

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal Nos. 8226-8227 OF 2012
Arising Out of
SLP (C) Nos. 26675-26676/2010
WITH
I.A. Nos. 19-20/2011**

Bihar State Government Secondary
School Teachers Association

... Appellant

Versus

Bihar Education Service
Association & Ors.

... Respondents

And

Contempt Petition Nos. 386-387/2011

Bihar State Government Secondary
School Teachers Association

... Appellant/Applicants

Versus

Anup Mukherjee & Ors.

... Respondents
(Alleged Contemnors)

JUDGMENT

JUDGEMENT

H.L. Gokhale J.

Leave granted.

2. These two Civil Appeals by Special Leave raise the question with respect to the approach the High Courts and the State

Governments are expected to adopt towards the orders passed, and the interpretations of Govt. resolutions rendered by this Court. The question arises in the context of litigation concerning the promotional avenues for the teachers in Bihar Government Service.

The relevant facts:-

3. The facts leading to the two Civil Appeals herein are as follows:-

The State of Bihar, which is respondent No.66 in these two appeals, set up a three member committee, in March 1976, with Shri Saran Singh, Member Board of Revenue, and Administrative Reforms Commissioner, as its Chairman. The terms of reference of this Committee were as follows:-

“To hasten the avenues for promotion in the Bihar Civil Services, the government has approved junior selection grade 20%, senior selection grade 12.50% and posts of senior Deputy Collector 2.5%. The same percentage has been applied for junior selection grade and senior selection grade in the Bihar Engineering Service. On this basis, requests have been coming from various state services associations that due to lack of opportunity for promotion in their cadres, there is stagnation, which must be removed.

1.2 Hence, keeping in view the strength and present promotional avenues in various State service cadres, to analyse the problem of stagnation and to recommend means to tackle this problem and

promotional opportunities, a committee of the following officers is constituted:-

- (1) Member, Board of Revenue-Chairman
- (2) Chairman, Public Grievances Bureau- Member
- (3) Finance Commissioner- Member”

4. The committee drew its conclusions on the basis of the facts and figures furnished by various departments. As stated in the report, the approach of the committee was to find out:-

- (a) what relatively, is the extent of stagnation in different services, and the present prospects of promotion, and
- (b) how the stagnation can be removed and promotional opportunities enlarged.

5. The committee noted that all the service associations staked claims for the same percentage of the promotional posts as allowed to Bihar Civil Service and Bihar Engineering Service. Two of the reasons for stagnation noted by the committee were: (i) relatively heavy recruitment of officers of the same age group in certain years, (ii) and lack of adequate number of promotional posts at different levels of the organizational hierarchy. The recommendations of the committee with respect to various services are in part III of its report. As far as Bihar Education Service is concerned, it has been discussed in para (9), thereof. To begin with, the committee dealt with the promotional

chances of Class-II officers into Class-I. Then in sub-para B it has dealt with the posts in specialized institutes like those teaching Sanskrit, Prakrit and Persian. Thereafter in sub-para C it has dealt with the Miscellaneous Cadre. The analysis in this part and the recommendations read as follows:-

"C. Miscellaneous cadre

11.10. This service consists of 59 posts of different categories like teachers, engineers, Doctors, Stadium Manager, etc. and excepting the teachers of Netarhat School who have adequate prospects of promotion within the cadre, most of the members of the cadre hold isolated posts with no definite prospect of promotion. No promotional posts can be provided for because of the isolated nature of their job.

In order, however, to minimize the hardships in their case, the committee would like to make the following suggestion for consideration of the Education Department:-

- (1) Education department may get the posts of engineers included in the cadre of the Public Works Department and obtain their services on deputation basis.*
- (2) The two posts of the doctors may also be got included in the Health service and service of doctors obtained on deputation basis.*
- (3) The remaining posts should be included in the General cadre and manned by officers of the Bihar Educational Service as far as practicable."*

The committee suggested that the proposals should come into effect from 1st January, 1977.

