

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18002 of 2022**

1. Anirudh Yadav @ Anirudh Prasad S/o Sumit Lal Yadav Resident of Village-Belkhoriya, Madhusudanpur, P.S.-Nathnagar, District-Bhagalpur.
2. Sushil Kumar S/o Navin Manal Resident of Village-Rampur, P.O.-Mathurapur, District-Bhagalpur.
3. Devanand Murmu S/o Varaku Murmu, Resident of Village-Badi Madhuban, P.O.-Prasando, P.S.-Parsando, District-Munger,
4. Pushplata devi @ Pushplata W/o Shiv Kumar Mandal, Resident of Village-Ganga Karhariya, Kasimpur, P.S.-Goradih, District-Bhagalpur.
5. Mritunjay Kumar S/o Madho Prasad Mandal, Resident of Village-Ganga Karhariya, Kasimpur, P.S.-Goradih, District-Bhagalpur.
6. Naveen Kumar Nawal S/o Mathura Mandal, Resident of Village-Mulucktand, Kharagpur, Munger, P.S.-Haveli Kharagpur, District-Munger.
7. Sanjay Murmu S/o Yamuna Murmu, Resident of Village-Barkittathia, P.S.-Haveli Kharagpur, District-Munger,
8. Sanjay Kumar S/o Bachchu Mandal, Resident of Village-Mulucktand, Teghra, P.S.-Haveli Kharagpur, District-Munger.
9. Hemlata Kumari D/o Bindeshwari Prasad Singh, Resident of Village-Rampur Ward No.-2, P.O.-Mathurapur, District-Bhagalpur,

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director, Health Department, Govt. of Bihar, Patna.
3. The Secretary, Health Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Health Department, Govt. of Bihar, Patna.
5. The District Magistrate, Bhagalpur
6. The Civil Surgeon, Bhagalpur.
7. The In-charge, Primary Health Centre, Bhagalpur.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Chandrasekhar Sharma, Advocate  
For the Respondent/s : Mr. Pawan Kumar, A.C. to A.G.

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 10-01-2023**



Petitioners have prayed for the following relief(s):-

“i. For diluting/quashing or declaring the clause (iii) of the notice dated 21.04.2016 published in Hindi Daily "Hindustan" read with clause 6(ka) (i) of the Govt. Memo No.-2530 dated 04.10.2017 as ultravirous to the constitution of India so also nonest in the eye of law.

ii. The respondents simultaneously may kindly be directed to replace the above said incorporation through just, fair, rational and reasonable stipulation so that the constitutional protection under Article 14, 16 & 21 be made available to the petitioners and other Non-Formal Education Instructors cum Special Education Instructors who are/ were validly appointed, bonafidely worked and genuinely entitle for the job/absorption in question the four corners of law coupled with the illegibility and experience criteria which they having admittedly.

iii. For directing the respondents to consider the petitioners candidature/ cause, in view of the well settled preposition of law as stated hereunder:-

a. "Justice must not only be done, but must also be seen to be done", since reported in (1924) IKB256 (i.e. Rex V. Sussex Justice case) and other cases.

b. "A reasonless order cannot be termed as an order, more so could not come under the



definition of law decided and as such not at all have any binding effect", since reported in (2010)9 SCC 496 (M/s Kranti Asso. Pvt. Ltd., & Anr Vs. Masood Ahmed Khan & Ors.. AIR 2004 SSC2950 (Narcotics Control Bureau case) etc.

c. "Hot and cold can not be allowed to blow simultaneously" since reported in AIR 2006 SCC online Cal. 158, (2009) BSCC-366, (2009) 9SCC-304, (2011)10 SCC-420, (2020) 6SCC-387 etc.

d. "Whenever a cut of date is fixed to categorized one set of employees for favourable consideration over others the twin test of valid classification must necessarily be satisfied" since reported in (2013)2SCC-772 (794), K.T. Retired official Association Vs. The State of Tamil Nadu & Ors.

e. "The judgment must be read in totality "as has been held in Hon'ble Apex Courts decision since reported in AIR 1993SC 43 (Commissioner Income Tax Vs Sun Engineering) etc. and as such the Hon'ble Apex Court decision/ order Supra dated 26.02.2016 ought to have been looked into in its totality and not in isolation while confining over the later part of order only.

f. The doctrine towards "judicial decorum and binding nature" of an order has also could not be looked into by the Hon'ble Apex Court while passing the order above said dated 26.02.2016 and 02.12.2021 as the principal decided in



Ashwini Kumar and Ors. case supra has been passed by the strength/ bench of three Hon'ble Judges of the Hon'ble Apex Court and even though the said decision was neither diluted nor challenge, having still holding its field ought to have been honoured/ followed by the Division Bench of the Hon'ble Apex Court under the doctrine of judicial decorum and binding nature of residence or the same ought to have been referred to the larger Bench, in case of difference of opinion etc.

g. "Right to livelihood is an integral part of right to life" since reported in (2016)2SCC 123 (B.S. Shershiri) Vs. The State of Karnataka), (2014)14 SCC127 (Dhiraj Singh Vs. State of Haryana), 2011(1) SCC 53 (V.N. Shrikhande (Dr.) Vs. Amla Sera Fernandes).

h. "State action to be reasonable and in public interest "Since reported in 2005 ALD 194 (Dr. V.V. Sai Naresh and another Vs. Union of India & Ors.

iv. The answering respondents also may kindly be directed to not at all be prejudice with any decision or order which has no sanction of law and not having any binding effect more so going to cause miscarriage of justice on the fact of it.

v. The answering respondent alternatively may kindly be directed to engage the petitioners either on regular basis or on contractual basis while extending preferential right/ weightage in their



favour, in view of the latest development published in Hindi Daily "Dainik Jagran" on 19.12.2021. (Annexure-10, Page-)"

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioners, learned counsel for the petitioners, under instructions, states that petitioners shall be content if a direction is issued to the respondent no. 6, namely, Civil Surgeon, Bhagalpur to consider and decide the representation which the petitioners shall be filing within a period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioners, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of four months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

As such, petition stands disposed of on the following terms:-

(a) Petitioners shall approach the authority concerned within a period of four weeks from today by filing a



representation for redressal of the grievance(s);

(b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioners;

(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioners to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;



(i) We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

**(Sanjay Karol, CJ)**

**(Partha Sarthy, J)**

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