

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.59 of 2018

In
Letters Patent Appeal No.1047 of 2017

-
1. The State Of Bihar
 2. The Principal Secretary, Education Department, Government of Bihar, Patna.
 3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar.
 4. The Director, Mass Education, Government of Bihar, Patna.
 5. The District Education Officer, Bhojpur.

... .. Petitioners

Versus

1. Harendra Mishra Son of Late Ram Bhawan Mishra, Resident of Village-Tilak Rai Ka Hata, P.O. Barka Rajpur, P.S.- Simari, District- Buxar.
2. Bhagwan Prasad, Son of Shri Nanhaku Prasad, Resident of VillageP.O.- Barka Singhanpura Narayanpur Bisen, P.S.- Simari, District- Buxar.
3. Anil Kumar, Son of Shri Pashupati Rai, Resident of Village- Dudhi Patti Simari, PostP.S.- Simari, District- Buxar.
4. Jitendra Kumar Prasad, Son of Shri Daya Nand Prasad, Resident of Village-Dudhi Patti Simari, PostP.S.- Simari, District- Buxar.
5. Subas Prasad, Son of Late Ganga Sagar Prasad, Resident of VillagePost-Manjhawari, P.S.- Simari, District- Buxar.
6. Ashok Kumar Mishra, Son of Shri Ram Chandra Mishra, Resident of VillagePost Keshopur, P.S.- Simari, District- Buxar.
7. Ram Niwas Singh, Son of Late Radha Mohan Singh, Resident of VillagePost- Manjhawari, P.S.- Simari, District- Buxar.
8. Dinanath Ram, Son of Late Sarju Ram, Resident of VillagePost- Simari, Dudhipatti, P.S.- Simari, District- Buxar.
9. Durgawari Devi, Wife of Shri Budhan Pandey, Resident of VillagePost-Dudhipatti, Simari, P.S.- Simari, District- Buxar.
10. Sushil Kumar Mishra, Son of Sri Ram Kishor Mishra, Resident of VillagePost- Simari, Dudhipatti, P.S.- Simari, District- Buxar.
11. Bhagmani Devi, Wife of Shri Paras Nath Rai, Resident of VillagePost Simari, P.S.- Simari, District- Buxar.
12. Manoj Kumar Sharma, Son of Late Mahendra Sharma, Resident of Village-Simari, Halwapatti, P.O.P.S.- Simari, District- Buxar.
13. Sri Ram Yadav, Son of Shri Shiv Dular Yadav, Resident of VillagePost-Gangauli, P.S.- Simari, District- Buxar.
14. Anil Kumar Ojha, Son of Late Daya Shankar Ojha, Resident of VillagePost-Barka Singhanpura, P.S.- Simari, District- Buxar.
15. Sardha Nand Ram, Son of Late Kshatra Dhari Ram, Resident of Village-



Simari Khairapatti, P.O.P.S.- Simari, District- Buxar.