6. The recommendations of the committee were accepted by the State Government, and the State Government (Finance Department) issued a notification dated 11.4.1977, which was subsequently published in the Gazette Extra-Ordinary on 27.4.1977. The decision with respect to the recommendations was contained in Schedule-1 of the notification. As far as the education department and the miscellaneous cadre are concerned, the decision notified reads as follows:-

Schedule-1

Sr. No.	Para No. of committee report	Page No.	Department	Name of service	Recommendation the Committee	Govt. Decision
1	2	3	4	5	6	7
7	1.10	25	Education Department	Misc. Cadre	1) kindly merge the post of the Engineers of the Education Department into Bihar engineering Services Cadre and take the Services of the Engineers by means of Deputation	Approved
					2) The posts of doctors should be included in the Bihar Health Services cadre and as per the requirement their service should also be taken on deputation	Approved
					3) Various Posts such as Teacher (except the teachers of Netarhat) and the posts of Stadium managers etc should be included in the Bihar Education Service cadre and the Officers of the cadre should be appointed on these posts	Approved

(emphasis supplied)

First round of litigation

7. It is the case of the petitioner Secondary School Teachers Association that, though this notification was issued by the State Government on 11.4.1977, the State Government took no steps to implement the same. They represented for its implementation from time to time, but that was without any effect. They learnt that one provisional gradation list was prepared in the year 1986, but it was never circulated or made known to the Petitioner association. Another gradation list was prepared in 1995, and they found that the same had left out the members of the Petitioner association. Two representations were once again made, including one on 25.5.1998, but that was also without any effect. Therefore, they were constrained to file the **Writ Petition, bearing No.12122 of 1998**, against the State of Bihar and the concerned officers. In this petition they specifically claimed (a) that the aforesaid notification of 11.4.1977 contemplated a merger of their cadre into Bihar Education Service which consists of class-II employees, and (b) that any appointment and further promotions are to be made from the combined cadre. The petition therefore prayed:-

(1) for a direction to implement the decision contained in the notification dated 11.4.1977.

(2) for a direction to prepare a combined gradation list of the Bihar Education Service Class II after placing the members of the Petitioner association in their appropriate places along with other constituents.

(3) to restrain the respondents from acting upon the defective gradation list of 1995

(4) for the consequential reliefs, which meant increase in salary and allowances pursuant to the recommendations of the Pay Revision Committees appointed from time to time.

8. It is relevant to note that in this petition they specifically pleaded in para 5 that they were also selected through Public Service Commission/ Central Selection Board, and that they also had qualifications of being graduates with necessary training, and further that from 1965 onwards they also had to have a Master's degree. In para 6 of the petition they submitted that the Saran Singh committee had recommended the merger, despite which the defective gradation lists were prepared, first on 19.7.1986 and thereafter on 13.11.1995, contrary to the notification of 11.4.1977.

9. Another **Writ Petition bearing CWJC No.8147/1999** was filed by some teachers viz. Smt. Ratan Prabha and Ors. This petition drew attention to the issue of pay anomaly. They also relied upon the notification of 11.4.1977, and prayed for preparation of a common seniority list for Bihar Education Service. Both the Writ Petitions were heard together. The State Government did not file any counter in spite of adequate time having been granted. The learned Single Judge of Patna High Court, observed in his order that it appears that the orders of merger had not been issued, and the matter was pending with the State Government, though in the meantime separate gradation list had been published for one or the other teaching cadre. The learned single judge therefore, passed the following order dated 2.2.2000:-

"In the circumstances, I direct the commissioner cum Secretary, Secondary, Primary and Mass Education, government of Bihar to act upon the government decision contained in Resolution dated 11.4.1977 so far it relates to the Education Service of the Education Department."

