

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16182 of 2012

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Kapileshwar Chaudhary, S/O Late Mahabir Chaudhary, Resident of Village-
Sugauna, Police Station- Raj Nagar, District- Madhubani. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
 2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
 3. The Special Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
 4. The Bihar Sanskrit Shiksha Board, Patna through its Secretary
 5. The Secretary, Bihar Sanskrit Shiksha Board, Patna. Respondent/s
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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Jha, Advocate
For the Respondent/s : Mr. SC6
For the Board : Mr. S. S. Sundram, Advocate
Mr. Shashank Shekhar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 31-07-2018

Heard learned counsel for the petitioner and State.

In view of the judgment of the Special Bench of the Apex Court in the case of **Krishna Kumar Singh Vs. State of Bihar & Ors.**, reported in (2017) 3 SCC 1, the respondents is directed to act strictly in accordance with the observations of the Apex Court in para 177 to 181, which are quoted herein 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 order, 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 [(1987) 1 SCC 378]. 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.”

With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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