

Sanjay Kumar And Ors Vs State Of Bihar And Ors

Court: Patna High Court

Date of Decision: July 18, 2019

Acts Referred: Constitution Of India, 1950 " Article 14, 16, 162, 234(G)

Bihar District Council, Secondary And Higher Secondary Teacher (Employment And Service Conditions) Manual, 2006 " Rule 4, 4(k)(vii)(a)

Bihar State Panchayat Raj Act, 2006 " Section 73, 146

Citation: (2019) 3 PLJR 1217

Hon'ble Judges: Amreshwar Pratap Sahi, CJ; Anjana Mishra, J

Bench: Division Bench

Advocate: Bindhyachal Singh, Satya Prakash, Vipin Kumar Singh, Manish Dhari Singh, G.A. 7, Umesh Kumar Mishra, Awadhesh Kumar, Prabhu Narayan Sharma, Alok Ranjan, Ashok Kumar Yadav, Vikas Mohan, Ebrahim Kabir, Shruti Sinha, Lalit Kishore, Kumar Manish, Kumar Pankaj

Final Decision: Disposed Of

Judgement

1. C.W.J.C. No. 5129 of 2009 and the connected writ petition C.W.J.C. No. 18039 of 2008 raise the same issue simultaneously in view of the order of

remand by the Apex Court dated 6th January, 2016 in Civil Appeal No. 4273 of 2014 and Civil Appeal No. 4274 of 2014. The other connected matters

being linked with the same legal issue have also been tagged along with these two writ petitions and have been heard simultaneously. We have heard

the learned counsel for the petitioners and the appellants in the respective cases for the private individuals contesting their claims and the learned

Advocate General for the State of Bihar on behalf of the respondents in the two writ petitions and on behalf of the appellant in L.P.A. No. 307 of

2016 and L.P.A. No. 1210 of 2010.

2. A dispute arose with regard to the equivalence of Graduate qualification which was claimed to be possessed by the two sets of writ-petitioners in

the above noted writ petitions contending that they possess the degree of Sahityalankar from the Hindi Vidya Peeth, Deoghar which is equivalent to a

Graduate degree and, therefore, they were entitled for the employment being claimed by them. In both the cases the selection and appointment is for

the post of Librarian in an Institution governed by the provisions of the Bihar Zila Parishad Madhyamik Evam Uchchatar Madhyamik Shikshak Niyojan

Evam Seva Sharten Niyamavali, 2006.

3. These two writ petitions were allowed by a Division Bench of this Court in the decision reported in 2009 (4) PLJR 1038 [Sanjay Kumar Vs. State

of Bihar]. The direction issued by the High Court was to re-do the selection process and consider the candidature of the petitioners preferably within a

period of three months.

4. Questioning the correctness of the said judgment, two Civil Appeals were preferred by the State of Bihar before the Apex Court being Civil Appeal

Nos. 4273 of 2014 and 4274 of 2014 that were ultimately allowed and the matter was remitted back to the High Court vide judgment dated 6th

January, 2016. The judgment being short and brief is extracted hereinunder:-

“These appeals have been filed challenging the common impugned order dated 17.11.2009 passed by the Patna High Court allowing the writ

petitions in CWJC Nos. 5129/2009 and 18039/2009 filed by the respondents herein and directing the appellant- State of Bihar to redo the entire

selection process for the post of Librarian considering the case of the respondents also and further restraining the State from issuing appointment

letters to other selected candidates.

2. Brief facts giving rise to these appeals are as under:-

State of Bihar framed Bihar District Council, Secondary & Higher Secondary Teacher (Employment & Service Conditions) Manual 2006 under

Article 243G and Section 73 read with Section 146 of Bihar State Panchayat Raj Act, 2006. Rule 4(k) (vii) (a) of the said Rules was amended in

2008. The said amendment prescribes an essential qualification for appointments of teachers and librarians in the schools and also regulating

appointments. As per amended Rule 4 for appointment as teachers/librarians, the candidates must possess the graduation degree from any recognized

university with minimum 45% marks. An advertisement bearing No.11/employment1- 13/91(Part-II)-1337 dated 25.08.2008 was issued by

Government of Bihar, Human Resources and Development Department for appointment to the post of Librarian and Teacher in different schools

under Zila Parishad and Nagar Nikaya in the State of Bihar. The said advertisement specifically referred to Recruitment Rules 2006 although the

qualification or eligibility criteria was not specifically mentioned.

