

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1254 of 2016

In

Civil Writ Jurisdiction Case No.16580 of 2014

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1. The State Of Bihar
 2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
 3. The Director, Primary Education, Government of Bihar, Patna
 4. The District Education officer, Jamui
 5. The District Programme Officer Establishment , Jamui

... .. Appellant/s

Versus

1. Sanjay Kumar Chaudhary and Ors S/o Lakhan Choudhary Resident of Village - Chakrasalpur, P.O. Rana Bigha, P.S. Deepnagar, District - Nalanda
2. Dharmendra Kumar S/o Sri Ram Bilash Paswan resident of village - Gongripar, P.O. Hargawan, P.S. Manpur, Distt. - Nalanda
3. Mukund Murari S/o Sri Mahendra Paswan Resident of Village P.O. Dafarpur, P.S. Navkothi, District - Begusarai
4. Rekha Kumari D/o Shiwan Ram Resident of Village - Ram Sir, P.O. Singhchak, P.S. Chanan, District - Lakhisarai
5. Sawan Kumar S/o Sri Sahdeo Paswan Resident of Village P.O. Dafarpur, P.S. Navkothi, District - Begusarai
6. Ajay Kumar Mahto S/o Ram Chandra Mahto Resident of Village - Chak Rasalpur, P.O. Tajpur, P.S. N.H. Bangra, District - Samastipur
7. Arun Kumar Das S/o Ram Briksh Das Resident of Village - Kutubpur Khalsa, P.O. Saidpur Kutubpur, P.S. Bidupur, District - Vaishali

... .. Respondent/s

with

Letters Patent Appeal No. 707 of 2016

In

Civil Writ Jurisdiction Case No.6753 of 2013

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1. The State Of Bihar
 2. The Chief Secretary, Govt. of Bihar, Patna.
 3. The Principal Secretary Human Resources Department, Govt. of Bihar, Patna.
 4. The Director, Primary Education, H.R. Govt. of Bihar, Patna.
 5. The District Education Officer, Vaishali.



6. The District Programme Officer, Establishment, Vaishali.

... .. Appellant/s

Versus

1. Shanti Kumari daughter of Jagdeo Rai resident of Village Rajapakar, Police Station - Rajapakar, District - Vaishali.
2. Shivpujan Rai son of Gulab Rai resident of village and Police Station - Rajapakar, District - Vaishali.
3. Fakir Prasad Singh son of Late Jagdishwar Rai resident of village and P.S. Rajapakar, District - Vaishali.
4. Bajrangi Singh son of Late Dipan Singh resident of village - Arari, P.S. - Sarai, District - Vaishali.
5. Parmanand Singh son of Late Brahmdeo Singh resident of Rushupur Psti, P.S. - Mahua, District - Vaishali.
6. Yadunandan Singh son of Late Gulab Chand Singh resident of village Prasonia, P.S.- Mahua, District - Vaishali.
7. Mukhtar Singh son of Maithur Singh resident of village and P.S. Rajapakar, District - Vaishali.
8. Ramjee Singh son of Ram Parikchhan Singh resident of village - Chaktha-Kurasi, P.S. - Biddupur, District - Vaishali.
9. Chandradeo Rai son of Late Fudari Rai resident of village Salempur Nandlalpur, P.S. - Lalganj, District - Vaishali.

... .. Respondent/s

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with

Letters Patent Appeal No. 1739 of 2016

In

Civil Writ Jurisdiction Case No.7504 of 2013

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1. The State Of Bihar through Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
2. The Director, Primary Education, Government Of Bihar, Patna.
3. The District Education Officer, Vaishali At Hajipur.
4. The District Programme Officer Establishment, Vaishali At Hajipur.
5. The Block Education Officer, Block- Deshri, District- Vaishali At Hajipur.

... .. Appellant/s

Versus

Ram Babu Singh S/O Sri Ram Milan Singh Resident Of Village- Bhatauli Bhagwan, P.O.P.S.- Kartahan, District- Vaishali At Hajipur.

... .. Respondent/s



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with
Letters Patent Appeal No. 1741 of 2016
In
Civil Writ Jurisdiction Case No.6778 of 2013

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1. The State Of Bihar, through the Commissioner cum Secretary, Department of Education, Govt. of Bihar, New Secretariat, Bihar, Patna
2. The Director, Department Of Primary Education, Government Of Bihar, New Secretariat, Bihar, Patna.
3. The District Magistrate, Vaishali.
4. The District Education Officer, Vaishali.
5. The District Programme Officer Establishment, Vaishali.
6. The Block Education Officer, Raghopur Block District Vaishali.

