

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22064 of 2011

=====

Suresh Bhagat, Son of Late Sheonandan Bhagat, Resident of Village- Begampur,
P.S. and Distt. Begusarai

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Human Resources,
Government of India, New Delhi
2. The Principal Secretary, Department of Human Resources, Government of
Bihar, Vikash Bhawan Patna
3. The Chairman, Bihar Sanskrit Shiksha Board, Boring Canal Road, Patna
4. The District Magistrate, Begusarai
5. The District Education Officer, Begusarai
6. The Secretary, Managing Committee of Akchewat Sanskrit Prathmik Sah
Madhyamik Vidalaya, Nawkothe, Begusarai
7. The Principal, Akchewat Sanskrit Prathmik Sah Madhyamik Vidyalaya,
Nawkothe, Begusarai

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Sr. Advocate Mr. Bhola Kumar, Advocate
For the State	:	Mr. SC-24
For Respondent No. 8 & 9	:	Mr. Purshottam Jha, Advocate
For BSS Board	:	Mr. S. S. Sundram, Advocate Mr. Shashank Shekhar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-07-2018

Heard learned counsel for the petitioner and the
respondents.

2. 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 writ application is disposed
of with a direction to the respondents 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 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 [(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.”



3. Final decision must be taken in the light of the judgment of the Apex Court in the case of **Krishna Kumar Singh** (Supra) within a period of four months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2018
Transmission Date	