10. The State of Bihar felt aggrieved by this common order passed in the two Writ Petitions, and therefore filed two **Letters Patent Appeals No.980 and 998 of 2000**. The State Government contended that there was no proposal to merge the sub-ordinate teachers into the Bihar Education Service Class-II. It was further pointed out that 50%

posts of Bihar Education Service Class-II were filled by the promotion of the subordinate teachers. This was however, denied by the appellants herein by pointing out that factually however, hardly any such promotions had taken place. They also pointed out that the notification dated 11.4.1977 had been implemented in other services in the manner in which they were canvassing. The Division Bench dismissed these two appeals by order dated 27.11.2000, wherein it observed:-

“In our view, since this court by order dated 2.2.2000 has specifically directed the Government to take a decision in terms of the resolution dated 11.4.1977, there appears no reason for the State to be aggrieved by such order.”

11. The State Government carried the matter further to this Court in **SLP Nos.4937-4938/2001**, and this Court dismissed the two SLP's by its order dated 16.4.2001 which reads as follows:-

“CORAM:

Hon'ble Mr. Justice B.N Kripal

Hon'ble. Mrs Justice Ruma Pal

*“Upon hearing the counsel the court made the following
ORDER*

It is clear that the final direction which has been given to the Petitioner to implement the resolution dated 27th April, 1977 in the manner it is meant to be implemented. The petitions are disposed of.”

Second round of litigation

12. It is, however, seen that inspite of the orders passed as above, State of Bihar did not issue the necessary orders for merger of the subordinate cadre of teachers into the Bihar Education Service, and consequential rise in pay. This led a subordinate-service teacher, one Shri Janardan Rai, to file a fresh **Writ Petition, being CWJC No.8679 of 2002**. He referred to the orders passed above, and prayed for consequential benefits along with fixation of pay in terms of the State Government Notification dated 11.4.1977, and in terms of the order dated 2.2.2000 passed in above referred CWJC No.12122 of 1998, which had been upheld by the Supreme Court.

13. This petition was opposed by the Additional Finance Commissioner of the State of Bihar, by filing an affidavit. In para 13, he specifically stated that the decision contained in the aforesaid notification is not at all related to the non-gazetted cadre of teachers of Government High Schools, and therefore, implementation of the order of the Hon'ble Court does not require merger of the Subordinate Education Service with the Bihar Education Service. In para 25, he contended that the word 'teachers' mentioned in Item No.7 of Schedule-1 of the notification of 1977 referred to those isolated posts of teachers who had been part of the umbrella service, namely, Bihar Education

Service, but who did not have any proper cadre, and therefore had no opportunities of promotion available to them. In para 26 he contended that the Saran Singh Committee report had made clear that the report was exclusively about the cadres within the Gazetted State Services.

14. The Director (Administration) cum Deputy Secretary, the Department of Secondary, Primary and Mass Education of Government of Bihar, filed two affidavits. In the first affidavit, he stated in para 4(c) that in the notification there is no mention of 59 posts, and hence the confusion arose. He further stated that the Government had, therefore, decided to locate those 59 posts by an advertisement and call for information. In para 6/A of the second affidavit, however, he stated that there was no mention of any merger in the notification.

15. The learned Single Judge who heard the petition referred to the earlier orders up to the Supreme Court, and then observed that, in view thereof, the matter should have attained finality. He further observed that it was really unfortunate that the state had again started giving its own different meaning to interpret the aforesaid orders, rather going to the extent of even stating that some shadow-boxing had been done in the High Court and the Supreme Court, to obtain certain orders. He stated that it appeared from the notings on the files of the State

Government that the Education Department had, in fact, taken a decision to implement the aforesaid notification, and prepared a draft notification for the approval of the Finance Department, so that the orders of the High Court, for implementing the notification of 11.4.1977, are complied with. He also recorded that the said draft notification speaks of about 2465 sanctioned/ created posts. He stated-

“...The said draft clearly goes to show that the Education Department has found that the petitioner and other similarly situated persons were also required to be merged in the Bihar Education Service, in view of the aforesaid resolution. However, final approval of the Finance Department was sought for, before final direction was issued in this regard. The said resolution speaks about 2465 sanctioned/created posts. As such it appears that the only obstacle which remains in non-implementation of the resolution is concerned is the functionaries of the Finance Department, who are giving a different meaning to the said resolution.”