... .. Appellant/s

Versus

Om Prakash Pankaj Son Of Dyali Paswan Resident Of Village- Rushulpur
Turki, P.O.- Ashoi, P.S.- Bhagwanpur, District- Vaishali.

... .. Respondent/s

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with
Letters Patent Appeal No. 1743 of 2016
In
Civil Writ Jurisdiction Case No.7045 of 2013

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1. The State Of Bihar
2. The Director Department Of Primary Education, Government Of Bihar, New Secretariat, Bihar, Patna. null null
3. The District Magistrate, Vaishali.
4. The District Education Officer, Vaishali.
5. The District Programme Officer Establishment, Vaishali.
6. The Block Education Officer Sahdae Buzurg, Block District- Vaishali.
7. The Secretary, Basic Education Council, Uttar Pradesh, Allahabad.

... .. Appellant/s

Versus

Nand Kishor Singh S/O Ram Sarekh Singh R/O Village- Uchidih, P.O.-
Bidupur, P.S.- Bidupur, District- Vaishali

... .. Respondent/s

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with



Letters Patent Appeal No. 2291 of 2016
In
Civil Writ Jurisdiction Case No.7042 of 2013

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1. The State Of Bihar, through the Commissioner cum Secretary, Department of Education
 2. The Director, Department of Primary Education, Government of Bihar, Patna.
 3. The District Magistrate, East Champaran, Motihari.
 4. The District Education officer, East Champaran, Motihari.
 5. The District Programme Officer Establishment, East Champaran, Motihari.
 6. The Block Education Officer, Chakia Block, District- East Champaran.
 7. The Block Education Officer, Rakshaul Block, District- East Champaran .
 8. The Block Education Officer, Kalyanpur Block, District- East Champaran.
 9. The Secretary, Basic Education Council, Uttar Pradesh, Allahabad.

... .. Appellant/s

Versus

1. Satendra Kumar Son of Sri Pashupati Prasad Resident of Village- Pakaridih, P.O.- Pairga, P.S.- Amnaur, District- Saran.
2. Ram Sobhit Sah Son of Sri Akalu Sah Resident of Village- Saifpur, P.O. Jadhua, P.S. Babubarhi, District- Madhubani.
3. Rajendra Kamat Son of Mahesh Kamat Resident of Village- Barail, P.O.- Teghra, P.S. Babubarhi, District- Madhubani.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1254 of 2016)

For the Appellant/s : Mr. Ashok Kumar Pathak
For the Respondent/s : M/s Sanjeev Kumar Mishra
Sudhir Kumar Singh
Gopal Bohra, Advocates

(In Letters Patent Appeal No. 707 of 2016)

For the Appellant/s : Mr. Ashok Kumar Pathak
For the Respondent/s : M/s Kamal Nayan Choubey, Sr. Advocate
Gyanendra Kumar Shukla, Advocate

(In Letters Patent Appeal No. 1739 of 2016)

For the Appellant/s : M/s Pankaj Kumar, SC 12
Manoj Kumar, AC to SC 12
For the Respondent/s : Mr. Banbari Sharma, Advocate

(In Letters Patent Appeal No. 1741 of 2016)

For the Appellant/s : M/s Pankaj Kumar, SC 12
Manoj Kumar, AC to SC 12
For the Respondent/s : Mr. Gyanendra Kumar Shukla, Advocate



(In Letters Patent Appeal No. 1743 of 2016)

For the Appellant/s : M/s Pankaj Kumar, SC 12
Manoj Kumar, AC to SC 12

For the Respondent/s : Mr. Gyanendra Kumar Shukla, Advocate

(In Letters Patent Appeal No. 2291 of 2016)

For the Appellant/s : M/s Pankaj Kumar, SC 12
Manoj Kumar, AC to SC 12

For the Respondent/s : M/s Pravin Ranjan
Shashi Bhushan Kumar, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-08-2023

1. The appeals are by the State of Bihar against the judgments in writ petitions, holding that the petitioners, who figured in the list of 34540 elementary teachers approved by the Hon'ble Apex Court on the recommendation of the Bihar Staff Selection Commission should not be disturbed. It was also held in CWJC No. 6753 of 2013 that it was for the Commission to have done their job carefully and had it been a little more vigilant the present situation could have been averted. Following the judgment of the Hon'ble Supreme Court, the learned Single Judge refused interference with the appointments. This judgment was followed in the other writ petitions against which also the State of Bihar has filed the appeals. In the judgments passed following the judgment in CWJC No. 6753 of 2013, the Director, Secondary Education,



Government of Bihar was directed to verify their cases and if found similar to that of the petitioners in CWJC No. 6753 of 2013 to annul the order passed by the District Education Officer, Jamui terminating their services and order reinstatement immediately thereafter.

