

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3525 of 2017

In
CIVIL REVIEW No.16 of 2016

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1. Bijendra Kumar Singh and Ors S/o Radha Mohan Singh Resident of village P.O.- Chandi, P.S.- Charpokhari, Distt. - Bhojpur - 802223
 2. Vidya Prasad D/o Sri Vashisth Prasad Resident of village - Tenduni Purana Bajar Dibra Mohalla Bikramganj, P.S. Bikramganj, District - Rohtas
 3. Jeetendra Kumar Pandey S/o Radha Pandey Resident of village - Jogeyan, P.O. Kajhai, P.S. Bikramganj, District - Rohtas
 4. Asha Kumari D/o Sri Satya Narayan Rai, W/o Sri Shailesh Kumar Singh Resident of village P.O. Khopira, P.S. Pawna, District - Bhojpur
 5. Shobha Kumari D/o SRi Satya Narayan Rai, W/o Sri Arun Kumar Rai Resident of Village P.O. Bagar, P.S. Sikarhatta, District - Bhojpur, Bihar
 6. Renu Kumari D/o Sri Satya Narayan Rai, W/o Sri Rameshwar Choudhary Resident of village - Baligaon, P.O. Rejandih, P.S. Rajpur, District - Rohtas, Pin Code – 802219
 7. Awadhesh Kumar Pandey S/o Sri Bindhyachal Pandey Resident of village - Ugana, P.O. Kahathu, P.S. Jagdishpur, District - Bhojpur
 8. Ashok Kumar S/o Sri Bindhyachal Pandey Resident of village - Ugana, P.O. Kahathu, P.S. Jagdishpur, District - Bhojpur
 9. Anil Kumar Pandey S/o Sri Bindhyachal Pandey Resident of village - Ugana, P.O. Kahathu, P.S. Jagdishpur, District - Bhojpur
 10. Arun Kumar S/o Sri Bindhyachal Pandey Resident of village - Ugana, P.O. Kahathu, P.S. Jagdishpur, District - Bhojpur
 11. Abha Kumari D/o Sri Dhar Sharma, W/o Pramod Choudhary Belaur Sadan Tilak Nagar, Katira, Ara, P.S. Nawada, Distri
 12. Kavita Rani D/o Sri Vinod Kumar Singh, W/o Sri Birendra Kumar Resident of village P.O. Karwan, P.S. Ara Muffasil, District - Bhojpur, 802312
 13. Pushpa Tiwari C/o Sri Rang Ji Pandey At Katira Bag, Gangadhar Press, Shahdeo Giri, Road, Ara, P.O. P.S. Nawada Ara, District - Bhojpur, Pin 802301
 14. Lilawati Kumari D/o Late Jagnarayan Shahu Resident of village P.O. Kesath, P.S. Nawanagar, District - Buxar
 15. Akhilesh Diwedi S/o Sri Jarandan Diwedi Resident of village P.O. Dasiwao, P.S. Nawanagar, District - Buxar
 16. Vijay Laxmi D/o Sri V.V. Mishra Resident of village - Basiwao, P.O. Kesath, P.S. Nawanagar, District - Buxar
 17. Suresh Kumar S/o Basisth Narayan Singh Resident of Mohalla - Singh Colony, Bhelai, P.O. Bhelai, P.S. Udwant Nagar, District - Bhojpur, Pin 802312
 18. Usha Kumari D/o Vijay Kumar Singh Resident of village P.O. Masudhi, P.S. Jagdishpur, District - Bhojpur



