

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.374 of 2019

In
Civil Writ Jurisdiction Case No.4622 of 2016

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1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
 2. The Director, Secondary Education, Government of Bihar, Patna.
 3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
 4. The Deputy Secretary, Finance Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Rajendra Rai Son of Brij Bhushan Rai, + High School, Katiknagar, Buxar,
P.S.- Nawanagar, Distt- Buxar.

... .. Respondent/s

with
Letters Patent Appeal No. 268 of 2019
In
Civil Writ Jurisdiction Case No.4916 of 2016

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Principal Secretary Finance Department, Government of Bihar, Patna
4. The Deputy Secretary, Finance department, Government of Bihar Patna

... .. Appellant/s

Versus

Krishnanand Tiwari Son of Ramdish Tiwary, +2 High School, Nabinagar,
Aurangabad, Distt.-Aurangabad

... .. Respondent/s

with
Letters Patent Appeal No. 375 of 2019
In
Civil Writ Jurisdiction Case No.4466 of 2016

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Deputy Secretary, Finance Department, Government of Bihar, Patna.



... .. Appellant/s

Versus

Prahlad Singh Son of Sri Hardeep Singh, at Present High School, Kaurar,
P.S.-Medical Gaya, Distt.-Gaya

... .. Respondent/s

with

Letters Patent Appeal No. 376 of 2019

In

Civil Writ Jurisdiction Case No.4478 of 2016

1. The State of Bihar Through the Principal Secretary Education Department, Bihar, Patna.
2. The Director Secondary Education, Government of Bihar, Patna.
3. The Principal Secretary Finance Department, Government of Bihar, Patna.
4. The Deputy Secretary Finance Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Raj Mohan Singh Son of Sri Ramchandra Singh Higher School, Maharajganj,
District- Aurangabad.

... .. Respondent/s

with

Letters Patent Appeal No. 381 of 2019

In

Civil Writ Jurisdiction Case No.4720 of 2016

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. The Director Secondary Education, Government of Bihar, Patna
3. The Principal Secretary Finance Department, Government of Bihar, Patna
4. The Deputy Secretary Finance Department, Government of Bihar, Patna

... .. Appellant/s

Versus

Jai Prakash Mandal Son of Late Bhagwat Mandal Headmaster, High School,
Ishipur, P.S.-Ishipur, Distt-Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi, AAG-10
Mr. Parijat Saurav, AC to AAG- 10
Mr. Sushil Kumar Singh, A.C. to AAG-10
Mr. Rohitabh Das, Advocate



For the Respondent/s : Ms. Smriti Singh, Advocate
Ms. Shilpi Keshri, Advocate
Mr. Naman Nayak, A.C. to AAG-10
Mr. Ashok Kumar Choudhary, Advocate
Mr. Md. Helal Ahmad, Advocate
Mr. Akshansh Ankit, Advocate
Mr. Vikash Kumar Shukla, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-09-2019

Re: I.A. No. 1 of 2019 (in L.P.A. No. 374 of 2019),
I.A. No. 2 of 2019 (in L.P.A. No. 268 of 2019), I.A.
No. 1 of 2019 (in L.P.A. No. 375 of 2019), I.A. No. 1
of 2019 (in L.P.A. No. 376 of 2019) and I.A. No. 1 of
2019 (in L.P.A. No. 381 of 2019)

Heard learned counsel for the parties.

2. For the reasons stated in the Interlocutory Applications, we are satisfied that there was sufficient cause for delay in approaching this Court for preferring the appeals.

3. The delay stands condoned. The Interlocutory Applications are allowed.

Re: L.P.A. Nos. 374 of 2019, 268 of 2019, 375 of
2019, 376 of 2019 and 381 of 2019.

The appellant/State of Bihar in all these cases has challenged the judgment and order dated 10.05.2018 passed by



a learned Single Judge of this Court in C.W.J.C. No. 4466 of 2016 and other analogous matters, whereby it has been held that the respondent/original writ-petitioners were entitled to pay protection on grounds of parity, as such pay protection has been given to the Headmasters who had served as teachers in the State of Bihar prior to the bifurcation of the State. The original writ-petitioners/respondents had challenged the validity of an order contained in Memo No. 279 dated 29.01.2016, whereby the State had treated the original writ-petitioners as fresh recruits on the post of Headmaster and had not given them pay protection.