16. The Learned Judge, therefore, heard the arguments of the counsel for the Finance Department exhaustively, and observed that if the meaning, which is tried to be given to the notification dated 11.4.1977, is to be accepted, the whole notification relating to the Bihar Education Service would become redundant. That apart, he observed “today it does not lie in the mouth of authorities to give it any other interpretation rather they are sitting over the orders of the High Court, as well as the Supreme Court.” He, therefore, directed them to

implement the notification of 1977 in its totality, within a period of six weeks, failing which, they would be liable to be proceeded for violation of the said order and the order dated 2.2.2000, as well as the orders of the LPA Bench and the Supreme Court of India. He granted liberty to the petitioner to bring a petition before the Court in that very writ application itself, so that, if necessary erring respondents can be proceeded against in accordance with law.

17. This order was again challenged by the State Government in **LPA No.65/2003**. Additional grounds were raised in the LPA. One of them was that if the interpretation of the term 'teachers' accepted by the learned single judge was approved, it will lead to the teachers other than those in Government service claiming the benefits of Bihar Education Service Class-II. Secondly, it was contended that the subordinate education service was not a state service. The Division Bench of the High Court however, dismissed the LPA by its order dated 10.3.2003, observing that the controversy had already attained finality with the order of the Supreme Court and nothing more was required to be recorded before passing this order. However, in the meanwhile Division Bench had also passed an order dated 27.1.2003 directing the Chief Secretary, Government of Bihar and Director Administration of

Bihar to remain present in the appeal to explain the non-implementation.

18. These two orders led the State Government to file **Civil Appeal No.4466/2003**, wherein the earlier grounds were reiterated. A counter was filed on behalf of Janardhan Rai & Ors. by the Gen. Secy. Of the Bihar State Government Secondary School Teachers Association which had been impleaded as a respondent by an order passed by this Court. Therein it was specifically stated in paragraph 13 as follows:-

“..... Thus, since the members of the Respondent Association belonged to a clearly identifiable cadre known as “B.S.E.S Cadre” and were not part of any isolated post and also since their posts were not declared “Gazetted”- then, they clearly fell within the purview of those State services covered by the Saran Singh Committee. It is also relevant to mention here that the term “State Service” used by the Petitioners has not been defined anywhere. This is evident from the Fitment Committee report, Government of Bihar published in 1998. Thus in the absence of any special definition, the words “State Service” would mean Government Service of the State regulated by State Service Code.”

The Civil Appeal was dismissed by this Court by its order dated 19.4.2006 which we quote in the entirety:-

*“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION*

CIVIL APPEAL NO.4466 OF 2003

STATE OF BIHAR & ORS.

...APPELLANTS

VERSUS

JANARDAN RAI & ANR

...RESPONDENTS

ORDER

Heard learned counsel on both sides.

That a Government Resolution passed in 1977 has not yet been implemented and continues to be the subject matter of a spate of litigation, despite 14 orders of different Courts, is something that shocks the conscience of this Court.

The Order of the High Court in Letters Patent Appeal, which has resulted in the present Appeal is a short (one paragraph) order, but the background appears to be voluminous. Learned counsel on both sides have taken us through the various documents on record. After patiently plodding through the record and the various orders, the only point that needs to be considered is, whether the Resolution No 3521 F2 dated 11th April, 1977 of the State Government has been implemented in respect of the Members of the Bihar Subordinate Education Service comprising Male and Female teachers. According to the Respondents, its implementation would mean merger of the cadre of teachers belonging to the Bihar Subordinate Education Service with the Bihar Education Service Class 2; the stand of the State Government is that this Resolution, which accepts and implements the report of the Saran Singh Committee (Paragaph 11.10), has nothing to do with the Members of the Bihar Subordinate Education Service Cadre.

Writ Petitions were filed before the High Court of Patna and they were allowed in favour of the teachers holding that such merger is contemplated in the concerned Government Resolution. A contempt petition was also taken out alleging non-implementation of the High Court's order, which had directed the State specifically to implement the concerned Resolution dated 11th April, 1977.

The contempt petition is still pending before the High Court and has been stayed in the present appeal.