19. Manda Kumari D/o Sachida Nand Upadhyay Resident of village - Khandol, P.O. Phuladhi, P.S. Sandesh, District - Bhojpur
20. Mohan Choubey S/o Sri Kapildev Choubey Resident of Mohalla - Pawarganj, P.O. Anaith, District - Bhojpur, 802301
21. Sanjay Pratap Singh S/o Sri Satyendra Pratap Singh Resident of village P.O. Kulhariya, P.S. Koilwar, District - Bhojpur
22. Ramendra Singh S/o Ramyash Singh Resident of village - Matiyara, P.O. Kayam Nagar, P.S. Koilwar, District - Bhojpur
23. Sidheshwar Singh S/o Late Dharikshan Singh Resident of Village P.O. Chandi, P.S. Charpokhar, District - Bhojpur
24. Rakesh Ranjan S/o Late Harikesh Singh Resident of village - Kuawan, P.O. Tikathi, P.S. Barahampur, District - Buxar
25. Uma Shankar Pandey S/o Late Shiv Bihari Pandey Resident of village - Gorpa, P.O. Diliyan, P.S. Chauri, District - Bhojpur
26. Ramnath Singh S/o Ram Lakshan Singh Resident of village - Gopalpur, P.O. Mahamadpur, P.S. Vikram, District - Patna
27. Usha Kumari D/o Bachcha Choudhary Near Sahdeo Giri Karwan Bhawan Katira, Ara, District - Bhojpur
28. Bindu Kumari D/o Kapil Dev Narayan Veram Prof. Colony K.G. Road, Ara District Bhojpur
29. Sashibhushan Upadhyay S/o Sri Jagnath Upadhyay Resident of village P.O. Mungaw, P.S. Koransaraya, District - Buxar
30. Shobha Kumari D/o Sri Narvdeswar Mishra, W/o Sri Sushikant Pandey Resident of village - Churamanpur, P.O. Churammanpur, P.S. Aucheo Buxar, District - Buxar
31. Kumari Suman D/o Masudan Sharma, W/o Sashi Narayan Resident of village P.O. Kanehari, P.S. Rajpur, District - Buxar
32. Ashutosh Narayan Pathak S/o Late Hira Pathak Block Road Nai Bajar, Buxar
33. Vinod Kumar Singh S/o Raghubar Dayal Singh Resident of village P.O. Mahdah, District - Buxar
34. Nagendra Kumar Trigun C/o SRi Vishwanath Trigun Resident of village P.O. Basawkala, District - Buxar
35. Nand Bihari Singh C/o Lage Mangal Prasad Singh Resident of Village P.O. Vikram English, Via Dhangoi, District - Buxar
36. Bhawana Kumari Bahara S/o Dr. Jaush Behara Musafirganj, M.O. Gajadharganj, District - Bhojpur
37. Ranju Rani D/o Late Sachidanand Upadhyay Resident of village - Gopnuwao, P.O. Central Jail, District - Buxar
38. Bindu Kumari D/o Birbal Dubey, W/o Surendra Pandey Resident of Village P.O. Mathila, District - Buxar
39. Vijay Shankar S/o Ram Ekbal Singh Shainik Colony, Nai Bajar Buxar
40. Akhileshwar Nath Upadhyay S/o Raghuwansh Upadhyay Resident of