2. The State is in appeal especially contending that the qualification of the respondents herein who were the writ petitioners were not valid. In the said circumstances it is prayed that there should be a re-examination of the appointment granted itself.

3. We have heard learned Government Advocate Pankaj Kumar, SC 12 assisted by Kamlesh Kumar, AC to SC 12 for the appellants and learned Senior Counsel Kamal Nayan Choubey and learned counsels Banwari Sharma, Gyanendra Kumar Shukla, Sudhir Kumar Singh, Pravin Ranjan and Shashi Bhushan Kumar for the respondents.

4. We have to notice the background facts for a proper understanding of the issue raised now. Special Leave Petition (Civil) Nos. 22882 - 22888 of 2004 were filed by several trained teachers for a direction to appoint them in the vacancies in the post of primary teachers in the State of Bihar. On 18.01.2006, the State Government submitted an undertaking



before the Hon'ble Supreme Court that there is a decision taken to recruit trained teachers as per the new recruitment Rules contemplated, especially in the context of the Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the High Court of Patna. It was also undertaken that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required. It was, hence, undertaken that there is no requirement to refer the selection to the Bihar Public Service Commission to initiate the process of recruitment and to that extent the judgment of the High Court of Patna may be modified.

5. The Hon'ble Supreme Court by order dated 23.01.2006 disposed of the SLPs recording the undertaking. However, the undertaking was not complied with and hence a number of contempt petitions were filed. In the contempt petitions, the State raised a contention that, in the subsequent period there were more teachers qualified, than on the date of undertaking and that there would be requirement for a proper selection to be conducted. In fact, the submission was to the effect that there are more teachers than the vacancies available and hence there should be a selection conducted. However, the Hon'ble Supreme Court was of the opinion that the undertaking



as on that date should be complied with by the State of Bihar. The Hon'ble Supreme Court also ascertained a total of 34540 vacancies which were available as on the date of undertaking. The persons who were qualified as on the date of undertaking were directed to be appointed. Justice V.A.Mohta, a retired Chief Justice of the Orissa High Court was appointed as Special Officer in whose presence the select list was to be settled. Justice V.A. Mohta recused from the assignment and Justice S.K.Chattopadhyay, a retired Judge of the High Court of Patna was appointed in his place.

6. A list was prepared in accordance with the directions of the Hon'ble Supreme Court and later, again contempt petitions were considered by the Hon'ble Supreme Court as seen from the order dated 13.10.2011. The order passed in Contempt Petition No. 297 of 2007 is produced as Annexure 2 along with the supplementary affidavit filed on behalf of the appellant-State of Bihar in LPA No. 707 of 2016. The learned Government Advocate alertly points out the issue raised therein and the order passed by the Hon'ble Supreme Court in so far as verification of the credentials of the candidates. We specifically extract the same:

“The second issue which has been raised by Mr. Kailash Vasdev is with regard to the examination of



the certificates and other documents that may be produced by the candidate concerned at the time of counselling and appointment. In the event, during scrutiny it is found that any of the documents do not conform to the requirements, the concerned authorities will be at liberty to take appropriate steps regarding the said candidate."

7. Learned Government Advocate submits that it is in compliance of such direction that now the procedure has been taken up to verify the eligibility of the certificates produced by the individual respondents herein, who are the writ petitioners in the batch of writ petitions.

8. In this context we specifically observe that when the said order was passed by the Hon'ble Supreme Court in Contempt Petition No. 297 of 2007, on 13.10.2011, Justice Chattopadhyay's report was already in place. The Bench of the Hon'ble Supreme Court specifically expressed their appreciation on the work carried out by Justice Chattopadhyay. Hence there could be nothing further agitated by the State with respect to the persons who are included in Justice Chattopadhyay's list; which the party respondents herein assert they were and so were they appointed in compliance of the judgment of the Hon'ble Supreme Court.

9. Now we come back to the last of the orders



passed by the Hon'ble Supreme Court in SLP (Civil) No. 26824 of 2012 on 18.07.2013. Therein the order passed on 13.10.2011 in Contempt Petition No. 87 of 2013 arising in Contempt Petition (Civil) No. 297 of 2007 in SLP (C) No. 22882 of 2004 was specifically noticed. It was found that those who have been appointed as against the 34540 vacancies shall not be disturbed. It was also noticed that there were 2413 vacancies posts remaining unfilled. That SLP was with respect to candidates who have not obtained admission as per Justice Chattopadhyay's list. The Hon'ble Supreme Court hence directed that all these candidates could approach the Hon'ble High Court to agitate their individual grievances. In fact as of now, in the present batch of appeals, none of these candidates are persons who had approached the Hon'ble Supreme Court whose case was considered in SLP (C) No. 26824 of 2012. At the risk of repetition, we notice that the party respondents herein are persons who are included in Justice Chattopadhyay's list but who are said to have been not holding valid qualifications, on which ground the State has now terminated them.