16. Hridya Nand Ram, Son of Late Kshatradhari Ram, Resident of Village- Simari Khairapatti, P.O.P.S.- Simari, District- Buxar.
17. Lalbabu Prasad Keshri, Son of Late Keshav Keshari, Resident of VillagePost- Simari Dudhipatti, P.S.- Simari, District- Buxar.
18. Nagendra Prasad Keshari, Son of Shri Dinanath Prasad Keshri, Resident of Village- Simari Khairapatti, P.O.P.S.- Simari, District- Buxar.
19. Sunaina Devi, Wife of Nandlesh Pandey, Resident of Village- Bakulaha, Simari, P.O.P.S.- Simari, District- Buxar.
20. Rahman Mohamad, Son of Sri Sultan Mohamad, Resident of Village- Barka Gaon, P.O.- Nagpura, P.S.- Simari, District- Buxar.
21. Paras Nath Singh, Son of Late Ram Newaj Singh, Resident of Village Bhan Bharauli, P.O.P.S.- Simari, District- Buxar.
22. Birendra Prasad, Son of Shri Ram Nath Prasad, Resident of VillageP.O.- Dudhipatti, Simari, P.S.- Simari, District- Buxar.
23. Sri Kant Dubey, Son of Shri Kashinath Dubey, Resident of VillageP.O.P.S.- Simari, District- Buxar.
24. Mahendra Ram, Son of Late Lalan Ram, Resident of Village- Dharmapura, P.S.- Indor, P.S.- Itarhiu, District- Buxar.
25. Santosh Kumar Pandey, Son of Shri Sudarshan Pandey, Resident of VillageP.O.- Chaki Pandey Dera, P.S.- Brahmpur, District- Buxar.
26. Sushil Kumar Choubey, Son of Shri Shaligram Choubey, Resident of VillageP.O.- Dumari, P.S.- Simari, District- Buxar.
27. Hari Bansh Ram, Son of Late Sahdeo Ram, Resident of Village- Simari, Halwapatti, P.O.P.S.- Simari, District- Buxar.
28. Meera Sinha, Wife of Shri Awadesh Lal, Resident of Village- Rajpur Beni Lal Ke Dera, P.O.P.S.- Simari, District- Buxar.
29. Ravindra Dubey, Son of Shri Deomuni Dubey, Resident of Asha Parari, P.S. Simari, District- Buxar.
30. Dadan Yadav, Son of Shri Ram Beyas Yadav, Resident of VillageP.O.- Barkarajpur, P.S.- Simri, Dist- Buxar.
31. Nilima Devi, Wife of Shri Jairam Thakur, Resident of Village Tilak Rai Hata, Post Barka Rajpur, P.S.- Simari, District- Buxar.
32. Uma Devi, Wife of Shri Satyanand Mishra, Resident of VillageP.O.- Barkarajpur, P.S.- Simri, Dist- Buxar.
33. Surendra Kumar Thakur, Son of Late Siddhnath Thakur, Resident of Village- Dullahpur, P.O.- Niyajipur, P.S.- Simari, District- Buxar.
34. Sanjay Kumar Thakur, Son of Shri Tarkeshwar Thakur, Resident of VillageP.O.- Gangauli, P.S.- Simari, District- Buxar.
35. Usha Devi, Daughter of Ram Lal Singh, Resident of Village- Yadupurba, P.O.- Sarenja, P.S.- Rajpur, District- Buxar.
36. Rajesh Kumar Choubey, Son of Late Gorak Nath Choubey, Resident of Vilage- Civil Line Khadan Area, P.O.P.S.- Buxar Town, District- Buxar.



37. Rajesh Kumar Yadav, Son of Shri Ram Nath Yadav, Resident of Village-Tawakal Rai Ke Dera, P.S.- Simari, District- Buxar.
38. Chhathu Yadav, Son of Bishwanath Yadav, Resident of Village- Niyajipur Lal Singh Ke Dera, P.S.- Simari, District- Buxar.
39. Surendra Yadav, Son of Shri Rajnath Yadav, Resident of Village- Tilak Rai Ka Hata, P.S.- Simari, District- Buxar.
40. Tribhuwan Prasad, Son of Shri Barmeshwar Prasad, Resident of Village-Srikant Rai Ka Dera, Post Gangauli, P.S.- Simari, District- Buxar.
41. Rama Shankar Ram, Son of Shri Birja Ram, Resident of Village- Niyajipur Garjan Pathak Ke Dera, P.O.- Gangauli, P.S.- Simari, District- Buxar.
42. Parshuram Yadav, Son of Shri Shiv Shankar Yadav Yadav, Resident of Village- Niyajipur Jiyan Ke Dera, P.O.- Niyajipur, P.S.- Simari, District- Buxar.
43. Ganga Sagar Singh, Son of Shri Paras Nath Singh, Resident of Village-Jiyajipur Abilakh Yadav Ke Dera, P.S.- Simari, District- Buxar.
44. Chhathu Lal Yadav, Son of Shri Ram Govind Yadav, Resident of Village-Garjan Pathak Ke Dera, P.O.- Gangauli, P.S.- Simari, District- Buxar.
45. Ramanuj Pathak, Son of Ramji Pathak, Resident of Village- Dada Baba Ke Dera, P.O.- Niyajipur, P.S.- Simari, District- Buxar.
46. Rameshwar Mishra, Son of Shri Shiv Shankar Mishra, Resident of VillageP.O.- Barka Gaon Nagpura, P.S.- Simari, District- Buxar.
47. Manoj Kumar Mishra, Son of Late Narendra Kumar Mishra, Resident of VillagePost- Barka Singhanpura, P.S.- Simari, District- Buxar.
48. Sarvendra Ojha, Son of Shri Atrimuni Ojha, Resident of VillagePost Kharahatar, P.S.- Simari, District- Buxar.
49. Ravi Ranjan Kumar, Son of Late Ram Narayan Kumar, Resident of VillagePost- Dumari, P.S.- Simari, District- Buxar.
50. Ramesh Kumar Upadhyay, Son of Late Bhrigunath Upadhyay, Resident of Village- Bagahipatti, P.O.- Mahila, P.S.- Itarhi, District- Buxar.
51. Bashisth Tiwary, Son of Late Sita Ram Tiwary, Resident of VillageP.O.- Barka Singhanpur, P.S.- Simari, District- Buxar.
52. Sanjay Kumar Upadhyay, Son of Shri Nilambar Upadhyay, Resident of VillagePost- Chilahari, P.S.- Dumaraw, District- Buxar.
53. Manoj Kumar Pandey, Son of Late Lalan Pandey, Resident of VillagePost-Chilahari, P.S.- Dumaraw, District- Buxar.
54. Kamaldeo Ojha, Son of Shri Ram Sevak Ojha, Resident of Village-Kharahatar, P.S.- Simari, District- Buxar.
55. Sushil Mishra, Son of Late Sudarshan Mishra, Resident of VillagePost-Dumari, P.S.- Simari, District- Buxar.
56. Harendra Ojha, Son of Shri Atarimuni Ojha, Resident of VillageP.O.- Kharahatar, P.S.- Simari, District- Buxar.
57. Drauopadi Devi, Wife of Shri Sarvenera Ojha, Resident of VillagePost-Kharahatar, P.S.- Simari, District- Buxar.