village P.O. Sukarbaliya, District - Buxar

41. Sushma Kumari D/o Sri Rajeshwar Prasad Sharma, W/o Sri Rakesh Kumar Ram Resident of village P.O. New Bajar, Ward No. 8, District - Buxar
42. Geeta Kumari D/o Sri Hari Har Prasad, W/o Sri Rajendra Choubey Mo. Teachers Colony Chariyawan, Buxar, District -
43. Neelam Kumari D/o Sri Keshav Tiwari, W/o Sri Kishna Dev Rai Resident of village - Chitan Dihara, P.O. Rasen, P.S. Dhandoi, District - Buxar
44. Surajwanti Kumari D/o Mukteshwar Prasad, W/o Noyal Kishor Resident of village - Methodist English School Gajadharganj Buxar, District - Buxar
45. Yogendra Nath Tiwari S/o Chachidanand Tiwari Resident of village - Ghanshyampur, P.O. P.S. Bagen Gola, Barampur, Buxar
46. Kanta Kumari D/o SRi Ras Bihari Tiwari, W/o Sri Shashi Bhushan Upadhyay Resident of village - Chanda, P.O. Arak, District - Buxar
47. Ramshila Kumari D/o Sri Ramadhar Singh, W/o Sri Vinod Kumar Resident of Village P.O. Vikram English, Via Dhangoi, District - Buxar
48. Nandji Singh Yadav S/o Sri Bhikhari Singh Resident of village P.O. Basantpur, District - Buxar
49. Lalan Singh S/o Srihari Kishun Singh Resident of village P.O. Nihalkpur, P.S. Sikraul, District - Buxar
50. Santosh Kumar @ Santosh Kumar Ram S/o Late Banshlal Ram Resident of village - Bharkhara, P.O. Kakariya, P.S. Shangoi, District - Buxar
51. Nand Kumar Singh S/o Ri Shiv Muni Singh Resident of village - Baladeva, P.O. Indaur, P.S. Itadhi, District - Buxar
52. Kripashankar Diwedi S/o Sriman Narayan Diwedi Resident of village P.O. Nadav, District - Buxar
53. Ravi Shankar Diwedi S/o Sriman Narayan Diwedi Resident of village P.O. Nadav, District – Buxar
54. Vijay Kumar Singh S/o Hari Krishna Singh Resident of village P.O. Chautauna, P.S. Mohrihan, District - Buxar
55. Bhola Prasad S/o Jagnarayan Resident of village P.O. Bani, District - Buxar
56. Ajay Pal Upadhyay S/o Sri Kanhaiya Upadhyay Resident of village P.O. Ariyano, District - Buxar
57. Ashok Kumar Mishra S/o Sri Jagdamba Mishra Resident of village - Lakshmipur, P.O. Kamarpur, District - Buxar
58. Sashikala Kumari D/o Sri Jagnarayan Tiwari Resident of village - Bibiganj Sumehwar Asthan, Buxar, District - Buxar
59. Chhathu Prasad Singh S/o Late Rambilas Shah Rambilas Ram Resident of village P.O. Dhansoi, District - Buxar
60. Anmesh Kumar S/o Late Rajkumar Ojha Resident of village - Paharpur, P.O. Umaraojan, District - Bojpur, Bihar
61. Suman Kumari H/o Harendra Nath Upadhyay Resident of village P.O. Majhriya, District – Buxar
62. Kumari Sarojwala D/o Ramakant Dubey Resident of village - Nilkanthpur,



P.O. Suryapura, District - Rohtas Buxar

63. Kamleshwar Choubey S/o Sri Ramashankar Choubey Resident of village P.O. Gosaipur, District - Buxar
64. Uma Shankar Singh S/o Sri Baidnath Singh Resident of village - Puraini Khurd, P.O. Hathua Rajpur, District - Buxar
65. Jagnarayan Singh S/o Sri Shivmurti Singh Resident of village P.O. Kamarpur, District - Buxar
66. Shila Kumari D/o Suryadev Pandey, H/o Sri Hari Narayan Ray Opposite of Wood Stock School Jail Mod Charitravan, Di
67. Phool Kumari D/o Ram Bachan Shahu Resident of village - Kalyanpur, P.O. Indaur, P.S. Estadi, District - Buxar
68. Martundmani Tiwari S/o Jaykishun Tiwari Resident of village - Karadhpur, P.O. Sisarad, District - Buxar
69. Dinesh Pathak S/o Shivparsan Pathak Resident of village - Dafa Baba Ke Dera, P.O. Niyajipur, P.S. Simari, District - Buxar
70. Satish Kumar Ray S/o Nageshwar Ray Resident of village P.O. Sarenja, District - Buxar
71. Usha Kumari D/o Sri Rampati Singh W/o Sri Chandrahas Singh Resident of village - Jalilpur, P.O. Sonpa, P.S. Rajapur, District - Buxar
72. Inchu Kumari D/o Shyam Nandan Singh, W/o Arbind Kumar Pandey Resident of village P.O. Chashi, P.S. Narayanpur, District - Bhojpur
73. Kumari Arti D/o Ramdhani Singh Resident of village - Kiorpurwa Buxar , P.O. Buxar, District - Buxar
74. Manju Kumari D/o Sri Ramsakal Singh Resident of village P.O. Baruna, District - Buxar
75. Kaushlya Devi W/o Sri Chandrama Pandey Resident of village - Chini Mill Buxar, P.O. Gajadharganj, Buxar, District - Buxar
76. Kumar Gopal Singh S/o Late Babu Lal Singh Resident of village - Milki, P.O. Sinha Ghat, P.S. Krishangarh, District - Bhojpur
77. Sunita Kumari D/o Chandeshwar Prasad, W/o Rakesh Kumar Urmila Niwas Ganga Vihar Colony Tekari Road Pather Ki Masji
78. Dharmshila Kumari D/o Indradeo Narayan Singh Resident of village - Vajipur, P.O. P.S. Vikram, District - Patna
79. Meena Kumari Mishra W/o Birendra Kumar Mishra, D/o Late Awadhesh Nand Mishra House of Sri S.N. Mishra Morga Vihar Colony
80. Sangita Kumari Sonthaliya D/o Hanuman Prasad Sonthaliya At Mill Road, P.O. P.S. District - Khagaria, Pin 851204
81. Kum Kum Kumari Roy D/o Arjun Prasad Singh At Bhavnathpur, Mkkundpur, Akbar Nagar, Bhagalpur
82. Babita Rani D/o Baikunth Singh At Choudhari Tola Rahimpur, P.O. Rahimpur, District – Khagaria
83. Ranjeet Kumar Choudhari S/o Ramesh Kumar Choudhary At Choudhari Tola Rahimpur, P.O. Rahimpur, District - Khagaria



