

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4855 of 2018

1. Sarwa Nand Prasad Singh and Ors Son of Late Ramashray Prasad Singh, Resident of village P.O.- Raksa, P.S.- Karja, District- Muzaffarpur.
2. Md. Ajim Ansari, Son of Md. Ganaur Ansari, resident of Village- Kodarksha P.S. Motipur, District- Muzaffarpur.
3. Manoj Kumar, Son of Sri Shiv Shankar Bhagat, resident of village- Kodarksha P.S. Motipur, District- Muzaffarpur.
4. Krishna Prasad Choudhary, Son of Gaya Choudhary resident of village- Baniyapur Chapra, P.S.- Motipur, District- Muzaffarpur.
5. Sindhu Kumari, Wife of Sri Dilip Kumar Srivastava, resident of Village- Narayanpur Kushahi, P.S.- Motipur, District- Muzaffarpur.
6. Shatrudhan Thakur, Son of Sri Komal Thakur, Resident of Village Kodarkata, P.S.- Motipur, District- Muzaffarpur.
7. Uma Kumari, Wife of Sunil Kumar, Resident of Vilalge Bazitpur, P.O.- Baniyarpur, P.S. Motipur, District- Muzaffarpur.
8. Sunil Kumar Sharma, Son of Sri Bharat Sharma, Resident of Village- Paratppati P.S. Sahebganj, District- Muzaffarpur.
9. Vinay Kumar Nirala, Son of Ram Dayal Prasad Singh, Resident of Village- Simra Patralay Srikant P.S. Piyar Bandra, District- Muzaffarpur.
10. Shiv Nath Prasad Yadav, Son of Late Bunilal Prasad Yadav, Resident of village Kanshpakari Visunpur, P.O. P.S.- Gulwara Madhuban, District- East Champaran.
11. Indradeo Prasad, Son of Lagru Bhagat, Resident of Village- Manjhauilya, P.O.- Jhapha, P.S. Bochaha, District- Muzaffarpur.
12. Jay Shankar Singh, Son of Sri Krishnadeo Singh, Resident of Village- Patipasa Jalal, P.O. Mirjapur Bhaya- Bochaha, P.S.- Ahiyapur, District- Muzaffarpur.
13. Ayodhaya Kumar Mahto, Son of Vishwanath Mahto, Resident of Village- Parhiya, P.O. P.S.- Saraiya District- Muzaffarpur.
14. Ram Babu Rai, Son of Sri Santu Rai, Resident of Village- Basoli Nanhakar, P.S. Bochaha, District- Muzaffarpur.
15. Satya Prakash Suman, Son of Ramshakal Das, resident of village- Raghunathpur, P.S. Mushahari, District- Muzaffarpur.
16. Sujata, Wife of Sri Nageshwar Prasad, resident of village- Vishunpur Patti, P.S. Sahebganj, District- Muzaffarpur.
17. Arun Kumar Singh, Son of Sri Daroga Singh, resident of Village- Jagdishpur, P.S. Maniyari, District- Muzaffarpur.
18. Manoj Kumar Singh, Son of Late Bindeshwari Prasad Singh, Resident of Village Ghosauta, P.S. Meenapur, District- Muzaffarpur.
19. Nilam Kumari, Wife of Rajendra Poddar, Resident of village- Jurabanpur, P.S. Barahat Dishpur, District- Bhagalpur.
20. Nilu Kumari @ Nilu Devi, D/o Late Narsingh Prasad Sah, C/o Manoj Kumar Sah, resident of village- Janidih, P.S.- Kahalgaw, District-



Bhagalpur.