58. Markandey Pandey, Son of Late Rama Shankar Pandey, Resident of Village-Ojhawalia, P.O.- Parasiya, P.S.- Brahmpur, District- Buxar.
59. Madhu Srivastava, Wife of Shri Sanjay Srivastava, Resident of Village-Chandpali, Post Nagawa, P.S.- Simari, District- Buxar.
60. Hardeo Prasad Singh Yadav, Son of Late Ram Chij Singh Yadav, Resident of Village- Manikpur, P.O.- Keshopur, P.S.- Simari, District- Buxar.
61. Saroja Devi, Wife of Late Nagendra Mishra, Resident of VillageP.O.- Keshopur, P.S.- Simari, District- Buxar.
62. Bans Narayan Roy, Son of Shri Bandhu Roy, Resident of VillageP.O.- Gajadhar Ganj, P.S.- Buxar Nagar, District- Buxar.
63. Anupurna Devi, Wife of Shri Arbind Mishra, Resident of Village-Barkagaon Sabalpatti, P.O.P.S.- Simari, District- Buxar.
64. Malti Devi, Wife of Shri Kashinath Prasad, Resident of VillageP.O.P.S.- Dumraon, District- Buxar.
65. Gita Devi, Wife of Shri Birbal Rai, Resident of Village- Narahi, P.O.- Rauni, P.S.- Rajpur, District- Buxar.
66. Ramjee Choudhary, Son of Shri Ramdeo Choudhary, Resident of Village-Nagawa Bin Dera, P.O.- Nagawa, P.S.- Simari, District- Buxar.
67. Ashok Kumar Paswan, Son of Shri Hari Paswan, Resident of Village- Akdar, P.O.-Hattinpur, P.S.- Brahmpur, District- Buxar.
68. Birendra Prasad, Son of Late Niranjana Prasad, Resident of VillagePost-Umedpur, P.S.- Brahmpur, District- Buxar.
69. Tej Narayan Choudhary, Son of Late Shivbeyas Choudhary, Resident of VillagePost- Akarasi, P.S.- Bagengola, District- Buxar.
70. Hare Ram Pandey, Son of Late Hari Bansh Pandey, Resident of VillagePost-Nadan, P.S.- Dumaraon, District- Buxar.
71. Nasareen Nikahat, Wife of Parvez Imam, Resident of Village- Katkauli, P.O.- Ahirauli, P.S.- Buxar Industrial, District- Buxar.
72. Banjhu Ram, Son of Shri Amawas Ram, Resident of VillageP.O.- Kamarpur, P.S.- Kamarpur, District- Buxar.
73. Ajit Kumar Ram, Son of Sri Dasarath Prasad, Resident of Village-Dharmapura, P.O.- Pasaraha, P.S.- Itarhi, District- Buxar.
74. Vidhya Sagar Dubey, Son of Late Raja Ram Dubey, Resident of Village-Balapur, P.O.- Churamanpur, P.S.- Industrial Buxar, District- Buxar.
75. Binod Kumar Singh, Son of Shri Munmun Singh, Resident of Village-Itauhana, P.O.- Tigana Basaw Kala, P.S.- Itarhi, District- Buxar.
76. Satyendra Singh, Son of Late Palatu Singh, Resident of VillageP.O.- Purana Bhojpur, P.S.- Dumraon, District- Buxar.
77. Anirudha Singh, Son of Late Sonapati Singh, Resident of Village-Dharahara, P.O.- Turiganj, P.S.- Krishna Brahm, District- Buxar.
78. Om Prakash Singh, Son of Late Dhanpal Singh, Resident of VillageP.O.- Sowan, P.S.- Krishna Brahm, District- Buxar.
79. Baban Singh, Son of Shri Bhola Singh, Resident of Village- Natadera, P.O.-