10. In this context, we again look at the judgment of the Hon'ble Supreme Court in SLP (C) No. 26824 of 2012 wherein the following directions were issued :

“We also direct that the applications,



special leave petitions and writ petitions filed before us be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working. We have been informed during the hearing that about 2413 posts out of the 34,540 posts were still left to be filled up. All the applications, Special Leave Petitions and Writ Petitions are, therefore, disposed of in the light of the aforesaid observations. We make it clear that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question.”

11. By the aforesaid extract, the Hon’ble Supreme Court had categorically held that there cannot be any disturbance of those persons who were appointed as against the 34540 vacancies, who are presumably those persons included in Justice Chattopadhyay’s list.

12. In such circumstances, there could be no termination on the basis of a further verification. We perfectly agree with the judgment of the learned Single Judge in CWJC No. 6753 of 2013 that the State should have been more vigilant in making the appointments, especially when the list was prepared under the supervision of a retired Judge of the High Court as appointed by the Hon’ble Supreme Court. If at all any



disturbance has to be made, it can only be made on the orders of the Hon'ble Supreme Court.

13. We also notice the judgment of a learned Single Judge pointed out by the learned Government Advocate. In a batch of writ petitions , numbered as CWJC No. 17310 of 2013 (Md. Shaheed Vs. The State of Bihar) and analogous cases produced along with the supplementary affidavit filed on behalf of the appellants, in LPA No. 707 of 2016. The specific reference was to paragraph no. 34 of the said decision, which is extracted here under:

“34. As a matter of fact, even before appointment of the petitioners and others in the light of the 34540 posts of teachers on the basis of the panel prepared by Hon'ble Justice S.K. Chattopadhyaya and approved by the Apex Court, it was made clear by the Apex Court in its order dated 13.10.2011, already quoted above, that the examination of certificates and other documents was to be made at the time of counseling and appointment and in the event during its scrutiny if it was found that any of the document do not conform to the requirement, appropriate steps should be taken against the candidates concerned. Thus, in view of the earlier order of the Apex Court dated 13.10.2011, the petitioners cannot be heard to say that their appointment once made could not have been cancelled because of the order dated 18.7.2013 even if they do not fulfill the requisite qualification.”



14. We are of the opinion that the said directions cannot be sustained especially looking at the order of the Hon'ble Supreme Court passed on 18.07.2013, which categorically declared that those persons who are appointed in the 34540 vacancies shall not be disturbed. We only notice that the petitioners herein were not parties in the said batch of writ petitions. Hence they cannot be denied of the benefit of the order of the Hon'ble Supreme Court which was passed on 18.07.2013, which is binding on the State of Bihar.

15. We further notice the judgment of a Division Bench of this Court produced as Annexure B, along with the counter affidavit filed by respondent no. 4 in CWJC No. 6753 of 2013. The Division Bench after noticing the order of the Hon'ble Supreme Court dismissed the writ petitions claiming selection to the balance vacancies other than those filled up from 34540 posts. In fact, the Hon'ble Supreme Court has also noticed in the order dated 18.07.2013 that 2413 posts out of the 34540 posts were still left to be filled up. The direction by the Division Bench in LPA No. 1491 of 2014 and the analogous cases were to the effect that the Committee shall consider the case of the petitioners therein, in accordance with the procedure that was followed in the selection of 32127 teachers on the



previous occasion. We are not concerned with the directions in LPA No. 1491 of 2014 which are with respect to the persons who were denied appointment as per the selection earlier conducted by the State of Bihar on the supervision of Justice Chattopadhyay.

16. We are of the definite opinion that in the present case where all the party-respondents were appointed as per the directions of the Hon'ble Supreme Court, under the supervision of Justice Chattopadhyay, cannot be terminated on grounds of qualifications not having been properly verified; unless otherwise permitted by the Hon'ble Supreme Court. The party respondents were appointed after their eligibility being settled by Justice Chattopadhyay, appointed by the Hon'ble Supreme Court, to oversee the selection and appointment of teachers to the vacant posts, identified as available, as per the undertaking made by the State before the Hon'ble Supreme Court. Though the verification of credentials and qualifications of the candidates were directed to be done, there could be no such verification at this late stage. As noticed by the learned Single Judge in the impugned judgment the State ought to have been more vigilant when the appointments were carried out.

17. We hence find no merit in the appeals filed by



the State and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-Shiv

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