

YASHWANT SINGH & ORS.

v.

STATE OF BIHAR & ORS.

(Special Leave Petition (Civil) No. 26824 of 2012)

JULY 18, 2013

**[ALTAMAS KABIR, CJI, ANIL R. DAVE AND
VIKRAMAJIT SEN, JJ.]**

Service Law - Appointment - Of primary teachers - SLPs filed by trained teachers for direction upon the State of Bihar to appoint them in the vacancies of primary teachers in the State of Bihar - SLPs withdrawn on an undertaking given on behalf of the State of Bihar - State of Bihar failed to abide by its commitments - Contempt Petition filed - Same disposed of with direction upon the State of Bihar to implement the undertaking given earlier - Further default on part of the State of Bihar - Another Contempt Petition - Applications made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties - Orders passed by Supreme Court directing that trained teachers be appointed against the available vacancies - Dispute in regard to the list of eligible candidates - Retired High Court Judge appointed by Supreme Court as Special Officer in whose presence the list could be settled - List submitted by him accepted and in terms of the recommendations made, 34,540 candidates appointed in different primary schools in the State of Bihar - However, some candidates, who had not appeared before said retired High Court Judge, came up with fresh applications in support of their cases - Most of the applicants were aggrieved by some defect or the other in the preparation of the select list - Applications, SLPs and writ petitions filed before Supreme Court directed to be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the

A *appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working - Bihar Education Code - Chapters 6 and 7 - Bihar Elementary Teachers Appointment Rules, 2003.*

B CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 26824 of 2012.

From the Judgment and Order dated 14.05.2012 of the High Court of Judicature at Patna in CWJC No. 8551 of 2012.

C WITH

I.A.Nos. 668, 669, 671, 674, 675, 676, 677, 679, 680, 681, Dy. Nos. 96650, 102358, 102908, 107866/2011, 1117, 1251, 3372, 3363, 4307, 4775, 5820, 4785, 5802, 7277, 8002, 7861, 7860, 8223, 8232, 8025, 8709, 9296, 9291, 9610, 9582, D 10029, 10303, 10783, 10777, 10773, 10772, 10817, 10822, 11173, 4069, 11080, 11355, 11872, 12010, 12009, 12012, 12523, 4473, 13535, 13533, 13883, 14230, 14529, 14902, 14901, 15677, 5602, 17890, 17893, 19256, 20919, 20920, 5727, 22003, 30504/2012, Contempt Petition (C) No.87 of E 2013 in Contempt Petition (C) No. 297 of 2007 in SLP (C) No.22882 of 2004, W.P. (C) No. 49 of 2013, SLP (C) No. 5946 of 2013, W.P. (C) No. 344 of 2012.

U.U. Lalit, L.N. Rao, P.H. Parekh, R.P. Bhatt, L. Nageshwara Rao, S.B. Sanyal, S.R. Singh, Nagendra Rai, F Neeraj Kumar Jain, Santosh Kumar, Madhurendra Sharma (for Mushtaq Ahmad), Santosh Kumar (for Mushtaq Ahmad), Venkita Subramoniam T.R., Mushtaq Ahmad, Kumud Lata Das, Vishal Prasad, P.N. Puri, Nischal Kumar Neeraj, Jitendra Kumar, Sanjeev Kumar, C.P. Yadav, Syed Md. Rafi, G Rameshwar Prasad Goyal, Subhro Sanyal, Bhawana Arora, Rakesh U. Upadhyay, Ranjit B. Raut, Neeraj Shekhar, Shirish K. Deshande, Dinesh Kumar Tiwary, N.N. Jha, Chandan Kumar, V.S. Mishra, Raghvendra Tiwary, Santosh Kumar Tripathi, Mukesh Verma, Pawan Kumar Shukla, Yashpal Dhingra, S. H Chandrashekhar, D.K. Thakur, Devendra Jha, Debasis Misra,

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ORS.

Manu Shanker Mishra, Anshuman Upadhyay, R.D. Upadhyay, Amit Kumar, Atul Kumar, Ashish Kumar, Rekha Bakshi, Avijit Mani Tripathi, Rituraj, Nirnimesh Dube, Iftekhhar Ahmad, M. Qamaruddin, Ambar Qamaruddin, Abhishek, M. Qamaruddin, M.M, Singh, D.K. Sinha, Dharmendra Kishor, Binay K. Jha, Bipin K. Jha, Anilendra Pandey, V. Sushant Gupta, Dr. Kailash Chand, Prabhash Kumar Yadav, Pushpa Mishra, Vijay Pratap Yadav, Bankey Bihari Sharma, Braj Kishore Mishra, Aparna Jha, Siddhartha Arya, Sanjay Jain, Shantanu Sagar, Smarhar Singh, Abhishek K. Singh, Gopi Raman, Ram Shankar Das, Chandra Prakash, Dr. S.K. Verma, Aftab Ali Khan, Nitin Kumar Thakur, Rajesh Kumar Bachchan, B.K. Choudhary, Ravishankar Kumar, Arun Kumar, E.C. Vidyasagar, Prem Prakash, M.P. Jha, Ram Shankar Singh, Ram Ekbal Roy, Pranav Kumar Jha, Harshvardhan Jha, Amit Kishore Sinha, Sunil Kumar Verma, Shahid Anwar, Sumit Kumar, Shekhar Kumar, S.K. Tirpathi, Rajiv Shankar Dvivedi, Manish Kumar Saran, Satya Prakash Sharan, Manjit Pathak, Rajan K. Chourasia, Nirmal Kumar Ambastha, Sanjæev Kumar, Sudhanshu Pole, Venkateswar Rao Anomolu, Pradeep Misra, Amit Sibal, Jafar Alam, Gaurav Dudeja, Md. Izhar Alam, M.P. Singh, Hetu Arora Sethi, Gopal Singh, Manish Kumar, Susmita Lal, Pranay Ranjan, Praneet Ranjan, Piyush Sharma, Dinesh C. Pandey, Dhruv K. Jha, Ravi C. Prakash, K.K. Jaipuria, Bijan Ghosh, Purushottam S.T., Filza Moonis, Brij Bhushan, Chandan Ramamurthi, Dharam Bir Raj Vohra, K.N. Rai, Lakshmi Raman Singh, Mohan Pandey, Prem Sunder Jha, S.K. Sabhrawal, S.K. Sinha, Shree Pal Singh, In-person (in I.A. No. 439), Revathy Raghavan, Anil Kumar Jha, B.K. Satija, Prashant Chaudhary, Anil Kumar Tandale, Subramonium Prasad, Ajay Jain, Karun Mehta, Varun Tandon, Neha Agarwal, Vishwajit Singh, Ambhoj Kumar Sinha, Shekhar Prit Jha, Abhijit Sengupta, Ratan Kumar Choudhuri, Kanhaiya Priyadarshi, T. Mahipal, Aniruddha P. Mayee, P.V. Yogeswaran, Shashi Bhushan Kumar, Vishnu Sharma, Gaurav Agrawal Prakash Kumar Singh, Amit Pawan, Sridhar Potaraju, Devashish Bharuka, Milind Kumar, Abhay Kumar, Arup Banerjee, H