Ariyawan, P.S.- Krishna Brahm, District- Buxar.

80. Urmila Devi, Wife of Shiv Prasan Prasad, Resident of Village P.O.- Chhatnawar, P.S.- Krishna Brahm, District- Buxar.
81. Ajay Kumar Prasad, Son of Ram Sanchi Prasad, Resident of Village P.O.- Chhatnawar, P.S.- Krishna Brahm, District- Buxar.
82. Kaushalya Devi, Wife of Gopal Prasad, Resident of Village- Nomia Dera, P.O.- Amasari, P.S.- Dumraon, District- Buxar.
83. Bir Bahadur Singh, Son of Shri Kashinath Singh, Resident of Village- Banneji Dera, P.O.- Purana Bhojpur, P.S.- Dumaraon, District- Buxar.
84. Ajay Kumar Pathak, Son of Shri Nandji Pathak, Resident of Village- Bharkahara, P.O.- Nenua, P.S.- Dumaraon, District- Buxar.
85. Kalawati Kumari, Wife of Jitendra Bahadur Singh, Resident of Village- Banneji Dera, P.O.- Purana Bhojpur, P.S.- Dumaraon, District- Buxar.
86. Satyendra Kumar Rai, Son of Late Lachhuman Rai, Resident of Village- Udiyanganj, P.O.- Chhatnawar, P.S.- Krishna Brahm, District- Buxar.
87. Indrawati Devi, Wife of Late Praduman Singh, Resident of Village Post- Ariyawan, P.S.- Krishna Brahm, District- Buxar.
88. Mahendra Kumar Singh, Son of Late Ramji Singh, Resident of Village Post- Ariyawan, P.S.- Krishna Brahm, District- Buxar.
89. Nand Bihari Singh, Son of Late Godhan Singh, Resident of Village- Dubhaki, Post Ariyawan, P.S.- Krishna Brahm, District- Buxar.
90. Sumitra Devi, Wife of Dharendra Singh, Resident of Village- Samausar, Post- Bahuara, P.S.- Nawanagar, District- Buxar.
91. Lalita Devi, Wife of Chandra Shekhar Singh, Resident of Village- Dubhaki, Post- Ariyawan, P.S.- Krishna Brahm, District- Buxar.

... .. Opposite Parties

Appearance :

For the Petitioners : Mr. P.K.Shahi, Advocate General
Ms. Binita Singh, Advocate
For the Opposite Parties : Mr. Mayashankar Mishra, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 05-07-2023

The State of Bihar is seeking review of an order dated
23.01.2018, passed in LPA No. 1047 of 2017 (arising out of
CWJC NO. 384 of 2017), whereby the said appeal, under the



Letters Patent of this Court, preferred by the State of Bihar, came to be dismissed. The order of the Co-ordinate Bench under review reads as under:-

The only objection raised in this appeal is that the Hon'ble Supreme Court in S.L.P. (Civil) No.59.32079 of 2015, while dismissing the petition of the State Government, has only restricted the benefit to such of the employees who had approached the High Court, but thereafter on liberty granted by the Hon'ble Supreme Court in a petition filed directly under Article 32 of the Constitution, being Writ Petition (Civil) No.883 of 2016, the matter was again considered by a Co-ordinate Bench of this Court in various cases, including M.J.C. No.3765 of 2016 wherein Division Bench considered all these issues and the benefit was granted. Even this Bench on 12.1.2018 in L.P.A. No.1968 of 2016 has granted benefit to certain petitioners who had approached this Court subsequently.