3. Respondents herein applied for the posts of Librarian. After the advertisement was issued, the Department issued order No. 11/Ma.1-01/2008 on

27.08.2008 containing exhaustive list of twenty eight colleges/universities/degrees that were not then recognized by the Government of Bihar for the

purpose of the Recruitment Rules 2006 and the advertisement dated 25.08.2008 and those degrees were not valid for employment of teachers. The

Department issued another Order No.11/M-44/2008-1968 (Annexure P/5) on 25.11.2008 declaring that the degree of Sahityaalankar awarded by

Deoghar Vidyapeeth is not valid for employment. The State Government issued a letter dated 27.07.2007 clarifying the stand of the State regarding

the degree of Sahityaalankar awarded by Vidyapeeth Deoghar is not equivalent to degree of graduation for the purpose of appointment under Bihar

Education District Council, Secondary and Higher Secondary Teachers (Employment/ Services) Rules 2006. The letter dated 27.07.2007 was subject

matter of challenge in Writ Petition No. 15237/07 titled Pramod Paswan vs. State of Bihar and in the said Writ Petition, the State was directed to take

a fresh decision on the same. The State Government examined the matter and vide Memo No. 11/M- 44/2008-1968 dated 25.11.2008, it was declared

that the degree of Sahityaalankar awarded by Deoghar Vidyapeeth is not valid for employment. On 13.12.2008, the Government of Bihar, Human

Resources Development Department, issued letter No.11/Na.1-9/2008- 2053 wherein inter alia it was specifically mentioned that the degree of

Sahityaalankar awarded by Deoghar Vidyapeeth cannot be attached to merit list of candidates.

4. Pursuant to the said advertisement, respondents applied for the post of Librarian. The respondents possessed the degree of Sahityaalankar awarded

by Deoghar Vidyapeeth. Challenging the validity, legality and correctness of the amendment of Rule 4(k)(vii) (a) of the Recruitment Rules 2006 as

amended in 2008, respondents filed two writ petitions bearing Nos.5129/2009 and 18039/2009. The Patna High Court vide impugned order dated

17.11.2009 allowed the writ petitions filed by the respondents directing the State of Bihar to redo the entire selection process as above mentioned.

Aggrieved by the same, State of Bihar has filed these appeals assailing the impugned order.

5. Mr. Gopal Singh, learned counsel for the appellants submitted that State of Bihar has issued order dated 27.08.2008 containing list of twenty eight

institutions which were not recognized under the recruitment rules. It was submitted that the State has considered the matter at several occasions and

has decided not to grant benefits to un-recognized degrees and accordingly the degree of Sahityaalankar awarded by Deoghar Vidyapeeth is not

equivalent to graduation degree and the High Court has not considered the matter in the light of order dated 25.11.2008 (Annexure P/5).

6. Per contra, Mr. N. Rai and Mr. S.B. Sanyal, learned Senior Counsel for the respondents contended that the degree of Sahityaalankar makes the

person eligible for appearing in the competitive examinations conducted by the Bihar Public Service Commission and it would be arbitrary to say that

degree of Sahityaalankar does not make a person eligible as per Bihar District Council, Secondary & Higher Secondary Teacher (Employment &

Service Conditions) Manual 2006 as amended in 2008 and the same is violative of Articles 14 and 16 of the Constitution of India.

7. We have considered the rival contentions of both the parties and perused the material on record.

8. The issue involved in these appeals is concerned with the interpretation of provisions in Rule 4 (k) (vii) (a) of Bihar District Council, Secondary &

Higher Secondary Teacher (Employment & Service Conditions) Manual 2006 as amended in 2008. As noticed earlier, Rule 4(k)(vii)(a) prescribes that

the candidate must have passed graduation examination with minimum 45% marks from any recognized university. It is the contention of the State that

the respondents do not fulfill the eligibility criteria as they possessed graduation degree from Hindi Vidyapeeth Deoghar which is not a recognized

university. As noticed above, as per the direction of the Patna High Court in CWJC No.15237/2007, the State of Bihar examined the matter and by an

order dated 25.11.2008 held that degree of Sahityaalankar cannot be a valid degree for appointment as teacher. Para 6 of the said order reads as

under:-

“In Bihar District Council/Urban Body Secondary/Higher Secondary (Employment and Service Conditions) Manual, 2006, there is no

provision to employing on any equivalent degree. Besides it, for employment, after deciding the all phases, the degree of

