such time State Government has taken such final decision as is provided hereinafter.

- (2) *The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act:*

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act.

- (3) *After the scheme approved by the Government is enforced it shall be fully implemented in its approved form and intent within three months from the date of its enforcement.*
- (4) *The Committee of Secretaries constituted under Sub-section (2) of Section 3 above shall be competent to decide utility and deployment of employees of the Council during transaction period and it shall not be open to any employee to question decision of Committee of*



Secretaries.

Provided that the State Government shall be competent to amend, modify, alter or substitute the scheme so framed for removal of any difficulty in its implementation.

- 28. The aforesaid provision clearly mentions that from the date of repeal of the Act of 1992, all the employees of the Council shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowance as was payable on the date of repeal of the Act. Hence after the repeal of the Act, 1992 in the year 2007, the petitioners stood adjusted in the Board in the same situation as if the Act of 1992 had not been repealed and they were entitled to be paid the same salary and allowance as was paid to them in the Council immediately prior to the date of repeal; meaning thereby that they continued on the posts of Assistants in the Board, on which posts they were functioning at the time when the Act of 1992 was repealed and the Council was abolished.*
- 29. No doubt, Clause 2 of section 3 of the Repeal Act, 2007 provided that the State Government shall constitute a Committee of Secretaries consisting of three Secretaries, who shall prepare a detailed scheme of absorption and other service conditions of employees of the Council and the State Government may make amendment or modification in the scheme, whereafter it would be operational as statutory scheme framed under the said Act and shall be implemented in its approved form. However, the Board has failed to show that any such Committee of three Secretaries was constituted.*
- 30. Much subsequently on 17.07.2012 the Board constituted a five Member Screening Committee with an ex-Vice Chancellor, a retired Finance Officer, a retired Deputy Collector, a retired Member, College Service Commission and a retired Section Officer of Education Department with respect to the absorption of the employees of the erstwhile Council into the Board. The said Committee submitted its report on 27.08.2012 relying upon a decision of the Apex Court in case of Uma Devi (supra) and recommending that*



only such employees should be considered in the service of the Board from the date of their absorptions and would be entitled to emoluments available to the employees of the Board, who were appointed strictly according to the provisions of law. The said report was approved by the Board in its meeting on 31.08.2012, whereafter office orders were issued for absorption of the petitioners on 12.09.2012 absorbing petitioner no.1 on the post of Assistant and petitioner no.2 on the post of L.D.C.

- 31 . *Although learned counsel for respondent-Board argued that it had approved in its meeting dated 31.08.2012 the aforesaid report of the Five Member Committee dated 27.08.2012 and had passed the impugned order of absorption of the petitioners dated 12.09.2012 as the said report was prepared by the Committee relying upon the decision of the Apex Court in case of Uma Devi (supra), but the said decision of the Apex Court was with respect to regularization of temporary, contractual, casual, daily wages or ad hoc employees, appointed/recruited de hors the constitutional scheme of public employment, whereas, in the instant case the petitioners were permanent employees of the Council and had continued on permanent posts without any objection from any quarter since several decades and hence there was no question of their services being temporary, contractual, casual, daily wages or ad hoc nor there was any question of regularization of their services rather the only issue was their absorption in the Board on the same posts, on which they were working earlier as per the provisions of the Repeal Act of 2007.*
33. *Thus, it is quite apparent that neither the decision of the Apex Court in case of Uma Devi (supra) was attracted in the instant case nor it was followed either by the Five Member Committee or by the Board, which approved the said report and passed the impugned order. Furthermore, the Repeal Act of 2007 clearly provided that the State Government shall constitute a Committee of Secretaries, consisting of three Secretaries, for preparing a detailed scheme with respect to service conditions of the employees of the Council absorbed in the Board, but there is nothing to show that any such Committee was*



constituted nor its report has been produced by the respondents and in the meantime the petitioners were allowed to continue for about five years on the posts, on which they were working in the Council.

39. *So far question of experience is concerned, the objection of the respondents is that advertisement required experience, which the petitioners did not possess at the time of advertisement. In this connection, it has to be noted that the petitioners were not directly appointed rather they were first appointed on daily wages and were later regularized by the State Government and hence the said criteria cannot be made applicable to case of the petitioners and even if there was lack of experience at the relevant time, the same is made good now and hence a new exercise, ordered after several decades, cannot legally lead to anomalous results. The law is well-settled that if a person has been appointed, lacking in experience, but otherwise eligible and qualified for the post concerned and permitted to continue on the said post for considerably long time of 15-20 years or more, his initial appointment cannot be held to be faulty on that count. In this connection, reference may be made to a decision of the Apex Court in case of Buddhi Nath Chaudhary & Ors. vrs. Abahi Kumar & Ors., reported in A.I.R. 2001 S.C. 1176 as well as a decision of the Apex Court in case of R. N. Thaturvedi vrs. the State of U.P. & Ors., reported in 2007(4) ALJ (NOC) (ALL).*
41. *Considering the matter in its entirety after full appraisal of the pleadings of the parties and the materials produced by them, it leaves no doubt that the impugned action of the authorities of the Board is absolutely illegal and perverse as there was no occasion for the respondent-authorities to remove the petitioners from the posts, on which they were working in the Council before the abolition of the Council by Repeal Act of 2007 and absorption of its employees in the Board.*
42. *Accordingly, this writ petition is allowed and the impugned order, so far it relates to the petitioners, is quashed and the Board and its authorities are hereby directed to adjust/absorb the services of the petitioners on the posts of Section Officers or on any post of the same scale*



in the Board and to give all such benefits to them of the said posts from the date, on which the Council was abolished and its functions were directed to be discharged by the Board by the Repealing Act of 2007."

Per contra, the learned counsel for the respondents has made the very old, run of the mill argument, to the effect that Section 3 of the Repeal Act, 2007, provides for conditions of employees, for which a Committee was to be constituted to prepare schemes, which after approval of the State Government, would attain statutory effect and since the report of the Committee of Secretaries has been submitted and approved, the same has attained the status of the statutory scheme, hence no interference is warranted as far as the impugned order dated 12.09.2012 is concerned.

I have heard the learned senior counsel for the petitioners and learned counsel for the respondents as well as have gone through the materials on record and I find that the learned counsel for the respondent Board has advanced a contemptuous argument, in teeth of the judgment dated 19.12.2012 passed in CWJC No. 18473 of 2012, as upheld by judgment dated 20.03.2017 passed in L.P.A. No. 658 of 2013, as also ultimately upheld by the Hon'ble Apex Court by its order dated 15.09.2017.



All the arguments advanced by the respondents as also pleaded in the counter affidavit have already been considered by this Court earlier and rejected, hence the same do not deserve any consideration in the present writ petition. The present case is squarely covered by the aforesaid judgment dated 19.12.2012 passed in CWJC No. 18473 of 2012 as upheld up to the Hon'ble Apex Court.

For the reasons mentioned hereinabove, the present writ petition is allowed. The order dated 12.09.2012 qua the petitioners herein, is quashed and the Bihar School Examination Board and its authorities are directed to adjust/absorb the services of the petitioners on the post of Assistant or any post of the same scale in the Board and to give all such benefits to them of the said post from the date, on which the Council was abolished and its functions were directed to be discharged by the Board by the Repealing Act of 2007.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	N/A
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