

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13909 of 2019

1. Ranjit Kumar, Son of Late Ramayan Sah, Resident of Village- Chouki Hassan, P.S.- G.B. Nagar, Tarwara, District- Siwan.
2. Gopal Anand, Son of Late Shiv Shankar Prasad, Resident of Village- Hariya, Civil Aerodram, P.S.- Magadh Medical College, District- Gaya.
3. Ranjan Kumar Singh, Son of Late Satyanarayan Singh, Resident of Mohalla- House No.1, Indira Nagar, P.O.- G.P.O., P.S.- Patliputra, District- Patna.
4. Raj Kumar, Son of Late Mishrilal, Resident of Mohalla- Patel Nagar, P.O. and P.S.- Shashtri Nagar, District- Patna.
5. Gourav Kamal, Son of Late Kameshwari Prasad, Resident of Mohalla- B/30S- Vaishanvi Palaza, Apartment Boaring Canal Road, P.S.- S.K. Puri, District- Patna.
6. Ajay Kumar, Son of Late Nathuni Rout, Resident of Mohalla- Magalpur, P.O.- Lalbagh, District- Darbhanga.
7. Zahado Bano, Wife of Late Minhazul Haque, Resident of Mohalla- New Millat Colony, Sector No.1, P.S.- Phulwari Sharif, District- Patna.
8. Sandhya Rani, Wife of Late Anjani Kumar, Resident of Mohalla- Bapu Nagar, North Mandiri, P.O.- G.P.O., P.S.- Buddha Colony, District- Patna.
9. Brij Mohan Kumar Sinha, Son of Late Shiv Narayan Prasad Sinha, Resident of Mohalla- New Bigrahpur, P.O.- G.P.O., P.S.- Jakkanpur, District- Patna.
10. Manoj Kumar Jha, Son of Late Yogendra Jha, Resident of Village- Rotpa, P.S.- Madhubani, District- Patna.
11. Mod Salim Ahmad, Son of Late Baddudin, Resident of Mohalla- Dargah Sah, Arja, P.O.- Mahendru, P.S.- Sultanganj, District- Patna.
12. Brij Kishore Prasad, Son of Late Rajeshwar Prasad Resident of Village- Baghi, Bhagalpur, P.O.- Patjirwa, P.S.- Bairiya, District- West Champaran.
13. Uday Kumar, Son of Late Ayodhya Ram, Resident of Village and P.O.- Kurthoul, P.S.- Parsa Bazar, District- Patna.
14. Shekhar Kumar, Son of Late Premchand Ram, Resident of Mohalla- Ambedkar Nagar, Sandalpur, P.O.- Mahendru, P.S.- Sultanganj, District- Patna.
15. Jitendra Kumar II, Son of Late Chandrika Rout, Resident of Village- English, P.O.- Nawadih, P.S.- Paharpur, District- East Champaran.
16. Sujeet Kumar II, Son of Late Raj Kishore Singh, Resident of Mohalla- Shiv Mandir, Gali, Golghar Chouraha, P.S.- Gandhi Maidan, District- Patna.
17. Rajeev Ranjan Kishore, Son of Late Chandra Kishore Prasad, Resident of Village- Shiv Nagar, Sct- Pipra, P.O.- Ramgardhwa, P.S.- Ramgardhawa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.



2. The Chairman, Bihar School Examination Board, Bihar, Patna.
3. The Secretary, Bihar School Examination Board, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr.Abhinav Srivastava, Advocate
		Mr. Dhaneshwar Prasad Singh, Advocate
For the BSEB	:	Mr. Satyabir Bharti, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 19-04-2023

Petitioners in the present case are seeking to challenge the order dated 11.12.2018 contained in Memo No. 6810 passed by the Chairman, Bihar School Examination Board, Patna (hereinafter referred to as the 'BSEB' or the 'Board') by which the representation dated 20.04.2018 submitted by the petitioners and others for absorption on the post of Assistant from the date of their obtaining the degree of Graduation and also for granting the pay scales of the post of Assistant from the said date has been rejected.

Brief Facts of the case

2. The petitioners were appointed on the post of Upper Division Clerk in the BSEB between the year 2008 to 2011. They have done graduation from the universities in the State of Bihar and other institutions. It is the case of the petitioners that the BSEB/Board took a policy decision to grant benefit of the



post of Assistant to the employees working on the post of Clerks with effect from the date they obtained their degree of graduation. It is stated that in the case of one **Amit Kumar Shukla** an employee of the Board, in **C.W.J.C. No. 1057 of 2009**, a counter affidavit was filed by the Board on 06.10.2012 in which Memo No. 854 dated 12.09.2012 was annexed stating that the petitioner has been absorbed in the service of the Board on the post of Assistant in pursuance of the report of the Absorption Committee constituted for absorption of the employee of the dissolved Bihar Intermediate Education Council, Patna (hereinafter referred to as the 'BIEC' or 'Council'). It is further stated that thereafter, the writ application was withdrawn. The Board came out with order dated 25.04.2013 whereby ten employees of the Council were granted benefit of the post of Assistant with effect from the date of their obtaining graduation degree. A copy of the counter affidavit filed on behalf of the Board is said to have been enclosed as Annexure '1' series to the writ application but on perusal of the records this Court finds that Annexure '1' series is the copy of the order dated 25.04.2013.