“Sahityaalankar given by Deoghar Vidyapeeth and other many degrees have not been decided recognized. Mainly, the holder of

Sahityaalankar Degree appear only at exam of some Sahitya papers while general B.A. pass the exam of graduation in many papers, which

is more useful for education, due to this reason the degree of Sahityaalankar from Deoghar Vidyapeeth is not valid for employment.”

Contention of the appellants is that pursuant to the above, the State sent instructions to all the districts vide Order dated 13.12.2008 directing them to

have appointment of teachers and librarians in accordance with Recruitment Rules 2006 as amended in 2008 and notification governing the validity of

degrees.

9. On behalf of the State, it is further submitted that the validity of Sahityaalankar degree from the Hindi Vidyapeeth Deoghar and its equivalence with

the graduation degree has been considered in detail by the Patna High Court in subsequent decisions filed by the State of Bihar in CWJC

No.13343/2011 and several other connected matters. It is submitted that in the above batch matters, High Court has rejected the claim of the

petitioners thereon that the Degree of Sahityaalankar is equivalent to graduation degree and the State of Bihar heavily relies upon the said judgment in

CWJC No.13343/2011 and batch matters. It was also submitted that the letter dated 11.01.1991 should be read in consonance with earlier circular

with respect to Hindi Vidyapeeth Deoghar wherein it has been mentioned that any recognition given to such degrees including Sahityaalankar is only

for the purpose of Hindi examination and not at par with graduation or equivalence and in this regard reliance is placed upon Press Note dated

05.05.1988 issued by the Central Government.

10. Having regard to the stand of the appellants and reliance placed upon order dated 25.11.2008 and the Press Note dated 05.05.1988 and the

subsequent decision in CWJC 13343/2011 etc. and in the interest of justice without commenting on the merit of the case, we deem it necessary to

remit the matter back to the High Court for consideration afresh.

11. In the light of the aforesaid discussion, the impugned order is set aside and the same is remitted back to the High Court for consideration of the

matter afresh after affording sufficient opportunity to both the parties. Liberty granted to the parties to file additional documents/pleadings. We request

the High Court to dispose of the matter as expeditiously as possible. The appeals are disposed of accordingly. Consequently, intervention application

stands disposed of granting liberty to the interveners to approach the High Court in accordance with law. In the facts and circumstances of the case,

we make no order as to costs.~<

5. It appears that before the Apex Court the argument advanced on behalf of the State was, that in view of the notification by the Human Resources

Department that the degree of Sahityalankar awarded by Deoghar Vidyapeeth is not valid for employment which was further sought to be

substantiated with the aid of the Press Note dated 05.05.1988 issued by the Central Government and a subsequent judgment of this Court by a learned

Single Judge in the case of Reeta Srivastava & Ors. State of Bihar & Ors., reported in 2012 (3) PLJR 353, it was contended that the claim of the

petitioners cannot be accepted, inasmuch as, the Human Resources Department vide its notification dated 27.08.2008 had not treated the said degree

obtained by the petitioners as equivalent to Graduation. Consequently, the argument was that they were not possessed of the minimum eligibility

educational qualifications and, therefore, they could not claim employment.

6. The Apex Court, as is evident from the judgment extracted hereinabove, proceeded to set aside the judgment of the High Court without

commenting on the merits of the case for a consideration afresh in the light of the judgment of the learned Single Judge referred to hereinabove, the

press note of the Central Government as also the notification issued by the Government of Bihar through the Human Resources Department referred

to hereinabove.