That being the factual position, we see no reason to interfere



into the matter. In fact, while deciding the writ petition the learned Writ Court has taken note of all these factors and allowed the benefit to the employees, primarily in view of the Division Bench clarification recorded in M.J.C. No.3765 of 2016 which has been reproduced in extenso by the learned Writ Court, and taking note of all these factors, we are not inclined to interfere into the matter.

Accordingly, the appeal stands dismissed.

2. We have heard Mr. P. K. Shahi, learned Advocate General of Bihar for the State assisted by Ms. Binita Singh and Mr. Mayashankar Mishra, learned counsel for the opposite parties.

3. Before noticing the grounds taken in the present review application, we deem it proper to notice the undisputed foundational facts of the case. For the benefit of clarity in the present judgment and order, we have described the opposite parties in the present review application as ‘the writ petitioners’.

4. The Government of India had formulated a scheme in the year 1981-82, popularly known as Non Formal Education Program for imparting Non Formal Education to the children in



the age group of 06-14 years, at different centers in the State of Bihar. In order to run those centers, the post of supervisors and instructors were created on fixed stipend and appointments were made in a phased manner. The program continued from 1984-95 and was subsequently extended till 2001, when it was finally closed. The writ petitioners claimed to have been appointed as instructors under the said scheme and the dispute primarily relates to their absorption in regular service in the light of certain directions and orders issued by this Court in different matters as also the orders passed by the Supreme Court.

5. After closure of the program, some of the supervisors had approached this Court by way of filing a writ application, giving rise to CWJC No. 8110 of 2001, seeking directions for their absorption. The writ application was, however, disposed of by an order dated 02.07.2009 in the wake of the statement made on behalf of the State of Bihar that the matter of absorption of the supervisors, employed under the said program, was under active consideration by the Government. This Court, by aforesaid order dated 02.07.2009, while disposing of CWJC No. 81110 of 2001, directed the State respondents to complete the process of absorption of the supervisors. In due course of the time, the supervisors employed



under the aforesaid program were absorbed against Class III posts.

6. In the aforesaid backdrop, some of the erstwhile instructors, who were associated with the program, approached this Court by filing a writ petition, giving rise to CWJC No. 8418 of 2010, with a plea that they deserve the same treatment as had been meted out to the supervisors and accordingly they also claimed their absorption in regular service under the State Government, as has been done in the case of the supervisors. The writ application was allowed by an order dated 21.04.2011 with a direction to the State respondents to absorb the petitioners of that case in regular government service as per their qualification and eligibility. Relevant portion of the order passed by a learned Single Judge of this Court is being reproduced herein below:

" In the circumstances, this Court finds that the respondents are not justified in not absorbing the instructors also in regular service at least on Class-IV posts and on the lines they have absorbed the Supervisors of the Programme. In the circumstances, this Court directs the respondents to apply the same policy in respect of the Instructors of the



Programme also and absorb them in regular Government Service as per their qualification and eligibility. For this purpose, the respondents shall identify such Instructors of the Programme who were validly appointed and subsequently stand thrown out on account of closure of the Programme and issue orders for their absorption positively within a period of found months from the date of receipt /production of a copy of this order.

The writ application is, accordingly, allowed with the aforesaid observations and directions."

7. The State Government of Bihar, thereafter preferred an intra-court appeal bearing LPA No. 1489 of 2011 (***The State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others***) questioning the correctness of the single bench order dated 21.04.2011 (supra). The appeal came to be dismissed by a Co-ordinate Bench of this Court by an order dated 11.08.2015, which has been brought on record by way of Annexure-2 to the present review application. It is noted that the said Letters Patent Appeal was heard by the Co-ordinate Bench



of this Court along with the writ application and other analogous matters involving identical issues. There were several intervention applications filed. The Court, in its decision, in case of ***the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others*** (supra) noted that no order was required to be passed thereon because the benefits would be applicable to all similarly situated persons. The Division Bench, in case of ***the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others*** (supra), while dismissing the intra-court appeal, made following observations in paragraphs 10 to 12:-

"10. We would only like to add that the State policy in respect of Supervisors be adopted mutatis mutandis with only addition that it would apply to the Instructors, at the time when the non-formal education scheme was abolished, in which they were. The respondents/writ petitioners do not insist on Class III posts but submits that State Government should take them into service on Class IV posts as per the vacancies available in different Departments. It surely cannot extend to people, who, at any distinct point of time, had worked for a short period and then left the work. They can have no legitimate claim in this regard.



