

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5133 of 2018

1. Uma Nath Thakur and Ors son of Late Bishwa Nath Thakur, resident of Village- Kumhari, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
2. Sarita Kumari, D/o Late Someshwar Prasad Mandal, resident of Village- Kumhari, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
3. Paras Mani Ravidas, son of Late Chhutarhar Ravidas, resident of Village- Kumhari, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
4. Kiran Kumari, D/o Maheshwar Mishra, resident of Village P.O.- Bharri, P.S.- Kadwa, District- Katihar.
5. Surendra Narayan Choudhary, son of Ram Govind Choudhary, resident of Village- Kaideli Sonapur, P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
6. Nilam Kumari, D/o Nishi Kant Mishra, resident of Village P.O.- Bharri, P.S.- Kadwa, District- Katihar.
7. Chandana Kumari, D/o Brinchi Prasad Singh, resident of Village- Diyari, P.O.- Sonoli, P.S.- Kadwa, District- Katihar.
8. Sadho Ram, son of Late Kartik Ram, resident of Village- Sanjhaili, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
9. Ram Khelawan Mohali, son of Late Aghanu Mohali, resident of Village- Mohammadpur, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
10. Geeta Kumari, wife of Krishandev Mandal, resident of Village- Mohammadpur, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.
11. Yogendra Prasad Das, son of Late Jagarnath Prasad Das, resident of Village- Kursail, P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
12. Sanjay Kumar Mandal, son of Jagdish Prasad Mandal, resident of Village P.O.- Bharri, P.S.- Kadwa, District- Katihar.
13. Dilip Kumar Yadav, son of Sukhdeo Yadav, resident of Village- Deoganav, P.O.- Bharri, P.S.- Kadwa, District- Katihar.
14. Nazir Hussain, son of Irfan Ali, resident of Village- Sikorna, P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
15. Bhag Lal Choudhary, son of Lakhi Chandra Choudhary, resident of Village- Sonapur, P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
16. Anwarul Haque, son of Galib Hussain, resident of Village P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
17. Faijuddin Alam, son of Jirat Ali, resident of Village- Sikorna, P.O.- Jhaua, P.S.- Kadwa, District- Katihar.
18. Saira Bano, wife of Sasuddin Hasmi, resident of Village- Kumhari, P.O.- Durgaganj, P.S.- Kadwa, District- Katihar.

... .. 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 District Magistrate, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Advocate
For the Respondent/s : Mr.Kameshwar Kumar, GP-17

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 26-09-2023 Heard the parties.

2. The present petition has been filed for the following reliefs:-

(i) to issue a writ in the nature of mandamus commanding and directing the respondents to absorb petitioners, the Non Formal Education Instructors in regular government service as per decision of this Hon'ble Court dated 11.8.2015 passed in L.P.A. No. 1489/2011 (The State of Bihar Vs Sheo Bhajan Prasad Dewakar and others);

(ii) any other writ/writs, order/orders, direction/directions for granting any other relief or reliefs for which the petitioners are found entitled to, in the facts and circumstances of this case. benefits.



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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