

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19054 of 2017

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Sri Ganesh Adarsh Sanskrit High School Son of Sri Bhagwan Singh, Resident
of Village- Bishambharpur, P.O.- Datiana, P.S.- Bikram, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Special Director Secondary Education, Education Department, Bihar, Patna.
4. The Bihar Sanskriti Siksha Board through its Chairman, Bihar, Patna.
5. The Secretary, Bihar Sanskrit Siksha Board, Bihar, Patna.
6. The District Education Officer, Patna.
7. The District Programme Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dilip Kumar Tewari
For the Respondent/s : Mr.Jitendra Kumar Roy No-1 -Sc13

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 12-07-2019

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 take appropriate decision in accordance with law, particularly, in the light of para 177 to 181, at the earliest preferably within a period of 60 days from the date of receipt/production of a copy of this order. Para. 177 to 181 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.”

(Anil Kumar Upadhyay, J)

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