

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.214 of 2022

In

Civil Writ Jurisdiction Case No.5722 of 2022

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1. Vishwanath Singh @ Vishwanath Prasad Singh son of late Sukhdeo Singh Presently residing at Village Sahpur, P.O. Bisandattpur, P.S. Kanti, District Muzaffarpur, Pin 843113, Permanent Resident of Village-P.O.- Bishunpur, Bedauliya, P.S. Jandaha, District Vaishali, Pin- 844505.
 2. Anand Kumar @ Anand Kumar Tiwari Son of Late Mahendra Nath Tiwari, Resident of Village- Brahmpur, Bara Vishwakarma Mandir, P.O.- M.I.T. P.S.- Brahmpura, District Muzaffarpur, PIN 842003.
 3. Sunil Kumar @ Sunil Kumar Chaudhary Son of Sri Chandrika Chaudhari, Resident of Village - P.O.- Mahant Maniyari, P.S. Maniyari, District Muzaffarpur, Pin- 843147.
 4. Amarjeet Kumar @ Amarjeet Mahto Son of Late Kailash Prasad, Resident of Village- Brahmpura, Krishna Toli, P.O.- M.I.T., P.S.- Brahmpura, District- Muzaffarpur, Pin- 842003.
 5. Sunil Paswan Son of Nandu Paswan, Resident of Village- Brahmpura, Laxmi Chauk, P.O.- M.I.T., P.S. Brahmpura, District Muzaffarpur, Pin- 842003.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, General Education-cum- Additional Secretary, Education Department, Bihar, Patna.
4. The Director, Science and Technology Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashish Giri, Adv.
For the Respondent/s : Mr. Prabhat Ranjan Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 25-01-2023

Heard Mr. Ashish Giri for the appellants and Mr. Prabhat Ranjan Singh for the State.

The appellants are the retrenched Instructors of the Science and Technology Department.

Sometimes in the year 2001, it was decided by this Court in C.W.J.C. No. 8110 of 2001 that the State, as a model employer, would do good by absorbing the retrenched Instructors and Supervisors as their services were utilized for fifteen to sixteen years and, thereafter, the entire project under which they were employed was abandoned, leaving them absolutely high and dry in the middle of their ages. Since it was in the contemplation of the State that time, the Bench dealing with C.W.J.C. No. 8110 of 2001, referred above, directed that such process which was initiated by the State be completed and the retrenched Instructors and Supervisors be absorbed. However, it so happened that the decision to absorb such retrenched employees was limited to only



the Supervisors, who were lesser in number than the Instructors.

This again led some of the Instructors to approach this Court vide C.W.J.C. No. 8418 of 2010, wherein a learned Single Judge found the distinction between the Supervisors and the Instructors to be illusory so far as the purpose of absorption was concerned and it was directed that they be also considered for being absorbed as a beneficent measure by a model employer.

The aforesaid order passed by the learned Single Judge was put to challenge in appeal vide L.P.A. No. 1489 of 2011, wherein the distinction drawn by the State was not found to be unreasonable *stricto sensu* but, considering the fact situation that not many of the Instructors would have been available for staking their claim for absorption because of their having attained the age of superannuation or having found greener pastures elsewhere, the Court directed the Government to absorb



the Instructors also, may be on Class-IV posts as per the vacancy available in different Departments but, limited such concession to those who had worked continuously for a period of three years before their retrenchment. The distinguishing line noticed by the Appellate Court was that by the time such process would be undertaken and completed, most of the Instructors would be in advanced age group who would not claim any absorption or would not be given the benefit because of their age.

However, this also was challenged before the Supreme Court when the suggestion of the Appellate Court was not interfered with but the pool of such employees was limited to the extent to only such Instructors who had approached the High Court and were heard or those who wanted to get themselves impleaded and those who had filed the applications before the Supreme Court. The benefit was to be extendable to even those Instructors whose cases were pending before the High Court on the day when this



order of Supreme Court was passed on 26.02.2016 and no other.

