

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.828 of 2019

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1. Kamal Kishor Sah S/O- Ram Punit Sah R/V- Bawanghat, P.S.- Khanpur, District- Samastipur.
 2. Abdul Mannan S/O- Md. Sayeed R/V- Suraul, P.S.- Khanpur, District- Samastipur.
 3. Rekha Kumari W/O- Satyanarayan Ray, D/O- Shiv Shankar Ray R/V- Gudarghat, P.S.- Khanpur, District- Samastipur.
 4. Shila Kumari S/O- Ram Vinod Ray, D/O- Manik Lal Yadav R/V- Dinamanpur, P.S.- Khanpur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Old Secretariat, Patna.
3. That Principal Secretary, Department of Personnel and Administrative Reform, Govt. of Bihar.
4. That Principal Secretary, Department of Human Resources Development, Govt. of Bihar.
5. The Director, Mass Education Department, Govt. of Bihar, Patna.
6. The District Mass Education Officer, Samastipur.
7. The District Education Officer, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Advocate
For the Respondent/s	:	Mr. Madhaw Pd. Yadav, GP-23
		Mr. Rajesh Kumar Sinha, AC to GP-23

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 11-09-2023 Heard the parties.

2. This application has been preferred for

*(i) issuance of a Writ in the nature
of mandamus, and / or other appropriate
writ, order or direction commanding upon
the respondents to consider their case for
absorption in Government Service even on*



class IV post in light of the order, direction passed by this Hon'ble Court in the case of similarly situated persons and also in the light of the direction passed in C. W. J. C. No- 18813/2010 filed by the Association of the petitioners and was disposed of by order dated 15.9.11 in terms of order dated 21.4.2011 passed in C.W.J.C. No- 8418 of 2010 and their applications forms are pending before concerned respondents District Mass Education Officer / District Education Officer which were filed in the light of the order passed in the case of the Association of the petitioners and others.

3. From the facts on record, it is clear that the petitioners chose not to agitate the matter earlier and only after the litigation which started in 2010 came to an end with the order of the **Hon'ble Apex Court in SLP (C) No. 32079 of 2015** disposed of on 26.02.2016 that they wake up after deep slumber.

4. The order of the Hon'ble Apex Court dated 26.02.2016 is as follows:

“We find 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. “

5. Recently, the Patna High Court in Civil Review No. 59 of 2018 disposed of on 05.07.2023 and it is necessary to incorporate the concluding parts which held as follows:

*“16. The issue has now attained its finality with the final decision of the Supreme Court rendered on 02.12.2021, in case of **The State of Bihar and others V/s Meera Kumari and another**, relevant portion of which has been noted hereinabove. The Supreme Court has reiterated that whereas it is true that generally similarly situated persons, irrespective of whether they moved the Court or not, must be similarly treated, the said principle cannot be applied when the Supreme Court had spoken and pronounced the order in terms as the order dated 26.02.2016.*

17. The Supreme Court's decision



in case of the State of Bihar and others V/s Meera Kumari and another, is near reiteration of specific observations made by the Supreme Court in its order dated 26.02.2016.

18. It is an admitted fact that the private respondents (writ petitioners) had not approached this Court or the Supreme Court either by filing writ application or intervention application or otherwise on or before 26.02.2016.

19. In view of the Supreme Court order dated 26.02.2016 and the subsequent decision rendered on 02.12.2021

*in case of the State of Bihar and others V/s Meera Kumari and another, in order to obviate any scope of doubt, we conclude that no person, claiming to have been appointed as an instructor under Non Formal Education Scheme, can seek absorption on the strength of a Co-ordinate Bench decision of this Court in case of **the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others**, unless it is demonstrated that he/she is eligible to be considered in the light of the observation made by the Supreme Court in its order dated 26.02.2016 (supra), subsequently reiterated and explained by the Supreme Court in its decision dated 02.12.2021 in the*



*case of **the State of Bihar and others V/s Meera Kumari and another**. Situated thus, we are of the opinion that as the order under review was passed by this Court in ignorance of the interim order passed by the Supreme Court dated 25.01.2017, in the case of **the State of Bihar and others V/s Meera Kumari and another**, and in the light of the admitted fact that the private respondents have not approached either this Court or the Supreme Court on or before 26.02.2016, the order dated 23.01.2018 passed in LPA No. 1047 of 2017 is liable to be recalled. The decision of the learned Single Judge dated 03.03.2017 passed in CWJC No. 384 of 2017, which was filed by the writ petitioners, is based on a Co-ordinate Bench's decision of this Court in the case of **the State of Bihar and others V/s Meera Kumari and another**. An order passed by the learned Single Judge dated 03.03.2017, which was challenged by the State of Bihar by preferring LPA No. 1047 of 2017, reads as under:*

"In between an issue was raised by one Meera Kumari and Punam Devi before this Court by filing Miscellaneous Jurisdiction Case NO. 3765/2016 complaining that the relief was being restricted to only those persons who are



party to the proceedings and not being extended to other similarly situated persons. The Division Bench clarified the position by passing the following order:

" 3. To us, problem is simple. The Apex Court, in the case of Ashwani Kumar & others v/ 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 everybody 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.

In view of the developments noted above, the case of the petitioners would also require a consideration by the respondents. It is stated by Mr. Mishra that although these petitioners have already applied but the



matter is not being disposed of.

Having heard learned counsel for the parties and considering that the issue stands settled, I deem it proper to dispose of all these writ petitions with a direction to respondents no. 2 to 4 to consider the claim of the petitioners in the backdrop of the issues settled by the Court and dispose of the same within a maximum period of three months from the date of receipt/production of a copy of this order.

All the writ petitions are accordingly disposed of."

20. As has been discussed above, as the writ petitioners had admittedly not approached this Court or the Supreme Court on or before 26.02.2016, no relief could have been granted to them. The writ petition filed by them, i.e., CWJC No. 384 of 2017, deserved to be dismissed. Accordingly, we set aside the order dated 03.03.2017 passed in CWJC No. 384 of 2017.

21. Accordingly, the review application stands allowed. The writ petition is accordingly dismissed. The LPA No. 1047 of 2017 stands allowed.

22. All Interlocutory applications stand disposed of. “

6. The petitioner, as stated above knocked the doors of



this Court only after the cut off date of 26.02.2016 and in that
view of the matter, no relief can be extended to them.

7. The writ petition stands dismissed.

(Rajiv Roy, J)

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