7. This is how on remittance, the matter has been heard by us where during the pendency of these writ petitions and appeals the State Government

has come up with two notifications dated 08.04.2016 and 24.08.2017. The said notifications have a direct bearing on the issue involved and, therefore,

we reproduce the said notifications hereinunder:

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- 15, 8.4.2016

-3/ 0-15/2015 0 0 5267/ ()

- 8/ 0 1-303/84 0- 541 -11 , 1991 ,

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2. “

0 0 00 0- 13343/2011 - 07.05.2012 ,

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4. () /

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3152 25.08.2008 1346 - 27.08. 2008 ,

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5. 0 00 00- 13343/2011

- 07.05.2012 (Observation) ,

- 8/01-303/840- 541 - 11

, 1991 - 07.05.2012

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-3/ 0-15/2015 0 0 5267/ -15, 8.4.2016

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-3/ 0-15/2015 0 0 5267/ -15, 8.4.2016

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- 15, - 24-8-2017

- 3/ 0-15/2015 0 0 10878/ ()

- 8/ 0 1-303/84 0- 541 11 , 1991 ,

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13343/2011 - 07.05. 2012 ,

- 5267 08.04.2016

0 0 0 0 0- 13343/2011 - 07.05.2012

(Observation) ,

- 8/0 1 303/84 0 541 - 11 , 1991

07.05.2012 ,

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3. 07.05. 2012 ,

07.05.2012 08.04.2016

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“Thus in my opinion, the clause simply means that appointments/promotions made/given on the basis of certificates issued by Hindi Vidyapeeth,

Deoghar prior to 07.05.2012 until the issuance of the notification by the G.A.D. dated 08.04.2016 shall not be affected.

This also makes clear that no further appointments/promotions can be given on the basis of certificates granted by Hindi Vidyapeeth, Deoghar treating

it equivalent to Matric, I.A. and B.A.”

5. , - 07.05.2012

07.05.2012 - 5207 - 08.04.2016

(08.04.2016) /

08.04.2016 /

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-3 / 0 15/2015 0 0 10878/ - 15, 24-8-2017

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8. The contention raised on behalf of the petitioners is that even assuming for the sake of arguments that the challenge raised to the rules as being

ultra vires may be kept aside for the time being, then in that event this subsequent development fortifies the stand of the petitioners and they are

entitled to the benefits under the said notifications. It may be pointed out that one of the petitioners Sanjay Kumar who is possessed of a degree of

Sahityalankar obtained prior to the year 2008 was an applicant and he was offered appointment on 26.12.2015 which is prior to the aforesaid two

notifications. The other writ-petitioner Azad Kumar Singh has been appointed on 11.10.2014 which is also prior to the date of the said notifications.

The petitioner Sanjay Kumar's services were terminated on 13.02.2016 after the matter was remitted back by the Supreme Court whereas Azad

Kumar Singh is still working.

9. It is in this background that we passed the following order on 11th July, 2019 calling upon the learned Advocate General to answer this issue:

“Heard Shri Bindhyachal Singh, learned counsel for the petitioner, and the learned Advocate General for the State of Bihar.

This writ petition was allowed on 17th of November, 2009. The issue raised in the petition is very simple, namely that the petitioner herein, who had

applied for the post of Librarian, was possessed of the degree of Sahitya Alankar from Hindi Vidya Peeth, Deoghar which degree was not being

accepted as a valid degree equivalent to Graduation for the purpose of appointment on the said post.

The Division Bench held in favour of the petitioner against which the State of Bihar preferred a Special Leave Petition before the Apex Court that

was converted into Civil Appeal No.4274 of 2014. The said appeals were allowed by the Apex Court on 6th January, 2016, but the matter was

remanded to be considered again by the High Court. The petitioner had by that time joined his services, but the same came to be terminated on 13th

February, 2016 after the Supreme Court judgement. The order has been assailed in I.A. No.219 of 2017.

Subsequent thereto, the Government issued a notification on 8th April, 2016 which has been filed as Annexure 7 to the aforesaid I.A. The said

notification categorically states that the earlier notification giving equivalence on 11th January 1991 stands annulled with effect from 7th May, 2012 in

the light of the decision of this Court in the case of Reeta Srivastava & Ors. vs. State of Bihar & Ors., reported in 2012 (3) P.L.J.R. 353. It may be

noted that the date of delivery of the said judgement is 7.5.2012 and, therefore, the State Government appears to have made the notification effective

from the date of the judgement of the learned Single Judge. It may not be out of place to mention here that two L.P.A's. were filed against the

aforesaid judgement of the learned Single Judge being L.P.A. No.953 of 2012 and L.P.A. No.1303 of 2012 as well as other connected L.P.A's that

came to be dismissed on 26.11.2012. Consequently, the judgement dated 7.5.2012 of the learned Single Judge has been upheld by the Division Bench.