3. It is further stated that some of the employees identically situated with the petitioners preferred C.W.J.C. No.



14221 of 2006 which was disposed of on 25.07.2007 with a direction to the competent authority to consider their case afresh. The specific case of the petitioners is that 44 identically situated employees have been granted benefit of the post of Assistant from the date of their attaining graduation.

4. The petitioners had earlier moved this Court in C.W.J.C. No. 10149 of 2017 for a direction to the respondent authorities of the Board to grant them similar benefits which were granted to the other similarly situated from the date of their obtaining graduation degree. The said writ application was disposed of vide order dated 16.04.2018 passed by this Court wherein respondent no. 1 was directed to dispose of the representation of the petitioner within a period of four weeks. It is submitted that in terms of the order of this Court, the petitioners filed a representation dated 20.04.2018 (Annexure '6' to the writ application) but the said representation of the petitioners has been rejected vide impugned memo no. 6810 dated 11.12.2018. The petitioners have challenged the rejection.

Stand of the BSEB

5. A counter affidavit has been filed on behalf of the BSEF. It is stated that the petitioners have moved this writ application on the principles of parity as according to them,



their case stands on similar footing with that of the 44 employees of the Board and the 10 employees of the BIEC. It is stated that the employees of the BIEC had earlier moved this Court in C.W.J.C. No. 22060 of 2019 whereas the employees of the BSEB have moved this Court in C.W.J.C. No. 1642 of 2021.

6. It is stated that C.W.J.C. No. 22060 of 2019 had been disposed of vide order dated 01.12.2021 with a direction to the respondents to reconsider the claims of the employees of the erstwhile BIEC and to pass a fresh reasoned order. Accordingly the Board has passed a fresh reasoned order dated 27.01.2022 whereby the claim of the said petitioners who were the employees of the BIEC and whose services were absorbed in the Board after abolition of the Bihar Intermediate Education Council have been rejected.

7. Mr. Satyabir Bharti, learned counsel for the Board has further submitted that those ten employees of the BIEC had challenged the order dated 27.01.2022 by filing C.W.J.C. No. 3962 of 2022 (Ram Bahadur Mochi & Ors. Vs. The State of Bihar & Ors.) which has been dismissed by this Court on 18.03.2023.

8. Learned counsel further submits that so far as the employees of the Board are concerned, in their case also the



benefits were granted to them of the post of Assistant from the date of their attaining graduation which has been revoked and a challenge to the same is pending consideration before this Court. It is submitted that in the said case which has been argued simultaneously with the present case, the petitioners have taken a categorical stand that they are not claiming the benefit of the post of Assistant and their only prayer is that the payments already made to them be not recovered. It is, thus, submitted that so far as the payability of the benefit of the post of Assistant to the similarly situated persons are concerned, it has received a finality in the case of **Ram Bahadur Mochi (supra)** and the petitioners in C.W.J.C. No. 1642 of 2021 are not claiming the benefits rather at this stage they are only praying that the recoveries be not made from them in the light of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. vs. Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334.

Submissions of the Petitioners

9. Mr. Abhinav Srivastava, learned counsel for the petitioners having fully understood the impact of the judgment of this Court in the case of **Ram Bahadur Mochi (supra)** and the submissions advanced on behalf of the petitioners in



C.W.J.C. No. 3962 of 2021 submits that if the employees of the BIEC who have been absorbed in the service of the Board have lost their claim for the benefit of the post of Assistant from the date of their obtaining graduation degree and now the employees of the Board who were given the same benefit on the ground that the employees of the BIEC/Council who are similarly situated are getting the said benefit, have restricted their argument only to the extent that the payments already made be not recovered from them, it would perhaps be difficult for these petitioners to stake their claim on the principle of parity.

10. Learned counsel for the petitioners has in fact submitted that the issue being the payability of the said benefit of the post on the date of obtaining graduation degree being no more *res integra*, it would be difficult for him to continue with the claims.

Considerations

11. Having heard learned counsel for the petitioners and learned counsel for the BSEB as also in the nature of the materials present on the record, this Court is of the considered opinion that the whole case of these petitioners are based on their submission that the other employees of the Board and the



Council who have been absorbed in the Board were given the benefit of post of Assistant from the date of their obtaining graduation degree. The discussions made hereinabove make it crystal clear that the employees of the erstwhile Council/BIEC who were absorbed in the service of the Board have already lost their cause in C.W.J.C. No. 3962 of 2022 and the employees of the Board who got the benefits on similar principle are no longer claiming the benefits of the post of Assistant from the date of their obtaining graduation degree rather they are only praying before this Court for not allowing recoveries of the payments already made. In fact, the learned counsel for the petitioners having understood the developments which have taken place in the cases of other employees rightly contended that in such circumstance it will be difficult for him to pursue with the similar claims.

12. In these circumstances, the very foundation of the writ petition has gone. This writ application has therefore, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	17.04.2023
Uploading Date	19.04.2023
Transmission Date	