21. Amrendra Kumar, Son of Sri Shakti Prasad Ram, Resident of village- Simanpur, P.S.- Pirpaiti, District Bhagalpur.
22. Vani Kumari, Wife of Suresh Prasad Sah, resident of Village- Janidih, P.S. Kahalgaw, District- Bhagalpur.
23. Kalyani Kumari, D/o Nagendra Nath Singh, resident of Village Guagachhi, P.S. Manihari, District- Katihar.
24. Murali Prasad Yadav, Son of Devi Yadav, resident of Village- Gopalpur, P.O.- Vishnupur, P.S. Rajaun, District- Banka.
25. Ramawatar Prasad Mehta, Son of Late Basudeo Mehta, resident of Village- Babhani, P.O.- Lahthua, District- Gaya.
26. Manoj Kumar Singh, son of Late Sita Ram Singh, resident of Village- Lahthua, P.O. Lahthua, P.S.- Mohapur, District- Gaya.
27. Ramanand Prasad, Son of Durga Prasad, resident of Village- Manohar Bigha, P.S.- Telhara, District- Nalanda.
28. Rita Kumari, Wife of Sundar Yadav, Resident of village- Phaggu Bigha, P.S. Sare, District- Nalanda.
29. Indu Devi, Wife of Shailesh Kumar, resident of village- Sikandarpur, P.S. Daniyama, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Human Resources Development Department, Govt. of Bihar, Patn
3. The Director, Mass Education Government of Bihar.
4. The District Education Officer, Muzaffarpur.
5. The District Mass Education Officer, Muzaffarpur.
6. The District Programme Officer Literacy, Muzaffarpur.
7. The District Education Officer, East Champaran.
8. The District Mass Education Officer, East Champaran.
9. The District Programme Officer Literacy, East Champaran.
10. The District Education Officer, Bhagalpur.
11. The District Mass Education Officer, Bhagalpur.
12. The District Programme Officer Literacy, Bhagalpur.
13. The District Education Officer, Banka.
14. The District Mass Education Officer, Banka.
15. The District Programme Officer Literacy, Banka.
16. The District Education Officer, Katihar.
17. The District Mass Education Officer, Katihar.
18. The District Programme Officer Literacy, Katihar.



19. The District Education Officer, Gaya.
20. The District Mass Education Officer, Gaya.
21. The District Programme Officer Literacy, Gaya.
22. The District Education Officer, Patna.
23. The District Mass Education Officer, Patna.
24. The District Programme officer Literacy, Patna.
25. The District Education Officer, Nalanda.
26. The District Mass Education Officer, Nalanda.
27. The District Programme Officer Literacy, Nalanda. null null

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Panchu Ram, Advocate
For the Respondent/s : Mr. Jai Prabhat Kishore, AC to SC 13

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

8 26-09-2023

Heard the parties.

2. The present petition has been filed for issuance of a writ in the nature of mandamus directing and commanding the respondents to absorb/ rehabilitate the petitioners giving them same and similar/ equitable treatment as has been given/ is going to be given to the similar situate instructors of the non-formal education scheme and for a direction to the respondents to give same and similar equitable treatment is being given to the other similar situate persons and not debar the petitioners on the ground that the petitioners were not writ petitioners earlier and/or for issuance of a writ/ order/direction for which the petitioner may be found legally entitled to under the facts and circumstances



stated herein above.

3. The petitioner(s) was/were waiting in the wings when the other such similar situate persons were pursuing their respective cases before the Patna High Court/Hon'ble Apex Court. The matter relates to Non-Formal Instructors.

4. The first case being **CWJC No. 8418 of 2010** and this followed **LPA No. 1489 of 2011** and thereafter, the matter travelled before Hon'ble the Apex Court in number of cases. The last case that came to be heard was **SLP (C) No. 32079 of 2015 (The State of Bihar & Ors. Vs Prabhat Ranjan).**

5. The important part of the order of the Hon'ble Apex Court in the said case is incorporated here-in-below:

“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. “

6. This has further been clarified in **Civil Appeal No. 59 of 2018 arising out of LPA No. 1047 of 2017** and is incorporated herein below :-

*“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. "

7. Admittedly, the petitioner(s) was/were waiting till 26.02.2016 which is the cut off date and in that backdrop, no relief can be extended to them.

8. The writ petition is accordingly, dismissed.

(Rajiv Roy, J)

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