2. It was argued on behalf of the respondents/writ-petitioners before the learned Single Judge that notwithstanding any communication between the Accountant General of Bihar and the Education Department, the original writ-petitioners were entitled to such pay protection.

3. After having heard the learned counsel for the parties, we find that the issue of bifurcation of the State of Bihar into two States, the other being State of Jharkhand, is of no relevance so far as the case of the original writ-petitioners is concerned. The original writ-petitioners had been allocated the State of Jharkhand without their exercising option for going to



that State. This fact would not come to the aid of the original writ-petitioners as their services stood transferred to the State of Jharkhand as teachers. Any pay protection to which they might have been entitled could have been obtained against the State of Jharkhand and not the State of Bihar. The original writ-petitioners participated in the recruitment process which was conducted afresh for the post of Headmaster. The target pool of persons who could have participated in such recruitment process was open to all, including employees of the Central Government and all such persons who are having experience of teaching in other States as well. In that view of the matter, if the original writ-petitioners were appointed as Headmasters, there cannot be any dispute over the proposition that such appointment was fresh recruitment and in cases of fresh recruitment, there cannot be any claim for protection of pay merely on the ground that for some time in their teaching experience, they had rendered their services in the State of Bihar.

4. The learned Single Judge, we are constrained to observe, did not refer to this aspect of the matter viz. that the original writ-petitioners were appointed under a fresh recruitment process without there being any condition of any privilege or premium to such persons who had worked as



teachers in the State of Bihar.

5. Mr. Ashok Choudhary, learned counsel appearing in one of the L.P.As. on behalf of the respondent/writ-petitioners has submitted that under similar circumstances, a Division Bench of this Court in L.P.A. No. 2285 of 2016 [Kamla Pati Singh & Ors. Vs. The State of Bihar & Ors.], in the case of Engineers, had directed the State Government to provide them pay protection and not refuse the same privilege on the ground that their services had been allocated to the State of Jharkhand.

6. The facts of that case is absolutely different. The original writ-petitioners in the aforesaid case were degree-holders in Civil Engineering who were initially appointed in the year 1981 as Junior Engineers in the Regional Engineering Organization (R.E.O.) and N.R.E.P. They continued to work on such post as *ad hoc* employees till their services were transferred to the State of Jharkhand. Under such circumstances, the appointees of the same batch, who remained in the State of Bihar, were granted pay protection by reckoning their period of appointment to the original *ad hoc* appointment, which later was regularized. The Division Bench of this Court, taking this fact into account, held that even though the service of the original writ petitioners was of an *ad hoc* appointee, but for all practical



purposes, it was a regular appointment and the advantages which had accrued to an employee of the same batch could not be denied to such Engineers whose services were allocated to the State of Jharkhand.

7. The facts of the case cited by Mr. Choudhary is absolutely different with the present set of cases as the original writ-petitioners had applied afresh pursuant to an advertisement issued for appointment of Headmasters.

8. We are a bit perplexed as to under what circumstances, a clarification was sought by the State with respect to the treatment which was to be meted to such direct recruits/appointees on the post of Headmaster. In the event of their being appointed in a fresh recruitment process, there was no confusion and no clarification was required. Only by seeking such clarification, the State has created a ghost and is now trying to kill the same. The Finance Department, on being asked has given a clear finding that the original writ-petitioners be treated as fresh recruits. It has also been clarified by the Finance Department, which fact has been notified by the Director of Secondary Education, Government of Bihar to the Accountant General vide communication dated 29th of January, 2016 that only because of such persons having worked in the State of



Bihar as teachers, they would not be entitled to have any pay protection; rather they would be subject to the pay as set out in Schedule-II of the notification.

9. Under the aforesaid circumstances, we find it difficult to sustain the order of the learned Single Judge which gives pay protection to fresh recruits on the post of Headmaster.

10. The orders impugned are set aside.

11. All the Letters Patent Appeals are allowed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

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CAV DATE	
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