IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6178 of 2012

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1. Ram Nath Roy S/O Late Ram Balak Roy Resident Of Village-Sarnarayan, P.O.-Saraiya, P.S.-Dariyapur, District-Saran (Chapra)
2. Ashok Kumar Roy S/O Sri Nandu Prasad Ray Resident Of Village-Sonepur Adam, P.O. & P.S.-Sonepur, District-Saran (Chapra)
3. Jaynandan Prasad S/O Sri Fanindra Roy Resident Of Village & P.O.-Mirpurjuara, P.S.-Awtar Nagar, District-Saran (Chapra)
4. Bhartendu Prasad Rai S/O Sri Yogendra Prasad Rai Reisdent Of Village-Shahpur Diyara, P.O.-Pahleza Barka, Via-Sonepur, District-Saran (Chapra)
5. Sushma Kumari W/O Sri Binod Kumar Resident Of Village-Chak Kanchanpur, P.O.-Rahimapur, Via-Hajipur, District-Vaishali
6. Dhrub Kumar S/O Sri Baidya Nath Prasad Resident Of Village-Humayupur, P.S.-Bajpatti, District-Sitamarhi
7. Manoj Kumar Roy S/O Sri Shyam Sundar Roy Resident Of Mohalla-Pokhra, Hajipur, P.O. & P.S.-Hajipur, District-Vaishali
8. Rajendra Kishore S/O Sri Yugal Kishore Resident Of Village-Bhagwanpur, P.O.-Fatehpur Chain, Via-Basant, P.S.-Awtar Nagar, District-Saran (Chapra)

... ... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department, Bihar, Patna
2. The Secretary, Education Department, Bihar, Patna
3. The Jai Prakash University, Chapra Through Its Registrar
4. The Vice-Chancellor, Jai Prakash University, Chapra
5. The Purvottar Railway College, Sonepur, Chapra Through Its Principal
6. The Secretary, Purvottar Railway College, Sonepur, Chapra

... ... Respondent/s

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Appearance :

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For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the Respondent/s : Mr. Arvind Kumar, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 26-06-2018

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. The issue warranting adjudication in the present writ petition is whether the State can act in a manner to promote discrimination between the similarly circumstanced employees working in the Purvottar Railway College, Sonepur, Chapra.

3. Mr. Abhinav Srivastava, learned counsel for the petitioners has drawn the attention of the Court to Annexure-8, letter dated 05.12.2008 whereby three posts created in the year 1987 without financial liability was converted subsequently with retrospective effect i.e., from the date of its creation in 1987 with financial liability. Mr. Srivastava submits that the State cannot apply different yardstick in the matter of converting the posts in the college in question without financial liability to posts with financial liability and extend benefit to a class of people and discriminate the petitioners.

4. There is no answer to the issue raised by the petitioners either in the counter affidavit or by the learned counsel appearing on behalf of the respondents during the course of submission. The Apex Court has considered the obligation of the

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State while dealing with the citizens in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority Of India And Ors.:AIR 1979 (SC) 1628**. The Apex Court in so many words held out that State cannot discriminate its citizens even in the distribution of larges and bounty. It is not free like private individual to adopt different yardstick in its activities. The present case is celebrated example of discrimination adopted by the respondents. Once the State has taken policy decision in 1982 not to create any post with financial liability purportedly as policy decision of Vitrahit Shiksha Niti, the State is precluded from adopting pick and choose. The pick and choose is discrimination and offends Articles 14 and 16 of the Constitution of India.

5. If the State cannot discriminate the citizen in the matter of distribution of even larges and bounty, there is no question of discriminating similarly circumstance two sets of employees. If the posts were created in Purvottar Railway College, Sonepur, Chapra in the year 1987 without financial liability and the State intends to provide financial assistance, the State has to convert all the posts created without financial liability as posts with financial liability. But the State has decided to convert only 3 posts out of the posts created by the same decision, Annexure-3 &

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4 whereby the State has created 25 posts of teaching and 22 posts of non-teaching posts as posts without financial liability.

6. The action of the State in converting three posts with financial liability with retrospective effect and denying the benefit of financial assistance to other teaching and non-teaching employees, who were appointed against the post created by same decision of the State Government, is per se discrimination and unsustainable in the eye of law. Either the State has to adopt corrective measures by converting the posts of the petitioners and others, who were appointed against the posts created in the same transaction in the year 1987 which were converted vide Annexure-8 as post with financial liability or to rectify its mistake if they are of the view that conversion of the posts with financial liability with retrospective effect vide Annexure-8 was erroneous decision on the part of the State. They have to rectify the mistake after giving opportunity to the petitioners and others likely to be adversely affected. Corrective measures in the nature of granting the same benefit or withdrawing the benefit to all the teaching and non-teaching employees, who were appointed against the posts vide annexures 3 and 4, should be taken by the respondents within a period of three months from the date of receipt/production of a copy of this order.

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7. In view of the above, the Court is of the considered view that the order contained in Annexure-12 rejecting the representation of the petitioners cannot sustain and is, accordingly, quashed.

8. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.06.2018
Transmission Date	

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