11. In view of the aforesaid, this Letters Patent Appeal is dismissed with observations and directions contained hereinabove. The tagged writ petitions are allowed in the same terms, the Civil Review is also allowed and the writ petition stands disposed of.

12. Needless to say that most of the Instructors would be in advance age group, the rehabilitation cannot be provided, of course, not to extend to those who have reached the age of superannuation or are towards the end of their working career. "

8. The State preferred Special Leave Petition before the Supreme Court putting to challenge the Division Bench decision of this Court rendered on 11.08.2015, passed in LPA No. 1489 of 2011 (***the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others***). The Supreme Court, by an order dated 26.02.2016, dismissed the said SLP in the following terms:-

" 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 and par with those formal as well as all those petitioners instructors which are pending as on date before the High Court, but shall not



apply to any fresh case either here of before the High Court".

9. In the meanwhile, a Civil Review Application No. 36 of 2012 was filed seeking review of the order of this Court dated 11.08.2015, giving rise to Civil Review No. 291 of 2016 (***Meera Kumari and another V/s. The State of Bihar and others***).

10. The said Review Application was allowed to be converted into an application for modification of an order passed in Civil Review No. 36 of 2012. Accordingly, MJC No. 3765 of 2016 (***Meera Kumari and another V/s. The State of Bihar and others***) came to be registered. The grievance of the petitioners in MJC No. 3765 of 2016 was that the relief granted in those proceedings were being extended only to such persons, who were the parties in those proceedings, and despite the fact that the petitioners were identically situated, they were not being treated similarly. A Co-ordinate Bench of this Court taking into account the Supreme Court's decision, in the case of ***Ashwani Kumar & others – versus – State of Bihar & Others*** (AIR 1997 SC 1628), passed following order on 25.01.2017 in MJC No. 3765 of 2016 (***Meera Kumari and another V/s. The State of Bihar and others***):-



"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 everybody is required to move the Court. Persons, in similar circumstances, must be treated similarly."

11. Against the order of this Court dated 25.01.2017, the State of Bihar preferred an SLP before the Supreme Court. The Supreme Court, by an order dated 08.09.2017 passed in SLP (Diary No. 25804 of 2017) preferred by the State of Bihar (***State of Bihar and others V/s Meera Kumari and another***), stayed this Court's order dated 25.01.2017, passed in case of ***Meera Kumari and another*** (supra). The Civil Appeal No. 7351 of 2021 was finally disposed of by the Supreme Court on 02.12.2021 with following clear observations:-

"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. While it may be true that, generally, similarly situated persons, irrespective of whether they move the Court or not, must be similarly treated, this principle cannot be applied when this Court has spoken and pronounced the order in terms as order dated 26.02.2016. Equally unsustainable is the finding that those who are waiting in the wings cannot be denied the relief which is granted by the Court unless the relief is personal to the person. Reference similarly to the provision of Clause 4(c) of the Bihar State Litigation Policy



was, in our view, a product of error following non-advertence to the terms of the order dated 26.02.2016. The final observation in paragraph 4 that if the petitioners are similarly circumstanced to other persons, they would be similarly treated, does not involve a clear finding as to whether these persons were within the ambit of the order dated 26.02.2016. It was incumbent upon the High Court to have decided the case in other words with specific reference to what has been stipulated by this Court by its order dated 26.02.2016. We reiterate the said principle. Shri Amit Pawan points out that following the order of the High Court, respondent Nos. 1 and 2 were appointed and subsequently, their services have been terminated. It is, however, pointed out that they have filed petitions before the High Court which are pending consideration. 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."

12. It is manifest from the records that the order, under review by a Co-ordinate Bench of this Court, was passed in the light of the decision rendered by this Court in MJC No. 3765 of 2016 (***Meera Kumari and another V/s. The State of Bihar and others***) by an order dated 25.01.2017, without noticing the fact that the said order was stayed by an interim order dated 08.09.2017, passed by the Supreme Court. As has been noted herein above, the SLP preferred by the State of Bihar (***State of Bihar and others V/s Meera Kumari and another***) has been finally disposed of on 02.12.2021.

