

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8581 of 2018

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1. Bijay Kumar Das S/o Late Shivnarayan Das, Resident of Village-Raniparty, P.S.-Kumarkhand, District-Madhepura.
 2. Kumari Munni W/o Om Prakash Singh, Resident of Village-Israinbela, P.S.-Kumarkhand, District-Madhepura.
 3. Ashok Kumar Singh, S/o Rameshwar Singh, Resident of Village-Israinkala, P.S.-Kumarkhand, District-Madhepura.
 4. Arun Kumar Yadav, S/o Dipnarayan Yadav, R/o Village-Paraini P.S.-Shiv Nagar, District-Madhepura.
 5. Md. Moinuddin, S/o Md. Ajimuddin, R/o Pokharia, P.S.-Sri Nagar, District-Madhepura.
 6. Venu Kumari, W/o Manoj Kumar Yadav, R/o Bishanpur Bazar, P.S.-Kumarkhand, District-Madhepura.
 7. Kumari Mina, W/o Ramendra Kumar, R/o Village-Ikulia Bishanpur Bazar, P.S.-Kumarkhand, District-Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education Government of Bihar, Patna.
3. The Director, Mass Education, Government of Bihar, Patna.
4. The Distict Mass Education Officer, Vaishali at Hajipur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6088 of 2018

Sarita Devi @ Sarita Kumari W/o Ranjeet Singh, R/o Village-Jhikuli, jhikuli P.S.-Sangrampur, District-Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Governmetn of Bihar, Patna
4. The Director, Primary Education, Department of Human Resources Development, Government of Bihar, Patna
5. The Director, Mass Education, Department of Human Resources Development, Government of Bihar, Patna



6. The District Magistrate, Munger.
7. The District Education Officer, Munger.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9227 of 2018

1. Rajeshwar Singh S/o Ram Janam Singh, Resident of Village- Paharpur, P.S.- Kaler, District- Arwal.
2. Lalit Kumari, S/o Sri Mithilesh Kumar Nehru, Resident of Village- Paharpur, P.S.- Kaler, District- Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Mass Education, Government of Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
4. The Director, Primary Education, Department of Human Resources Development, Govt. of Bihar, Patna.
5. The Director, Mass Education Jan Shiksha, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8581 of 2018)

For the Petitioner/s : Mr.Mithilesh Kumar Upadhyay, Adv.

For the Respondent/s : Smt.Binita Singh -Sc28

(In Civil Writ Jurisdiction Case No. 6088 of 2018)

For the Petitioner/s : Mr.Rakesh Ranjan, Adv.

For the Respondent/s : Mr.Madanjeet Kumar- Gp20

(In Civil Writ Jurisdiction Case No. 9227 of 2018)

For the Petitioner/s : Mr.Arvind Prasad Singh, Adv.

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

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 17-11-2022 Heard the parties.

In all these matters the petitioners have approached this Court seeking absorption in State service on the basis they were working as instructors under the scheme which was in



vogue with the State Government. It appears that Division Bench of this Court passed an order directing the State to take steps for absorption of the instructors who were appointed under a non-formal education scheme. The said order came up before the Supreme Court challenged by the State of Bihar and vide order dated 26th February, 2016, in Petition for Special Leave to Appeal (C) No. 32079 of 2015 while dismissing the S.L.P. it was observed as under :

“The relief granted by the High Court shall be restricted to those who approached the High Court who were heard as well as who wanted to get themselves impleaded and those who have filed applications here at par with those former as well as all those petitioner. Instructors which are pending as on date before the High Court but shall not apply to any fresh case either here or before the High Court.”

The litigation ought to have ended at the stage however it appears that a fresh round of litigation continued wherein directions were issued by the coordinate Benches directing the petitioners to make representations and authority being directed to consider the claim as a similar order has been passed in C.W.J.C. No. 6267 of 2022 on 11.08.2022. The orders were passed in ignorance of the order of the Supreme Court. keeping in view the settled legal position as laid down by the



Apex Court in Official Liquidator Vrs. Dayanand & Ors. reported in (2008) 4 SCC 1, this Court will have to ignore the order of the coordinate Bench. It may be noticed that in another Civil Appeal No. 7351 of 2021 (the State of Bihar & Ors. Vrs. Meera Kumari & Ors.) the Supreme Court again considered the aspect regarding absorption of the instructors and again it was reiterated by the Supreme Court as under :

“.....We, however, make it clear even with respect to such petitions that they cannot get any relief except as is provided to them under the order of this Court on 26.02.2016. Any other application (where they have not sought to withdraw applications for impleadment/intervention) will stand disposed of without prejudice to their right to seek relief if are entitled to relief within the meaning of order dated 26.02.2016.”

Thus the order passed way back on 26th February, 2016, (supra) has been reiterated that only those petitions which were pending as on the said date, would get the relief as directed by the Division Bench.

At this juncture this Court also notices the judgment passed by the Supreme Court in the case of Avas Vikas Sansthan & Anr. Vrs. Avas Vikas Sansthan Engineers Assn. & Ors. reported in (2006) 4 SCC 132, wherein the Supreme Court has held as under :



“49 : In Rajendra v. State of Rajasthan, and S.M. Nilajkar v. Telecom District Manager, where a project has been shut down due to want of funds the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. This finding is applicable in the present matter and therefore the finding of the High Court is not fair to common conscience and also that the same will act as a disincentive to the state to float such schemes in future thereby reducing the employment opportunities of many.

Power to abolish civil posts

50 : It is settled law that the power to abolish any civil post is inherent in every sovereign government and such abolition will not entail any right on the person holding the abolished post the right to reemployment or to hold the same post. In the present case, the State Government was benevolent enough to



float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by counsel for the respondents with regard to unfairness meted out to the employees of Avas Vikas Sansthan hold no water.

51 : With regard to 604 employees of the AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of the AVS. But the State of Rajasthan in all fairness did frame a scheme and offered employment in other local bodies of the government. Thus, the terms and conditions of such alternative employment cannot be challenged. We are of the opinion, that the decision of the High Court granting relief of reemployment with pay protection, seniority and pension is erroneous. We, therefore, direct the State of Rajasthan to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit.

Thus, it is settled law that if the posts are abolished and scheme is abolished, no directions can be issued for absorption on regular post of such persons. The judgments



passed by coordinate Bench being passed without being the law as settled by the Apex Court (supra) have to be treated as per incurium.

The writ petitions, in view of above, are dismissed.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item Nos. 14,
14.1, 14.2

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