84. Jay Prakash Yadav S/o Siya Ram Yadav Resident of Village - Koyala, P.O. Piprapantee, P.S. Pasaraha, District - Khagaria
85. Sanjay Kesari S/o Raja Ram Prasad Keshari At P.O. Maheskhunt, District - Khagaria
86. Shashi Kant Mankesh S/o Late Krishna Chandra Verma At Chandra Nagar, P.O. Koshi College, Distt. - Khagaria, Pin 851205
87. Niraj Prasad Yadav S/o Muneshwar Prasad Yadav At Kapasiya, P.O. Ki Ratwara, District – Madhepura
88. Shailesh Poddar S/o Khanik Chandar Poddar Resident of village - Lauwa Lagan, P.S. Chausa, District - Madhepura Wrongly typed as village - Lauava Lagam in Writ
89. Ranju Devi D/o Ram Nath Roy At Kisti Kothi Addaghat Ward No. 19, P.O. P.S. District – Khagaria
90. Anju Kumari D/o Bhuwan Lal Yadav resident of Patel Nagar, Ward No. 19, P.S. Distt. – Khagaria
91. Kumari Bibha D/o Manik Prasad At Baluahi Ward No. 26, P.O. Koshi College Khagaria, P.S. District - Khagaria
92. Viveka Nand Vidrohi S/o Shyamial At Chhoti Pasraha, P.O. Pasraha, District - Khagaria Wrongly Typed as P.O. Paaraha, District Buxar in the writ
93. Bihari Prasad Chaurasia S/o Phoddar Mandal Resident of village P.O. Madarpur, P.S. Maeshkhunt, District - Khagaria
94. Vir Abhimanyu S/o Yamuna Prasad Khirhari Resident of Bagri, P.O. Chorhar, P.S. Kharik, District - Bhagalpur
95. Hare Krishna Kunwar S/o Janardan Kunwar Resident of village P.O. Kavela, P.S. Parbatha, District - Khagaria
96. Vimlendu Shekhar @ Bimlendu Shekhar S/o Sri Ramashish Prasad Singh R/o village - Nayagaon Satkhunti, P.O. Jorawarpur, P.S. Parbatta, District – Khagaria
97. Md. Manzoor Alam Son of Awiruddin R/o Karmahat, P.O. P.S. Dhoraoya Vill Ghogh Distt. Banka
98. Md. Abdul Haleem Son of S.K. Uddan R/o Mahila, P.O. Bishanpur Vill Ghoyha, P.S. Dhoraia, Distt. Banka
99. Md. Maniruddin Son of S.K. Garbhu R/o Hyachak P.O. Choti Naki P.S. Sono Khar, District - Bhagalpur
100. Md. Minhazurddin Son of Md. Asgar Hussain R/ Chapari, P.O. Nunanpur vill Gogha P.S. Choraiya, Distt. - Banka
101. Md. Mokhtar Alam Son of Late S.K. Hasiruddin R/o Near Idgah Barahpur P.S. Ishak Chak Bhagalpur Distt. - Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar Through Mr. Anjani Kumar Singh, The Chief Secretary, Old Secretariat and Ors
2. Mr. R.K. Mahajan, The Principal Secretary, Human Resources Development