However, the notification dated 08.04.2016 categorically in the last sentence states that any appointment or promotion made on the basis of the degree

awarded prior to 7.5.2012 shall not be affected.

A clarification was sought by different Departments in respect of the aforesaid notification and the State Government sought the opinion of the

learned Advocate General whereafter it issued another notification on 24.8.2017 that has been brought on record along with I.A. No.7827 of 2017.

The said notification specifically clarifies that any appointments made on the basis of a degree obtained prior to 7.5.2012 and between 7.5.2012 and

8.4.2016 shall remain unaffected.

The contention of the petitioner, therefore, is that in the present case, even though the advertisement was made in the year 2006 and selections held

thereafter, the petitioner had to fight his litigative battle and, ultimately, he was granted appointment on 26.12.2015. The petitioner, therefore, contends

that this appointment having been made prior to 8.4.2016 stands saved under the notification dated 24.8.2017 read with the notification dated 8.4.2016.

It is, therefore, submitted that such appointment could not have been invalidated, yet the services of the petitioner have been terminated on 13th

February, 2016 that has been challenged as noted above.

The learned Advocate General prays that the matter be taken up on Wednesday.

Put up on Wednesday i.e. 17th July, 2019.Ã¢â¬â€

10. The main plank of the argument of the learned Advocate General is to the effect that in view of the notification dated 27.08.2008 issued by the

Human Resources Department, which has not been rescinded or modified till date, no employment could be given to a teacher who has to possess a

Graduate qualification as prescribed under the rules and not an equivalent qualification as claimed by them which does not stand recognized. He

therefore laid emphasis on the fact that firstly the qualification of the writ-petitioner is from an Institution which is not recognized and secondly the said

qualification is not equivalent as per the notifications of the State Government issued by the Human Resources Department.

11. Replying to the contention in relation to the notifications dated 08.04.2016 and 24.08.2017 he submits that these are notifications issued by the

State Government through the General Administrative Department and the same would not apply in relation to appointment of teachers who are under

the control of the Human Resources Department, Government of Bihar. His further contention is that they are to hold a specialized post where a

qualification of Graduation is required as prescribed and any equivalent qualification is not permissible. He, therefore, submits that there is no question

of any discrimination or arbitrariness or even unreasonableness so as to treat the petitioners to be ineligible. Commenting upon the two notifications

referred to above he submits that these are notifications issued by the General Administrative Department of the Government of Bihar but they do not

relate to the Human Resources Department and would not apply at all in respect of these two writ-petitioners or any other similarly situated claimant.

He has invited the attention of the Court to every line of the said notification to contend that even though the said notifications take notice of the

developments in the present matter and relate to the Education Department, yet the notification dated 27.08.2008 cannot be said to have been affected

in any manner so as to render any relief to the writ- petitioners.

12. On behalf of the writ-petitioners a Division Bench judgment in L.P.A. No. 562 of 2015 Shilpi Singh Vs. State of Bihar and others has been

pressed into service to urge that these issues were taken notice of and it has been held that those who were possessed of degrees prior to 27.08.2008,

any subsequent disqualification arising out of the said notification would not affect the validity of the said degrees. We have considered the reasoning

given in the said judgment and we entirely agree with the same.

13. Coming to the argument of the learned Advocate General on the two notifications referred to above, what we find is that it was only on account of

this litigation in the Education Department that the entire matter travelled up to the Apex Court and it is the same issue which became the concern of

the General Administrative Department, Government of Bihar which is a wing of the same Government. We may clarify that the State Government in

the name of His Excellency the Governor is empowered to issue notifications in respect of all subjects on which the Government can legislate under

List-II as well as under List-III and, therefore, any executive instruction is clearly traceable to Article 162 of the Constitution of India. The

notifications, therefore, issued by one Department or the other in the name of the Governor is a notification by the Government.

14. To clarify it further the notification dated 08.04.2016 has been communicated to all departments with a direction to take appropriate action. This is

evident from the last note to the notification dated 08.04.2016 extracted hereinabove. It is therefore more than evident, and with the utmost clarity, that

the entire issue pertaining to the equivalence of qualification was not confined only to the General Administrative Department but was clearly made

applicable to all departments of the Government irrespective of the nature of employment. The argument of the learned Advocate General so as to

treat the employments in question in the present case being distinguishable from the other departments cannot be accepted, inasmuch as, it is in this

very litigation that the matter has travelled up to the Apex Court which has been noticed by the State Government for certifying the issue relating to all

Government Departments.

