

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.78 of 2019

In
Civil Writ Jurisdiction Case No.16923 of 2017

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1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
 3. The Principal Secretary, Department of Personnel and Administrative Reforms Department, Government of Bihar, Patna.
 4. The Director Mass Education, Government of Bihar, Patna.
 5. The District Education Officer, Buxar.
 6. The District Education Officer, Bhojpur.
 7. The District Education Officer, Kaimur (Bhabhua).

... .. Petitioner/s

Versus

1. Ashraf Hussain Khan Son of Late Alataf Hussain Khan, resident of Village and Post- Ranisagar, P.S.- Shahpur, District- Bhojpur.
2. Md. Jahid Hussain Khan, Son of Md. Islam Khan, resident of Village and Post- Ranisagar, P.S.- Shahpur, District- Bhojpur.
3. Md. Ekram Khan Son of Late Md. Hafiz Anmatullah Khan, resident of Village and Post- Ranisagar, P.S.- Shahpur, District- Bhojpur.
4. Patiraj Singh Yadav Son of Late Bal Mukund Yadav, resident of Village- Kanaili, Post- Ranisagar, P.S.- Shahpur, District- Bhojpur.
5. Shyam Sundar Ram, Son of Musafir Ram, resident of Village- Ghataw, P.S. Kudara, District- Kaimur (Bhabhua).
6. Subas Sharma, Son of Sri Narayan Sharma, resident of Village- Kudariya, Post- Nenua, P.S.- Dumaraw, District- Buxar.
7. Bashishth Muni Prasad, Son of Late Bishwanath Prasad, resident of Village and Post- Chhatnawar, P.S.- Dumaraw, District- Buxar.
8. M. Rizwan Khan, Son of Md. Gulam Gaus Khan, resident of village- Bagahi, P.S.- Bihiya, District- Bhojpur.
9. Sri Krishna Singh, Son of Ram Balak Singh, resident of Village- Nawadih Osai, P.S.- Bihiya, District- Bhojpur.
10. Md. Akabal Khan, Son of Md. Ajaylullah Khan, resident of Village- Ranisagar, P.S.- Shahpur, District- Bhojpur.
11. Gaya Prasad, Son of Late Maheshwar Prasad, resident of Village- Simari Dudhipatti, Post and P.S.- Simari, District- Buxar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Shilpa Singh, G.A. 12
		Ms. Abhanjali, AC to G.A. 12
For the Opposite Party/s	:	Mr.



CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT**Date : 24-08-2022**

Since the order under review was passed with the consent of the parties, no interference is required in the present case, however, it has been pointed out by the learned counsel for the petitioners that against the order dated 03.03.2017 passed in C.W.J.C. No. 384 of 2017 (Harendra Mishra & Ors. vs. The State of Bihar & Ors.), the State Government had preferred an appeal bearing L.P.A. No. 1047 of 2017, however, the same had stood dismissed vide order dated 23.01.2018 and on the basis of the said two orders dated 03.03.2017 and 23.01.2018, the writ petition in question i.e. CWJC No. 16923 of 2017 and other analogous cases were disposed of vide order dated 07.02.2018, with the consent of the parties. It is further submitted that the aforesaid appeal of the State Government bearing L.P.A. No. 1047 of 2017 was dismissed vide order dated 23.01.2018, taking into account the order dated 25.01.2017 passed in M.J.C. No. 3765 of 2018 (Meera Kumari & Ors. Vs. The State of Bihar & Ors.), against which the State Government had preferred a Special Leave Petition before the Hon'ble Apex Court bearing S.L.P. (C) No. 19893 of 2021, which was subsequently converted into Civil Appeal No. 7351 of 2021. In the meantime,



the State Government had preferred a review petition for review of the aforesaid order dated 23.01.2018 passed in L.P.A. No. 1047 of 2017 and the same has been numbered as Civil Review No. 59 of 2018 (The State of Bihar & Ors. vs. Harendra Mishra & Ors.). In the said Civil Review No. 59 of 2018, the learned Division Bench of this Court by an order dated 27.06.2018 has directed for listing of the said Civil Review petition after disposal of the S.L.P. filed by the State of Bihar against the order passed in M.J.C. No. 3765 of 2016 and till then it has been directed that the implementation of the order dated 23.01.2018 passed in L.P.A. No. 1047 of 2017 shall be kept in abeyance.