Department, Government of Bihar

3. Mr. M. Ramchandra Tudu, The Director, Primary Education, Government of Bihar, Patna.
4. The Deputy Director, Primary Education, Government of Bihar, Patna.
5. Mr. Jyoti Kumar, The District Education Officer, Patna, District Patna, Collectorate Office, Patna.
6. Mr. Anil Sharma, The District Education Officer, Banka at Banka, District Banka.
7. Mr. Mahendra Poddar, The District Education Officer, Rohtas Fazalganj at Sasaram, District Rohtas at Sasaram.
8. Mr. Awanindra Kumar Sinha, The District Education Officer, Bhojpur, District Bhojpur Arrah.
9. Mr. Shree Krishna Singh, The District Education Officer, Near Registry Office Buxar, District Buxar
10. Mr. Suresh Sahoo, The District Education officer, Collectorate Office, Khagaria, District - Khagari
11. Mr. Ugresh Mandal, The District Education Officer, Collectorate Office, Madhepura, District- Madhep
12. The Staff Selection Commission, Veterinary College, Raja Bazar, Bihar, Patna.
13. Mr. Sanjeev Kumar Sinha, The Chairman, the Staff Selection Commissioner, Vetenary College, Raja Ba
14. Mr. Yogendra Ram, The Secretary, Staff Selection Commission, Vetenary College, Raja Bazar, Bihar, Patna.

... .. Opposite Party/s

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with

Miscellaneous Jurisdiction Case No. 1900 of 2023

In

CIVIL REVIEW No.210 of 2016

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Sanjay Kumar Son of Mrityunjay Prasad Resident of Flat No.-401,
Mantrabharti Apartment, Bailey Road, Patna-800014

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat Patna.
3. The Staff Selection Commision, Vetenary College, Patna.
4. The Secretary, Staff Selection Commission. Vetenary College, Patna.

... .. Opposite Party/s



Appearance :

(In Miscellaneous Jurisdiction Case No. 3525 of 2017)

For the Petitioner/s : Mr.Radha Mohan Pandey, Advocate
Ms. Richa, Advocate
Mr. Santosh Kumar, Advocate
Mr. Chandrashekhar Verma, Advocate
Mr. Madhurendra Sharma, Advocate
Mr. Utsav, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Sanjiv Kumar, AC to AG
Mr. Sarvesh Kumar Singh, AAG-13
Mr. Rajat Kumar Tiwary, AC to AAG-13
For the BSSC : Mr. Satayabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Smt. Kanupriya, Advocate

(In Miscellaneous Jurisdiction Case No. 1900 of 2023)

For the Petitioner/s : Ms. Richa, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Sanjiv Kumar, AC to AG
Mr. Sarvesh Kumar Singh, AAG-13
Mr. Rajat Kumar Tiwary, AC to AAG-13
For the BSSC : Mr. Satayabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Smt. Kanupriya, Advocate
For Education Dept : Mr. Naresh Dikshit, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-02-2024

These two contempt cases are filed alleging non-compliance of the directions in the judgment in review, by the State Government Officials.

2. Mr. P.K. Shahi, learned Advocate General at the outset referred to a judgment of a co-ordinate bench of this Court dated 28.08.2023 passed in LPA No. 1254 of 2016 and analogous cases to assert that there is no contempt on the part of the State Officials.



3. The dispute has a long history and commenced from a decision of this Court quashing the Bihar Elementary Teachers Appointment Rules-2003. A Special Leave Petition was filed by the several trained teachers for a direction to appoint them in the vacancies in the post of Primary Teachers arising within the State of Bihar. Before the Hon'ble Supreme Court, the State contended that the available vacancies would be in excess of the trained teachers and hence recruitment would be carried out without reference to the Bihar Public Service Commission. The undertaking was recorded and Special Leave Petition (Civil) Nos. 22882-22888 of 2004 were disposed off on 23.01.2006.

4. The undertaking having not been complied with; contempt petitions were filed before the Hon'ble Supreme Court, wherein the State submitted that after the undertaking recorded, there were a number of persons qualified and there would be requirement of proper selection to be conducted. Despite the said submission the Hon'ble Supreme Court was of the opinion that the undertaking as on that date should be honoured; which led to ascertainment of a total of 34540 vacancies existing as on that date. A retired High Court Judge; first of the High Court of Orissa and then Justice S.K Chattopadhyay, of this Court, was appointed to finalize the



select list. The Hon'ble Supreme Court directed scrutiny of the certificates and other documents produced by the candidates at the time of counselling for the purpose of appointment. It was also indicated that the credentials of the documents if suspected or do not conform to the requirements, necessary action could be taken as against the said candidate. Justice Chattopadhyay's report was then commented upon with appreciation by the Hon'ble Supreme Court.