13. Mr. P. K. Shahi, learned Advocate General appearing on behalf of the State has submitted that it is manifest from this Court's order under review dated 23.01.2018, passed in LPA No. 1047 of 2017, that the same was passed without taking into account the fact that this Court's order dated 25.01.2017 passed in MJC No. 3765 of 2016, was stayed. He has further submitted that it is an undisputed fact that the writ petitioners had neither approached this Court nor the Supreme Court by filing any application, nor had they intervened in any



proceedings prior to 26.02.2016. He has submitted that in view of the Supreme Court's order dated 26.02.2016 (supra), the issue attained finality, as regards the fact that the relief granted by High Court would be restricted to only those who had 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 would not apply to any fresh case either here or before the High Court. He has further submitted that the Supreme Court, in its subsequent decision in case of ***State of Bihar and others V/s Meera Kumari and another***, has made it clear that the order of the Supreme Court dated 26.02.2016, could not be deviated by the High Court and the High Court had erred in referring to certain general principles by holding that all persons similarly situated, whether they had moved the Court or not, must be similarly treated. The Supreme Court concluded that the said finding of the High Court was in teeth of the clear terms of the order passed by this Court dated 26.02.2016.

14. Mr. Mayashankar Mishra, learned counsel appearing on behalf of the writ petitioners/opposite parties, on the other hand, has submitted that they had approached the



Supreme Court under Article 32 of the Constitution of India and since they had been granted liberty by the Supreme Court to approach this Court, the order under review is not required to be reviewed. He has submitted that whether the cases of the private respondents, who had approached this Court, though after 26.02.2016, was required to be considered distinctly, in view of the fact that they were granted liberty by the Supreme Court to approach this Court.

15. We have carefully gone through the orders under review as well as various orders passed by this Court and the Supreme Court, as noted above. The Supreme Court had made it clear in its order dated 26.02.2016, in SLP No. 32079 of 2015 (*The State of Bihar and others V/s Prabhat Ranjan*), while upholding this Court's order dated 11.08.2015, passed in CWJC NO. 21391 of 2011 and other analogous cases including LPA No. 1489 of 2011 (*the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others*) that the relief granted by this Court by the said order shall be restricted to those who had approached the High Court, who were heard as well as who wanted to get themselves impleaded and those who had filed applications before the Supreme Court at par with those former as well as those petitioner-Instructors which are



pending as on date before the High Court, but shall not apply to any fresh case either before the Supreme Court or the High Court. The unambiguous language used by the Supreme Court in its order dated 26.02.2016, made it abundantly clear that those, who have not approached either of the Courts, i.e., the Supreme Court or the High Court in any manner on or before 26.02.2016, shall not get the benefit of the High Court's order dated 11.08.2015 passed in LPA No. 1489 of 2011 (*the State Government of Bihar and others V/s Sheo Bhajan Prasad Diwakar and others*). The Co-ordinate Bench of this Court, in case of *Meera Kumari and another V/s The State of Bihar and others*, applying the general principles, laid down in the case of *Ashwani Kumar and others V/s The State of Bihar*, had opined that all the persons, similarly situated, whether they have moved the High Court or not, must be similarly treated. It does not appear from this Court's order dated 25.01.2017, that the order of the Supreme Court dated 26.02.2016 was brought to the notice of the Co-ordinate Bench of this Court in the case of *Meera Kumari and another V/s The State of Bihar and others*. The said order dated 25.01.2017, passed in case of *Meera Kumari and another V/s The State of Bihar and others*, was firstly stayed by an order dated 08.09.2017 by the Supreme



Court, as has been noticed herein above. Apparently, without noticing the interim order passed by the Supreme Court dated 08.09.2017, a Co-ordinate Bench of this Court passed the order under review on 23.01.2018. After filing of the present review application, the Co-ordinate Bench noticed the fact that the said order was passed in the light of Co-ordinate Bench's order of this Court in MJC No. 3765 of 2016 without taking into account that the order passed in that case was stayed by the Supreme Court. Accordingly, by an order dated 27.06.2018, the order under review was directed to be kept in abeyance.

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.

(Chakradhari Sharan Singh, J)

I Agree.
Madhuresh Prasad, J:

(Madhuresh Prasad, J)

Nishant/-

AFR/NAFR	NAFR
CAV DATE	24.02.2023.
Uploading Date	06.07.2023.
Transmission Date	