At the end of the day, we are satisfied that whether the implementation has been done in the manner required by the Resolution or not is for the High Court to decide since the High Court is in seisin of the contempt petition. Hence, we feel that it is not necessary for us to interfere in the matter, particularly since our attention has been drawn to the statements made on the floor of the legislative assembly that the Government itself is thinking of implementing the Resolution in the manner that is being suggested by the Respondents. In any event, since the contempt petition is pending, the High Court will examine the matter and, if satisfied that the Resolution has not been implemented, deal with the contemnors according to law. In this view of the matter, we do not think that it is necessary for us to interfere at all.

Civil Appeal is dismissed. No order as to costs. Stay of the contempt proceedings is vacated forthwith.

.....J.
(B.N. Srikrishna)

.....J.
(Lokeshwar Singh Panta)

New Delhi April 19, 2006”

19. It appears that in view of this judgment of this Court in the second round of litigation, the State Government ultimately moved to take the decision as canvassed by the subordinate teachers. The Cabinet took the necessary decision on 3.7.2006. The memorandum prepared by the administration for the consideration of the Council of Ministers referred to the earlier developments in the first 10

paragraphs. Paragraphs 11 to 18 of this memorandum which was approved by the Cabinet read as follows:-

“11. The department prepared an estimate of financial burden involved. According to a provisional estimate the estimated amount difference is near about Rs. 64 crore. But because almost all the beneficiaries have got the benefit of first ACP therefore on this count after deducting a moderate amount it comes to near about Rs. 48 crores 62 lakhs. In addition to this, so many of the beneficiaries are entitled to get the benefit of 2nd ACP. If they are granted, the 2nd ACP then the estimates amount will further come down.

12. In the year 1977 the No. of total created/sanctioned post of the male and female teachers were 2465 against which total working strength was 1336, which decreased to 880 by the years 2006, out of this if 301 units belonging to Jharkhand is deducted it comes to 579 only.

13. It is to be noted that in view of the provisions contained in resolution No.3521 dated 11.04.1977 several departments have merged the lower scales with the higher ones. But the incumbents of this cadre of the Education Deptt. have been denied their promotions after 1977 which was otherwise due. Whereas the incumbents of Inspecting Branch of this cadre are reported to have been promoted upto 2001.

14. The officers of the Bihar Education Service in their representation against this merger are apprehending that this merger will harm their interest. But the Deptt. has no such knowledge about them to be an intervener or a party in CWJC, LPA and SLP filed in this regard. **Most of the beneficiaries of this merger are on the verge of retirement therefore there is no possibility of a major harm to be caused to the officers of the Bihar Education Service.**

15. Therefore consequent upon-complying the orders of the Hon'ble Courts **it is proposed to upgrade 2465**

created/sanctioned posts of teachers of subordinate education service male and female cadre with Bihar Education Service Class-2 w.e.f 01.07.77.

16. The concurrence of Finance Deptt. has been obtained.

17. The approval of the Departmental Minister has been obtained in the proposal.

18. The approval of the council of ministers in the proposal contained in para 15 of the memorandum is solicited.”
(emphasis supplied)

20. Accordingly, necessary resolution was issued under the order of the Governor of Bihar on 7.7.2006, stating that the teachers of the Subordinate Education Service (Teaching Branch) male and female cadre, are merged into Bihar Education Service Class II w.e.f. 1.1.1977, in accordance with the Finance Department Notification dated 11.4.1977, and that appropriate orders will follow after evaluating personal benefits arising out of the order. A notification was also subsequently issued on 9.10.2006 giving effect to the above resolution with respect to three teachers mentioned specifically in that notification.