5. Again, the matter was taken up by the Hon'ble Supreme Court and vide order dated 18.07.2013 passed in SLP No. 26824 of 2012, the Hon'ble Supreme Court directed the petitioners therein to approach the High Court individually for relief. It was categorically found that there were persons appointed to the 34540 posts who were continuing and it was clearly directed that none of the persons appointed out of 34540 vacancies should be disturbed, in any way. The question of filling up of the balance 2413 posts were left to be considered while disposing of the applications; reference being to applications filed before the High Court for relief.

6. The petitioners had approached this Court with CWJC No. 17889 of 2012 and from the judgment passed, filed LPA No. 1491 of 2014. From the judgment in appeal, review



was filed leading to the order from which the contempt cases arise.

7. In the review filed, a Division Bench of this Court took note of four grievances as primarily urged by the petitioners and answered them. We will refer to them in seriatim, then to the findings and consequent directions on each of such grievances, to decide on whether any contempt is made out.

8. Before that, it is relevant to notice that by the time the matter was considered in review, 32,127 candidates were appointed and out of the balance of 2413 further 200 candidates were also appointed. There was remaining 2213 vacancies to which vacancies, the aspirants had risen to almost 65,000; quite contrary to the undertaking of the State that the trained teachers were less in number from that of the available vacancies. Here we have to reiterate that in the interregnum many more had qualified who cannot have any claim as against the undertaking.

9. The first grievance, addressed in the order in review, was regarding the eligibility of a large number of applicants who had obtained certificates fraudulently and some from non-accredited institutions. It was also urged that some of the applicants, who were discarded in the report of Justice



Chattopadhyay were wrongly excluded though they would have been entitled for appointment, if properly considered.

10. The Division Bench found that the wrongful exclusion and wrongful inclusion should be appropriately considered, when grievances are raised within a specific time, with supporting information, before the State. The State would then consider such grievances and take appropriate decision either including them or excluding them. It was also directed that the question of certificates being those from accredited institutions would also be ensured and a list was directed to be prepared, from which the remaining 2213 posts, would be filled up.

11. The second grievance was as to the judgment of the Apex Court applying *in personam* and not *in rem*, thus entitling the applicants before the Apex Court to the benefit of appointment, at the first instance. The Division Bench found that it is not relevant to consider the question, as to whether the judgment applies *in rem* or *in personam* since the appointments have to be made based on merit and not on any fortuitous circumstance. The second grievance, hence was found to be unsustainable.

12. The third grievance was in so far as the 32,137



candidates who were selected in course of time and the State having verified their testimonials; from among whom 10,000 were found to have forged and fabricated certificates and testimonials. It was found that 10,000 vacant posts; on cancellation of the appointments, should be filled up in the very same selection process. The Division Bench specifically noticed the Supreme Court having put a final seal in so far as 32,127 appointments which were also declared to be “*not to be questioned*” (*sic*-para 18). While noticing the same, the Division Bench found that if the selections and appointments were fraudulently obtained, then the appointments so made, cannot be held to be valid. It was directed that the State would consider filling up of the said vacancies, which remain still unfulfilled. This, with due respect, was in the teeth of the directions issued by the Hon’ble Supreme Court.

13. The fourth grievance was in so far as the original advertisement having specified recruitment under three categories i.e. General Teachers, Urdu Teachers and Physically Trained Teachers. The State, before the Apex Court, itself contended that they required lesser number of physically trained teachers and larger number of Urdu Teachers. However, in the process of selection, it was revealed that sufficient trained Urdu



teachers were not available. The prayer hence was that the unfilled Urdu teacher posts should be reverted to the physically trained teacher quota. The Division Bench found that there can be no direction issued, in this regard, since the allocation of posts were not challenged. The Division Bench, merely noticed that if the seats remained unfilled, it would be for the State to consider whether restoration to the physically trained teachers quota could be done, as a just and fair measure.

