

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1868/2018
(ARISING FROM SLP (C) NO.34154/2016)

MUKESH KUMAR & ORS.

APPELLANT(S)

VERSUS

STATE OF BIHAR & ORS.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellants have worked under the Bihar School Examination Board (formerly known as Bihar Intermediate Education Council) for around 23 years as of now. The Bihar Intermediate Education Council Act, 1992 was repealed by the Bihar Intermediate Education Council (Repeal) Act, 2007 (for short 'the Repeal Act'). Section 3 of the Repeal Act reads as under:-

"3. Adjustment of employees of the Bihar Intermediate Education Council. - (1) On and from the date of repeal of the Bihar Intermediate Education Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time State Government has taken such final decision as is provided hereinafter.

(2) The State Government shall constitute a Committee of Secretaries consisting of three

Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act:

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act.

(3) After the scheme approved by the Government is enforced it shall be fully implemented in its approved form and intent within three months from the date of its enforcement.

(4) The Committee of Secretaries constituted under sub-section (2) of Section 3 above shall be competent to decide utility and deployment of employees of the Council during transition period and it shall not be open to any employee to question decision of Committee of Secretaries:

Provided that the State Government shall be competent to amend, modify, alter or substitute the scheme so framed for removal of any difficulty in its implementation."

3. Accordingly, the Education Department of the Government of Bihar considered the Report of the 3-Members Committee and it was resolved as follows, to the extent relevant :-

"I. Employees on which below listed action has been taken at the time of the appointment will be adjusted in the vacant post of the Bihar School examination committee.

a) Appointment being held by the competent authority.

b) Advertisement was published for the appointment.

c) Reservation policy was being followed for the appointment.

d) Appointee must be qualified as per the requirement of the post.

e) Appointments were made against the acceptance and vacant post.

II. Employees which does not fall upon the abovementioned list will be adjusted in the Bihar School examination committee if they fulfills the below mentioned requirement laid by the Hon'ble Supreme Court in Civil Appeal No.1968/2006 in case title State of Karnataka V/s Uma Devi.

a) APPOINTMENT BEING HELD BY THE COMPETENT AUTHORITY.

b) Till the date of Appointment or repealment Appointments were made against the acceptance and vacant post.

c) Appointee must be qualified as per the requirement of the post.

d) Must be completed minimum 10 years of service.

III. Temporary employee of the dissolved council shall be adjusted on the basis of their original appointment if they fulfilled the abovementioned conditions (Clause I and II)."

4. It appears, this Resolution was not implemented. However, there was another Committee constituted by the Board and according to that Committee the appellants herein do not have the required service of even ten years.

5. We find it difficult to appreciate the stand taken by the Board. Once the Committee, as per the Act, has submitted a Report, it was for the State Government to act in terms of the Report. For the implementation of the Report, there was no requirement for a further Committee. We find from the impugned judgment that the High Court has directed the State Government to consider the case of the appellants herein in the light of the Government Resolution.

6. Accordingly, this appeal is disposed of with a direction to the State Government to take an appropriate decision in the light of the Scheme of the Repeal Act, the Report of the 3-Members Committee constituted under the Act and the Resolution taken based on the Report. While taking the decision the Government will also keep in mind that the appellants have as of now worked for around 23 years. The needful, as above, shall be done positively within a period of two months from today.

7. Pending applications, if any, shall stand disposed of.

8. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[MOHAN M. SHANTANAGODAR]

NEW DELHI;
FEBRUARY 13, 2018.