Third round of litigation

21. Now, it was the turn of the Bihar Education Service to file their **Writ Petition bearing CWJC No.10091/2006**, wherein, they

challenged the Government resolution dated 7.7.2006 providing for the merger of the Bihar Subordinate Education Service into the Bihar Education Service Class-II. It was contended that the Bihar Subordinate Education Service, to which the secondary teachers belonged was quite different from the Bihar Education Service Class-II. This was on the footing that their modes of recruitment and minimum qualifications were different. It was submitted that the merger will affect their seniority and therefore the decision is arbitrary and violative of Article 14 of the Constitution. The State Government opposed this petition by filing an affidavit. It was pointed out by the State Government that the Govt. resolution dated 7.7.2006 had been issued in view of the judgments of the High Court as approved by the Hon'ble Supreme Court. The opinion of the Advocate General was also tendered that the Govt. had no option but to implement the notification of 11.4.1977 as regards the merger of the two services. The intervener Bihar Education Service Association also opposed this petition and pointed out that the earlier Writ Petitions were allowed by the High Court in favour of the teachers holding that the merger was contemplated in the Govt. notification and the SLP therefrom had been dismissed.

22. The learned Single Judge, however, referred to the observation of this Court in its order dated 19.4.2006, that it was for the High Court to decide whether the notification of the State Govt. has been implemented in the manner required by the notification, and therefore examined the legality of the resolution dated 7.7.2006 by re-examining the earlier notification dated 11.4.1977. He took the view that the Govt. decision accepting the recommendation of the committee as recorded at Serial No.7 of Schedule 1 was concerning the miscellaneous cadre only, and while doing that there was no occasion for State to take a decision about Bihar Education Service and to merge the teaching branch, male and female, of the Bihar Subordinate Education Service with the Bihar Education Service. He therefore allowed CWJC No.10091/2006 by his judgment and order dated 31.10.2007 and quashed the resolution dated 7.7.2006.

23. Along with the above writ petition, the learned Single Judge heard another Writ Petition bearing **CWJC No.14678/2006** which was filed by 51 subordinate teachers who on the other hand claimed the benefit of the very Govt. resolution dated 7.7.2006. The learned Judge disposed of that petition with same common order, but directed the Govt. to

consider their cases if they are in any way situated similar to the miscellaneous cadre.

24. It is relevant to note that after this judgment and order of learned Single Judge dated 31.10.2007, the Govt. of Bihar came out with a consequential notification dated 19.11.2007 quashing the above Resolution No.1209 dated 7.7.2006 (which had merged the teachers of subordinate services into Bihar Education Service Class-II), and withdrawing the financial benefits flowing therefrom.

25. Some of the individual teachers who felt aggrieved by this judgment and order dated 31.10.2007, filed LPAs Nos.941/2007, 946/2007, 947/2007 and 974/2007. As far as the Secondary School Teachers Association is concerned it directly filed an SLP to this Court against the order dated 31.10.2007, bearing SLP No.8031/2008, but this Court vide its order dated 16.3.2009 noted that those individual LPAs were pending before the High Court, and therefore granted liberty to the association to approach the High Court by way of LPA. Accordingly, the petitioner association filed **LPA No.418/2009**. All those LPAs were heard together.

26. The appellant association as well as the Bihar Education Service Association reiterated their positions before the Division Bench.

The appellant association principally contented that after the decision of the Supreme Court dated 19.4.2006, it was not permissible for the learned Single Judge to re-open the entire controversy, otherwise there would never be any finality. The decision of the learned Single Judge was however defended by the Bihar Education Service Association by contending that no definite decision had been arrived at in the earlier proceedings. As noted earlier the State of Bihar had defended, before the learned Single Judge, the Resolution dated 7.7.2006 approving the merger. However, the State changed its stand before the Division Bench. As can be seen from para 38 of the judgment of the Division Bench, it was contended on behalf of the State Govt. that neither in the notification of the Finance Department dated 11.4.1977 nor in any order of this Court except in CWJC No.8679 of 2002 (the contempt petition wherein was being heard with these appeals) it had even remotely been decided as regards the merger of the teachers of SES in BES. Thereafter, the para records the stand of the State Govt. as follows:-

“As with regard to the order passed by the learned Single Judge in CWJC No.8679 of 2002, it was sought to be explained by the learned Advocate General that since that case itself was being heard along with these appeals as per the order of the Apex Court dated 19.4.2006, the same could not be treated as a binding precedent”.