A Abhishek Atrey, Aruna Gupta, Rajiv Shankar Dvivedi, Mithilesh Kumar Singh, Mohit Kumar Shah, Sanjay Kumar Visen, G.P. Singh, Manendra Dubey, Abhishek, Shirish K. Deshpande, Vikas Giri for the appearing parties.

The Order of the Court was delivered by

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O R D E R

ALTAMAS KABIR, CJI. 1. Special Leave Petition (Civil) Nos. 22882-22888 of 2004 were filed by several trained teachers for a direction upon the State of Bihar to appoint them in the vacancies in the post of primary teachers in the State of Bihar. The same was withdrawn on an undertaking given on behalf of the State of Bihar on 18th January, 2006, whereby the State of Bihar committed itself to recruiting and filling up the vacant posts of teachers in primary schools with trained teachers. The undertaking given by the State of Bihar reads as follows:

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"That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.

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That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna High Court, while making recruitment of teachers.

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That it is respectfully submitted 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 to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may not be necessary, and

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the order of this Hon'ble Court and of the Patna High Court in this regard may be modified" A

2. The application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the Petitioner, Nand Kishore Ojha, filed Contempt Petition (Civil) No. 207 of 2006, and the same was disposed of with a direction upon the State of Bihar to implement the undertaking given earlier, upon a categorical statement being made that priority would be given to the trained teachers in matters of appointment in the said posts. B C

3. Thereafter, on account of further default on the part of the State of Bihar to honour its commitments, another Contempt Petition, being Contempt Petition (Civil) No. 297 of 2007, was filed and several applications were made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties to the proceedings. Ultimately, the learned Attorney General appeared before us on 25th August, 2009, and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf. Since there had been a change in the administrative set up in the State of Bihar, the situation had become more complex and it had become difficult to work out a solution to the problem posed in filling up the vacancies in the post of primary school teachers throughout the State of Bihar. When Contempt Petition (Civil) No. 297 was taken up for consideration, we heard the same along with several interlocutory applications filed by several teachers having individual grievances and reserved judgment. D E F

4. By our order dated 13th October, 2011, on the Contempt Petition filed in SLP(C) No. 22882 of 2004, arising out of the breach of undertaking given on 18th January, 2006, by the State of Bihar and the order passed on the basis thereof on 23rd January, 2006 in the aforesaid SLP, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts, should be given appointment G H

A in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement, which had been published for recruitment of
 B primary school teachers and took the number of available vacancies to be 34,540. We had further directed that the said vacancies be filled up with the said number of trained teachers as a one time measure to give effect to the undertakings given on 18th January, 2006 and 23rd January, 2006.

C 5. Subsequently, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and the genuineness of some of the institutions from which they alleged to have
 D received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the Petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

E 6. When the said dispute could not be resolved in terms of the list produced by the State of Bihar, we thought it fit to entrust a neutral person with the work and, accordingly, we had appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be
 F settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the
 G finalization of the seniority list. After much debate, the list submitted by Justice Chattopadhyay was accepted and in terms of the recommendations made, 34,540 candidates were appointed in different primary schools in the State of Bihar.

H 7. The matter did not end there. On account of the fact that some of the candidates, who had not appeared before Justice

Chattopadhyay, came up with fresh applications in support of their cases and urged that there were various omissions from the final select list, we decided to entertain the said applications, particularly, on account of the directions, which we had given, in our judgment and order dated 13th October, 2011, that no court would entertain any objection or applications with regard to the list of candidates, who had already been appointed, in terms of our earlier order.

8. During the hearing of these applications, special leave petitions and writ petitions, what emerged is that most of the applicants were aggrieved by some defect or the other in the preparation of the select list, which occurred on account of the failure of the candidates to give their relevant particulars to the Committee headed by Justice Chattopadhyay.

9. Be that as it may, in the event, some discrepancies had crept in the final select list, the individual grievances contained various anomalies, which it is difficult for us to unravel. Accordingly, we modify our order dated 13th October, 2011, and allow the applicants to approach the High Court for redressal of their grievances. 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.

B.B.B. SLPs & Writ Petitions disposed of.