

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12307 of 2013

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1. Om Prakash Sinha, Son Of Late Babu Lal Das, Resident Of Peoples Cooperative Colony, Sector 23, Patna P.S. Kankarbagh, District Patna
 2. Randhir Kumar, Son Of Bindeshwar Bhagat, Resident Of Rasulpur Bakhari Post Bakhari Supain, District Vaishali
 3. Bachchu Rajbanshi, Son Of Saryug Rajbanshi, Resident Of Village Mahapur Post Scotar, District Gaya

... .. Petitioner/s

Versus

1. Bihar School Examination Board, Patna through its Secretary.
2. The Chairman, Bihar School Examination Board, Patna
3. The Secretary, Bihar School Examination Board, Patna
4. The Principal Secretary, Human Resource Development Department, Government Of Bihar, Patna
5. The Director, Secondary Education, Government Of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binodanand Mishra, Advocate
For the BSEB	:	Mr. Md. Nadim Seraj, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-08-2024

Heard Mr. Binodanand Mishra, learned counsel
appearing on behalf of the petitioners and Mr. Md. Nadim Seraj,
learned counsel appearing on behalf of the Bihar School
Examination Board.

2. The petitioner in paragraph no. 1 of the present
writ petitions have sought *inter alia* the following relief(s),
which is reproduced hereinafter:-

(i) For issuance of an order, direction or writ including writ in the nature of Certiorari quashing the office order contained in Memo No. 855 dated 12.09.2012 so far it relates to the Petitioners whereby the Petitioners have been



reverted to the post of section officer from the post of deputy secretary held by them for the last more than a decade.

(ii) For issuance of an order, direction or writ including writ in the nature of Mandamus commanding the respondents not to give effect to the office order dated 12.09.2012 so far it relates to the Petitioners.

(iii) For issuance of an order direction or writ including writ in the nature of Mandamus commanding the Respondents to adjust /absorb the services of the Petitioners on the post of Deputy Secretary or its equivalent post in the Bihar School Examination Board, Patna.

(iv) For issuance of an appropriate declaration holding that the reversion/demotion of the Petitioners to the post of section officer is illegal, arbitrary and unsustainable in the eye of law.

(v) For issuance of an order, direction or writ including writ in the nature of Mandamus directing the Respondents not to disturb the Petitioners and to permit them to work on the post of deputy Secretary to which they have been duly promoted by the Bihar Intermediate Education Council (since abolished).

(vi) For issuance of an appropriate declaration holding that the Petitioners are entitled to be absorbed/adjusted in the Bihar School Examination Board to the post of Deputy Secretary.

(vii) For any other relief(s) to which the petitioners may be found entitled in the facts and jurisdiction of the case;

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners have called for quashing of the Office Order contained in Memo No.855 dated 12.09.2012, whereby, the petitioners have been reverted to the post of Section Officer from the post of Deputy Secretary held by them for the last more than a decade in the erstwhile, Bihar Intermediate Education Council. Learned counsel informs that by the Bihar Intermediate Education Council (Repeal) Act, 2007



(Bihar Act 17 of 2007), the Bihar Intermediate Education Council Act, 1992 was repealed and as per Section 4 of the said Repeal Act, all the asset and liabilities of the Bihar Intermediate Education Council were transferred to and vested in and be deemed to have come in the possession of the Bihar School Examination Board. Learned counsel referring to Section 3 of the said Repeal Act submitted that the only interpretation that the appointment and continuance of employee of the erstwhile Bihar Intermediate Education Council has to be on "as is where is basis" and only minor tweaking and adjustments are permissible by virtue of Section 3 of the Repeal Act, 2007. Learned counsel informs that during pendency of the present writ petition, similar matter came before this Court in ***LPA No.658 of 2013 (Bihar School Examination Board, Patna through its Secretary vs. Abhay Nath Jha)*** arising out of ***CWJC No.18473 of 2012*** reported in ***2017(3) PLJR 832*** and has relied on paragraph nos.3 to 7 of the said judgment dated 20.03.2017. Learned counsel further submitted that the petitioners' case must be considered in light of direction and observation made by the Division Bench vide order/judgment dated 20.03.2017, against which, the Bihar School Examination Board has preferred S.L.P., which has been registered vide



Diary No(s). 24923 of 2017 (Bihar School Examination Board & Ors. vs. Abhay Nath Jha & Ors.). The Diary No(s). 24923 of 2017 arising out of L.P.A. No. 658 of 2013, and same was dismissed vide order dated 15.09.2017, *in limine*. Learned counsel referring to Annexure-5, 7 and 9 to the writ petition submitted that the petitioners were duly promoted on the sanctioned post of Deputy Secretary vide Memo No.99 dated 14.05.1999.

