

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8874 of 2015

Awadhesh Kumar Mishra

... .. Petitioner/s

Versus

The State Of Bihar & Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Advocate

For the Respondent/s : Mrs. Nivedita Nirvikar- GA-10

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 05-12-2018 This case has come up under the heading “To Be Mentioned” for correction of certain typographical error in the order dated 28.11.2018. Instead of “paragraphs 177 to 181” of the judgment in the case of Krishna Kumar Singh, reported in (2017) 3 SCC 1, “paragraph Nos. 77 to 81” of the judgment of the Apex Court in Krishna Kant Singh Vs. State of Bihar has been inadvertently quoted. Paras 177 to 181 of the judgment in the case of Krishna Kumar Singh, reported in (2017) 3 SCC 1 are as follows:-

“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.

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.”

Let the quotation of paragraph 77 to 81 of Krishna Kant Singh case already quoted in the order dated 28.11.2018 be treated to have been deleted and replaced by the above quoted paragraphs of the judgment of the Supreme Court in the case of Krishna Kumar Singh (2017) 3 SCC 1.

The order dated 28.11.2018 is modified to the aforesaid extent.

(Anil Kumar Upadhyay, J)

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