15. Thus, the argument to split up the applicability of the said notifications and to apply only to the General Administrative Department is a futile

argument, more so keeping in view the fact, that the said notification was further substantiated through the clarification in the notification dated 24th

August, 2017 extracted hereinabove. We, therefore, find that the State itself has fortified the stand of the petitioners by issuing a clarification and

which, therefore, clearly contradicts the arguments which have been advanced on behalf of the State. We find no reason to accept any of the

submissions on behalf of the State to the effect that the notifications dated 08.04.2016 and 24.08.2017 do not apply to the Education/Human

Resources Department. The clarificatory notification also in its last note again mentions the fact that the same is being sent to all departments for

information and appropriate action.

16. In the light of what has been concluded by us hereinabove, these writ petitions have to succeed on account of this subsequent development and we

accordingly hold that the petitioners in both the writ petitions are entitled to the benefit of the notifications dated 08.04.2016 and 24.08.2017 and

consequently their appointments being prior to the issuance of the said notifications are saved thereunder. The petitioner Sanjay Kumar shall,

therefore, be reinstated in service forthwith and his termination order dated 13.02.2016 that has been brought on record through I.A. No. 219 of 2017

is hereby quashed. Both the writ petitioners shall be treated to have been validly appointed of being possessed of the qualification referred to above

and shall be entitled to all consequential benefits.

17. We may now proceed to consider the claim set forth in C.W.J.C. No. 16183 of 2012 that was referred to the Division Bench by a learned Single

Judge as it raised the same issue and L.P.A. No. 894 of 2016. In these two matters the claim of the writ-petitioners and the appellant respectively are

with regard to promotional benefits in the higher scale of pay after having served for 8 years as an Assistant Teacher. They were denied promotional

pay-scale only on the ground that they did not possess the minimum eligibility qualification as prescribed and were claiming benefits on the strength of

the degree of Sahityalankar from Deoghar Hindi Vidyapeeth. In view of what has been concluded by us hereinabove, the petitioner of C.W.J.C. No.

16183 of 2012 and the appellant of L.P.A. No. 894 of 2016 are both entitled to the benefits of promotion and the same cannot be denied merely on the

ground that they were possessed of an equivalent degree as referred to hereinabove. It is undisputed that these two are also in possession of the

degree of Sahityalankar having been obtained prior to the year 2008. Accordingly, C.W.J.C. No. 16183 of 2012 and L.P.A. No. 894 of 2016 are

allowed. The impugned judgment of the learned Single Judge dated 28.03.2016 is set aside. Since both the candidates have prayed for a mandamus,

we accordingly direct the competent authority to pass an appropriate order in the light of above within three weeks from the date of presentation of

the certified copy of the order served on them with effect from the date they were entitled for such benefit together with all consequential benefits.

L.P.A. No. 1210 of 2010 and L.P.A. No. 307 of 2016

18. These two appeals have been filed by the State questioning the correctness of the judgment of the learned Single Judge whereby the respondent

writ-petitioners have been extended the benefit of equivalent qualification having been obtained by them from Deoghar Hindi Vidyapeeth. In the light

of what has been stated by us hereinabove, we do not find any merit in these two appeals which are hereby dismissed.

I.A. No. 6128 of 2016 in C.W.J.C. No. 5129 of 2009, I.A. No. 3543 of 2016 and 230 of 2017 in C.W.J.C. No. 5129 of 2009, I.A. No. 1 of 2017 (old

I.A. No. 2917 of 2017) in C.W.J.C. No. 18039 of 2008), I.A. Nos. 6022 of 2015, 5951 of 2015 and 6865 of 2015 in L.P.A. No. 1210 of 2010:

19. All these Interlocutory Applications have been filed by candidates contending that they are entitled to similar benefits. We are of the opinion that

they will have to prefer their individual writ petitions and, therefore, all the Interlocutory Applications are disposed of with liberty to all the applicants to

approach the appropriate forum for the redressal of their grievances.