4. *Per contra*, Mr. Nadim Seraj, learned counsel appearing on behalf of the Bihar School Examination Board has relied on the judgment dated 07.11.2022 passed in ***LPA No.2168 of 2016 (Bihar Intermediate Education Council Employees Association & Anr. vs. The State of Bihar & Ors.) arising out of CWJC No. 17414 of 2013*** to contend that the grievance of the Association was similar to that of the present petitioners, in which, also seniority and other associated relief were prayed by the Association of Employees of erstwhile Bihar Intermediate Education Council after the dissolution of Bihar Intermediate Education Council by Repeal Act, 2007. Learned counsel further submitted that the case of the petitioners is covered by the said judgment and the grievance of the employees were not found sustainable by the Division Bench



and vide judgment dated 07.11.2022 passed in L.P.A. No. 2168 of 2016 ***Bihar Intermediate Education Council Employees Association (supra)***, had dismissed their grievance and, as such, no interference is called for. Learned counsel further relied on Clause 16(III) of the resolution dated 12.07.2012 submitted that it binding on the petitioners after they having accepted to being absorbed in the Bihar School Examination Board, on the terms and conditions contained in the said resolution. Learned counsel clarifies that the petitioners, who have claimed themselves to be absorbed on the post of Deputy Secretary in the Bihar Intermediate Education Council, were not working on the approved post of the Deputy Secretary. Learned counsel further submitted that the present writ petition being devoid of any merits, the judgment relied on behalf of the petitioners under the facts and circumstances of the present case can not help the petitioners to consider their case in light of ***LPA No.658 of 2013 Abhay Nath Jha (Supra)***.

5. Having considered the rival submissions made on behalf of the parties, as well as, the limited relief sought by the petitioners that their case be also considered in light of order/judgment dated 20.03.2017 passed in ***LPA No.658 of 2013 Abhay Nath Jha (Supra)***, considering the fact that the



petitioners were initially holding the post of Deputy Secretary in the erstwhile Bihar Intermediate Education Council and they have been absorbed in a lower rank on the post of Section Officer. It is the claim of the respondents that petitioners themselves have accepted to join on the lower post in terms of the Clause 6(III) of the Resolution dated 12.07.2012 and now they cannot turn around from the same. However, the contention that the case of the petitioner is covered by the judgment dated 07.11.2022 passed in ***LPA No.2168 of 2016, Bihar Intermediate Education Council Employees Association (Supra)***, having been dismissed. The question of seniority is an individual grievance and the same can not be agitated by association. Moreover, it has to be noted that the association consist of different cadres of employees. It is worth to take note of the observation made by the Division Bench in ***LPA No.2168 of 2016, Bihar Intermediate Education Council Employees Association (Supra)***, which is *inter alia* reproduced hereinafter:

“Therefore, seniority is an individual grievance. The same cannot be agitated by Association. Moreover, it is to be noted that in the present case appellant Association is consisting of different cadres of employees. Even assuming that such Association is of a particular cadre, one can understand because for the reasons that it is a common cause of a class of persons. Class of persons association could be entertained whereas in the present, Appellant Association is consisting of different cadres. They do not fall under particular class of employees of a particular cadre. In the light of these facts and



circumstances, writ petition itself is not maintainable by an Association.

9. The appellants have not questioned the Clause 13 of the Resolution dated 12.07.2012. The Resolution Item No. XIII reads as under:

“XIII. Past service of the adjusted employees will be counted for the purpose of pension and A.C.P.”

10. The aforesaid clause is restricted in counting past service towards pension and A.C.P. and not seniority. Therefore, there is no challenge to the aforesaid Clause in restricting past service towards pension and A.C.P. and not extending for seniority benefit. Further, it is to be noted that during the intervening period from 12.07.2012 the date on which Resolution was passed and presentation of writ petition whether seniority list has been prepared in a different cadre has been apprised so as to contend that the employees of the Appellant Association have been placed with reference to date of entry in the Bihar School Examination Board in the year 2007 by virtue of Repealing Act or from the date of passing Resolution in the year 2012. The Bihar School Examination Board must have prepared and notified seniority list of various cadres. The same has been placed on record as Annexures 2 and 14 to the writ petition and the same has been questioned. Even questioning the aforesaid seniority list cannot be entertained for the simple reason that such a those persons whose rights are likely to be affected, in the event of quashing of seniority list, they have not been arrayed as necessary and proper party to the litigation.

11. In the light of these facts and circumstances, appellants have not made out a case so as to interfere with the prayer sought in the writ petition. Accordingly, appeal stands dismissed while affirming the order of learned Single Judge.”

6. I find that the judgment dated 07.11.2022 passed in ***LPA No.2168 of 2016, Bihar Intermediate Education Council Employees Association (Supra)***. is of no help to the



respondents. The petitioners, if so advised, may file a detailed representation before the Secretary, Bihar School Examination Board, who may consider their case in light of judgment passed in *LPA No.658 of 2013 Bihar School Examination Board (Supra)* and dispose of the representations filed on behalf of the petitioners expeditiously in accordance with law, considering the fact that the petitioners, as on date, have already superannuated.

7. With above direction/observation, the present writ petition stands dispose of.

(Purnendu Singh, J.)

Niraj/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2024
Transmission Date	NA