14. The contempt case, hence could only agitate the cause in so far as the two questions which have been specifically considered by the Division Bench. The second grievance, in so far as the applicants before the Hon'ble Supreme Court being considered for appointment, at the first instance was rejected. No contempt can arise from the negation of such a grievance.

15. The fourth grievance was only directed to be considered. We cannot but observe that only since there was no requirement of physically trained teachers, the posts identified in that category, were considered for appointment to the enhanced requirement of Urdu Teachers. If there is no sufficient qualified candidates to fill up the posts of Urdu Teacher, there is no question of any such unfilled vacancies being restored to the



quota of physical trained teachers; if in fact, there is no requirement of physically trained teachers. There cannot arise any charge of contempt from the innocuous direction for consideration.

16. So far as the wrongful exclusion or inclusion is concerned, the judgment had directed such issues to be considered individually, by the State. The said direction is inextricably linked with the claim of filling up of 10,000 vacancies, arising on termination of already appointed persons. We notice that the persons who were terminated from employment had approached this Court with writ petitions numbered as CWJC No. 16580 of 2014 and analogous cases. These writ petitions were allowed, setting aside the terminations which resulted in the State challenging the common judgment passed in appeals, decided by a Division Bench on 28.08.2023 in LPA No. 1254 of 2016 and analogous cases (The State of Bihar and Ors Vs. Sanjay Kumar Chaudhary and Anr).

17. The Division Bench, has specifically noticed the order of the Hon'ble Supreme Court dated 18.07.2013, which categorically directed that those persons who were already appointed in the vacancies, shall not be disturbed. We have to notice that even the Division Bench judgment from which the



contempt cases arise, noticed the said order, but on the principle that fraud vitiates everything, directed the vacancies to be filled up. The vacancies, however, do not exist as of now. The writ court has set aside the terminations and the appeal filed by the State, has been dismissed.

18. The learned counsel for the petitioner in MJC No. 1900 of 2023, has further argued that the judgment in Civil Review No. 16 of 2016 and analogous cases were challenged by the State before the Hon'ble Supreme Court which dismissed the Special Leave Petitions and hence, there is a merger of the judgment of this Court with that of the Hon'ble Supreme Court; in which event, the Supreme Court judgment would have precedence over the Division Bench judgment in LPA No. 1254 of 2016 and analogous cases. We have to immediately notice **Kunhayammed and Ors Vs. State of Kerala and Anr, AIR 2000 SC 2587**, which declared that dismissal of SLP will not necessarily result in a merger of the judgment of the High Court with that of the Supreme Court.

19. Be that as it may, it has to be pertinently observed that the judgment of the Division Bench in LPA No. 1254 of 2016 and analogous cases proceeded on the basis of the directions of the Hon'ble Supreme Court in the order dated



18.07.2013; that the appointments already made cannot be questioned. The appointments made were from the persons enlisted in the report of Justice Chattopadhyay and after due scrutiny conducted by the State Government.

20. We have to pertinently notice that the appointments which are the subject matter of this petition, were proposed as early as in the year 2003, two decades back. The undertaking which is sought to be pressed even now, made by the State of Bihar before the Hon'ble Supreme Court was that the trained teachers in the State are less than the available vacancies. We cannot, but notice that even before the Hon'ble Supreme Court, the State had time and again pointed out that it was carrying out fresh recruitment and that there are other persons who have qualified and became eligible to be considered for the vacancies. It has to be pertinently observed that as of now, going by the judgment in review, from which the contempt cases arise, there are 65,000 aspirants. All of them cannot definitely be those persons who were eligible as on 2003; when the State submitted that the trained teachers would be less than the available vacancies of a little more than 34,000.

21. The total vacancies as admitted by the State at that point were only 34,540 and there were only 2413 posts



remaining vacant of which 200 have been filled up. It is crystal clear that the persons who are now styled as aspirants coming to around 65,000 were not trained teachers at the time when the undertaking was made before the Hon’ble Supreme Court.

22. Considering the totality of the circumstances, the tenor of the directions issued and the binding orders of the Hon’ble Supreme Court we find absolutely no case of contempt having been made out. Especially, going by the binding orders of the Hon’ble Supreme Court, we close both these contempt petitions, however, with liberty left to the applicants to agitate their cause, if it still survives individually.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Ranjan/..-

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