Pursuant to the aforementioned set of litigation, several of the Instructors were absorbed but, here also, there was charge on the Government of cherry-picking and discrimination amongst the retrenched Instructors. This led some of the Instructors, who are not the appellants here, to approach this Court vide C.W.J.C. No. 1430 of 2021, which was disposed of by order dated 31.01.2022 with a direction that the Science and Technology Department shall initiate process of recruitment to Class-IV posts of 282 vacancies on war footing basis and complete the process of selection and appointment within a period of eight months from the date of passing of the order. If those Instructors were to participate in the process of selection and appointment, necessary relaxation shall be given to them in terms of the judicial pronouncements if any.

This, Mr. Giri submits, ought to have covered



the cases of other Instructors also, who are not the petitioners in this case as the order was based on the eventuate of the litigation referred to above.

All the Instructors who had approached this Court earlier in the year 2001 or the Supreme Court before the order dated 31.01.2022 was passed or whose petitions were pending consideration before the High Court, were the class of Instructors who were to be the beneficiaries of the absorption policy. Out of that pool, some of the Instructors became the petitioners in C.W.J.C. No. 1430 of 2021, on whom only, the Department wrongly remains fixated today. The reference of the phrase "petitioners" was wrongly limited by the Department to only those persons who were writ petitioners in C.W.J.C. No. 1430 of 2021, thereby shutting out other Instructors who should also be given the benefit of such absorption.

The appellants also had approached the authorities for permitting them to participate in the



process of absorption but, as noted above, they were not considered to be the “petitioners” to be given such advantage, as they were not petitioners in C.W.J.C. No. 1430 of 2021.

Perhaps, this was because of the restrictive meaning given to the expression ‘petitioners’ in C.W.J.C. No. 1430 of 2021 when in fact the petitioners, the target beneficiaries, were all those whose cases were explained by the Supreme Court who were entitled for being considered for absorption.

The appellants here come in that category.

Only when a restrictive meaning was being given by the Department, an occasion arose for the appellants to approach this Court in C.W.J.C. No. 5722 of 2022, seeking a mandamus to the Science and Technology Department not to shut them out from the process of absorption by giving a restrictive meaning to the word “petitioners” in C.W.J.C. No. 1430 of 2021. The case of the appellants rested on the observation



made back in the year 2001 and by the Supreme Court in the year 2016. To remove the impediment in their being considered as the pool from where absorption should have taken place, such writ petition was filed.

Mr. Giri vehemently contends that it was not for the purpose of seeking a mandamus for implementation of the orders of the High Court and Supreme Court.

The difficulty faced by the appellants because of the less permissive approach of the State was sought to be removed by a direction of the Court which was erroneously taken to be an effort at seeking mandamus for implementation of the High Court's order. This is where, it has been argued, the learned Single Judge found the petition to be not maintainable.

Hence this appeal.

The appellants are the beneficiaries of the litigation referred to above, but, only because the Department of Science and Technology had not permitted them to participate in the fresh process of



absorption, that the writ petition was necessitated. It was never the plea of the appellants that the orders passed by this Court and the Supreme Court be implemented.

Though we do not find any fault with the order passed by the learned Single Judge but, allowing it to remain inviolate and without modification will unnecessarily give a space to the Science and Technology Department to shut out the appellants from the benefit of absorption which they have earned till date (the appellants had approached this Court in the year 2001 when their cases were considered). The appellants remain within the target pool of beneficiaries from where absorption has to be made and they cannot be shut out from the process without any reason.

Thus, we modify the learned Single Judge's order to mean that it shall not affect however the future of the appellants for being considered for absorption, provided vacancy exists.



In light of this modification of the learned Single Judge’s order, we permit the appellants and all such beneficiaries of the earlier litigation, whose cases have not yet been extinguished on any count, to appear in the process of absorption, which shall be considered by the concerned authority.

With the aforementioned modification, the appeal stands disposed of.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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