

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.84 of 2023

=====

Veena Rani Wife of Akhilesh Kumar Sinha, Resident of Village- Main Bazar,
Famous Tailars, Karai Parasurai, Police Station- Karai Parsurai, District-
Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Education, Bihar, Patna.
4. The Director, Mass Education, Bihar, Patna.
5. The District Education Officer, Nalanda.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate

For the Respondent/s : Mr.Madanjeet Kumar, GP-20

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 20-02-2023 Heard learned counsel for the petitioner and Mr.
Madanjeet Kumar, learned GP-20 for the State.

Petitioner in the present case is seeking a writ in the nature of a writ of Mandamus commanding the respondents to adjust the petitioner in Class III or Class IV post suitably as per her educational qualification as has been done in the matter of Supervisor and Instructors engaged in the Non Formal Education Scheme, sponsored by the Central Government.

The petitioner claims that she was engaged as Instructor in Non Formal Education, Bihar. Over the period, the State Government decided to adjust all the Supervisors posted under the Non Formal Education Programme after long battle



of litigations up to Hon'ble Supreme Court.

Learned counsel for the petitioner admits that the petitioner had never moved this Court earlier but a wrong statement to this effect has been made in Paragraph '5' of the writ application giving an impression to this Court that the petitioner had filed a writ petition in this Court being CWJC No. 8418 of 2010.

Learned counsel at this stage seeks permission to delete Paragraph '5'. He is permitted to do so.

In course of argument, learned counsel has drawn the attention of this Court towards the order of the learned writ Court in CWJC No. 384 of 2007 (Annexure '7') and the order of the Hon'ble Division Bench in LPA No. 1047 of 2007 (Annexure '8'). It is submitted that by Annexure '7' to the writ application, the learned writ Court directed the respondents to consider the claim of the petitioners within a period of three months. A challenge to the order contained in Annexure '7' to the writ application failed as the Hon'ble Division Bench dismissed the appeal of the State of Bihar vide Annexure '8' to the writ application.

Learned counsel, therefore, submits that the petitioner being similarly situated would be entitled for similar relief.



Learned counsel for the State has opposed this writ application. Attention of this Court has been drawn towards the latest order of the Hon'ble Supreme Court in Civil Appeal No. 7351 of 2021 (The State of Bihar and Others vs. Meera Kumari and Others). Learned counsel points out that the said Civil appeal had arisen out of an order of the Hon'ble Division Bench of this Court in MJC No. 3765 of 2016 in Civil Review No. 291 of 2016 by which the Hon'ble Division Bench of this Court had entertained the application of Meera Kumari and Punam Kumari, the two applicants who had approached this Court seeking similar benefits as had been granted to others vide order dated 11.08.2015 in Civil Review No. 36 of 2012 by this Court. The Hon'ble Court reviewed the order on general principles that similarly situated persons must get similar benefits.

The order of Hon'ble Division Bench in MJC No. 3765 of 2016 had been appealed against. While disposing of the Civil Appeal vide judgment dated December 2, 2021, the Hon'ble Supreme Court did not approve the views of the Hon'ble Division Bench of this Court and clearly held 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. The



Hon'ble Supreme Court held that this finding of the High Court is in teeth of the clear terms of the order passed by the Hon'ble Supreme Court on 26.02.2016.

Learned counsel submits that the Hon'ble Supreme Court had earlier passed an order dated 26.02.2016 in the matter of consideration of the Instructors under Non Formal Education Scheme for purpose of absorption and had passed a detail order dated 26.02.2016 wherein it was categorically directed that the order dated 26.02.2016 shall bind both the State as well as the Courts including the High Court. It is, thus, submitted that the order dated 26.02.2016 passed by the Hon'ble Supreme Court cannot be touched by this Court. This mistake was committed earlier in MJC No. 3765 of 2016.

Learned counsel further points out that Annexures '7' and '8' to the writ application clearly refers the earlier order of the Division Bench in MJC No. 3765 of 2016 and relied upon the said order to extend the benefit again to some of the petitioners.

Having heard learned counsel for the petitioner and the State, this Court finds much substance in the submissions of learned counsel for the State. The Hon'ble Supreme Court has while disposing of Special Leave to Appeal (C) No. 32079 of



2015 on 26.02.2016 passed the following order:-

“ We find no 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.”

A bare perusal of Annexures ‘7’ and ‘8’ of the writ application would show that both the learned writ court as well as the Hon’ble Division Bench of this Court relied upon the earlier Division Bench order in MJC No. 3765 of 2016 and extended the benefit to the petitioners in those cases on the general principles. The Hon’ble Supreme Court did not approve this in Civil Appeal No. 7351 of 2021.

The Hon’ble Division Bench of this Court had occasion once again to consider these aspects of the matter in Civil Review No. 68 of 2019 arising out of the order dated 23.07.2018 passed in MJC No. 809 of 2012. After going through the various orders passed from time to time in these related matters, the Hon’ble Division Bench held as follows:-

“We are of the view that the impugned order dated 09.01.2019 is not in consonance with



paragraph 26 of the judgment of the Hon'ble Division Bench of this Court as the case of the Association in MJC No.4208 of 2016 is required to be considered keeping in mind the cut-off date (26.02.2016) fixed by the Hon'ble Supreme Court and which have been taken note of in paragraph 26 of the judgment dated 23.07.2018..."

The Hon'ble Division Bench, thus, allowed the review application as well as the Letters Patent Appeals filed by the State of Bihar which were tagged with the Civil Review application.

In the aforementioned background of the materials available before this Court, this Court is of the considered opinion that this writ application is only a futile attempt by the petitioner to claim a benefit on the ground of general principles of similarity which has not been approved by the Hon'ble Supreme Court.

This writ application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

tusharika/-

U			
---	--	--	--