2. It is submitted that the aforesaid S.L.P. (C) No. 19893 of 2021 (Civil Appeal No. 7351 of 2021), filed by the State of Bihar has finally been allowed and the impugned order dated 25.01.2017 passed in M.J.C. No. 3765 of 2016 has been set aside by a Judgment dated 02.12.2021. In this regard, it would be apt to refer to the relevant paragraphs of the said judgment dated 02.12.2021 herein below:-

“By the impugned order, an application which was styled as a miscellaneous application seeking modification of order dated 11.08.2015 has been disposed of in the following manner:

“2. The grievance of the petitioners is that the relief granted in those proceedings are



only being extended to persons who were parties in those proceedings even though there are others who are identically situated but they are not being treated similarly.

3. To us, problem is simple. The Apex Court, in the case of Ashwani Kumar & Others-Versus-State of Bihar& Others since reported in AIR 1997 Supreme Court 1628, in paragraph 17, has clearly held that all persons, similarly situated, whether they have moved the Court or not, must be similarly treated. Those, who were waiting in the wings, cannot be denied the relief which is granted by the Court unless the relief is personal to the person. In our view, similar is the provision of Clause 4(c) of the Bihar State Litigation Policy which clearly envisages that not every body is required to move the Court. Persons, in similar circumstances, must be treated similarly.

4. In that view of the matter, all we say is if the authorities find that the petitioners are similarly circumstanced to the other persons, they would be similarly treated.

5. This application is, accordingly, disposed of with the aforesaid direction.

6. IAs No 4666 and 7159 of 2016 are also allowed.”

It is necessary to refer to certain facts. A scheme was introduced by the Central Government introducing program for imparting elementary education to the students. As part of the scheme, Centers for Non-Formal Education were contemplated. To operate such centers, instructors and center supervisors were contemplated. Under the scheme, several persons were employed in these categories. Thereafter, the scheme was finally closed in the year 2001. The Government decided to absorb the supervisors. Instructors, however, were not treated similarly. This led to a spate of litigation at the instance of



the Instructors. By order dated 11.08.2015, the High Court gave certain directions for rehabilitating the instructors as well subject to certain conditions which have been indicated therein. This order, in turn, came to be challenged before this Court.

The order of this Court dated 26.02.2016 is significant and it reads as follows:

“We find no infirmity in the order impugned herein. The Special Leave Petitions are dismissed. 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. Pending applications, if any, stand disposed of.”

We are of the view that the order passed by this Court dated 26.02.2016 is an order which binds both the State and the Courts including the High Court. It is for the reason that the Court has clearly, while upholding the order dated 11.08.2015, confined the benefit granted vide order to only those persons who have been mentioned specifically in the order.

We notice from the impugned order passed by the High Court that the High Court has not specifically referred to the order passed by this Court dated 26.02.2016 and therefore, not considered the case in the light of the order dated 26.02.2016. We are of the clear view that the order of this Court dated 26.02.2016 cannot be deviated from by the High Court. We think that the High Court has erred in referring to certain general principles by holding that all persons similarly situated whether they have moved the Court or not must be similarly treated. This finding is in teeth of the clear terms of the order passed by this Court dated 26.02.2016.



In the light of this, the course that this Court must adopt is, since the matter is a live issue, even from the point of view of the averments seeking modification, the matter must receive the attention of the High Court in the light of the order passed by this Court on 26.02.2016. As noted already, certain petitions at the hands of Unions have attained finality. Matters which have attained finality cannot be reopened. At the same time, if there are persons who fall within the four walls of the order dated 26.02.2016, they may be entitled to relief as envisaged. Accordingly, we allow the appeals and set aside the impugned order. The matter will be considered by the High Court in the light of our observations and with specific reference to the order dated 26.02.2016. We make it clear that the matters which have become final cannot be reopened.”

3. In such view of the matter, it is submitted that now the aforesaid Civil Review No. 59 of 2018 is ripe for hearing and is also being listed from time to time before the learned Division Bench of this Court.

4. Having regard to the facts and circumstances of the case as also in view of the fact that the judgment passed by the learned Division Bench of this Court in L. P. A. No. 1047 of 2017 i.e. the one dated 23.01.2018, which was the basis for disposing of the original writ petition of the present case, has been stayed by the learned Division Bench of this Court by an order dated 27.06.2018 passed in Civil Review No. 59 of 2018, the consequences have to follow, hence, there is no need for issuing notice to the private respondents and, therefore, the



matter is now required to be governed not only by the judgment dated 02.12.2021 passed by the Hon’ble Apex Court in Civil Appeal No. 7351 of 2021 (The State of Bihar & Ors. vs. Meera Kumari & Ors.), but also by the final outcome of the aforesaid Civil Review No. 59 of 2018, which is pending adjudication before the learned Division Bench of this Court.

5. Consequently, the present review petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27-08-2022
Transmission Date	N/A