27. The Division Bench took the view that the State Govt. had issued the resolution 7.7.2006 under the threat of contempt, though the judgment does not record any such submission on behalf of the State Govt. The judgment indicates that in the opinion of the Division Bench the order of this Court dated 19.4.2006 did not prohibit the learned Single Judge from going into the entire controversy. The Division Bench accepted that unless rules were framed, there could not be any merger since there was no parity in the pay of the subordinate teachers and the Bihar Education Service Class-II employees. After referring to the report of the Saran Singh Committee, the Division Bench formed the opinion that the notification of the State Govt. dated 11.4.1977 will have to be confined only to 59 posts in the miscellaneous cadre.

28. The LPAs were therefore dismissed by the Division Bench by the impugned judgment and order dated 21.5.2010. The Division Bench by the same order also dropped the contempt matter then pending in CWJC No.8679/2002. The orders passed by the learned Single Judge as well as by the Division Bench have led to the present two **Civil Appeals (arising out of SLP (C) Nos.26675-76 of 2010)**, which is the third occasion when this controversy is coming up to this Court.

29. When the Special Leave Petitions leading to these appeals came up for consideration, initially a notice was issued on 7.3.2011, and later on after hearing the counsel for respondents, the operation of the judgment and orders passed by the learned Single Judge as well as by the Division Bench came to be stayed by an order passed on 4.7.2011. The State of Bihar has now moved **IA Nos. 19-20 of 2011** to vacate the order of stay. The appellants on the other hand have contended that in view of the stay granted by this Court, the State of Bihar and its officers are expected to take steps to implement the Resolution dated 7.7.2006, and since that was not being done they have filed the Contempt Petition (Civil) No.386-387 of 2011 against the Chief Secretary of the Govt. of Bihar and its other officers. The Civil Appeals, the I.A for vacating the stay order and the Contempt Petitions have been heard, and are decided together. Shri Patwalia, learned Senior Counsel has appeared for the appellants, Shri Nagendra Rai, learned Senior Counsel has appeared for the State of Bihar and its officers, and learned counsel Shri Akhilesh Kumar Pandey has appeared for the Bihar Education Service Association and its members.

Submission of the rival parties

30. It was submitted on behalf of the appellants that the learned Single Judge and the Judges of the Division Bench who have passed the impugned order have failed to grasp the true import of the order passed by this Court on 19.4.2006. All that remained to be done thereafter was to monitor the contempt proceedings in Writ Petition No.8679/2002. This limited scope was exceeded by them to re-open the entire controversy. If this is approved, there would never be any end to the litigation. It was submitted by Mr. Patwalia, learned senior counsel for the appellants, that the fact of stagnation in the services of the subordinate teachers was not being disputed. What was being contended was that the recommendation of Saran Singh Committee was concerning only 59 miscellaneous posts and that was approved by the State Govt. in the notification of 11.4.1977. In his submission, this reading of the recommendation was not correct. In any case, the notification of 11.4.1977 has to be read on its own. Besides, in the present matter the Court is concerned with the challenge to the Govt. Resolution dated 7.7.2006. The implementation of this notification was not going to cause any serious financial burden on the State Govt. The State Govt. was to upgrade the posts, and thus the subordinate teachers were to carry their own posts in the Bihar Education Service

Class-II, though not many of those teachers were going to benefit since most of the beneficiaries have already retired or are on the verge of retirement as stated in the resolution. As far as seniority is concerned, he submitted that the subordinate employees who remain in service will get seniority from 1977, and naturally those who joined the service subsequently will be placed thereafter. Mr. Patwalia therefore submitted that these appeals should be allowed, and the challenge to the resolution dated 7.7.2006 be repelled. He, however, fairly stated that he was not pressing for the action in contempt.

31. As against this, it was submitted on behalf of the employees of the Bihar Education Service that the Subordinate Education Service is a feeder cadre for promotion to the Bihar Education Service. Their pay is different, and the merger, as proposed in the resolution dated 7.7.2006, will affect their seniority retrospectively. In their submission, the State Govt. notification of 11.4.1977 has basically to be read in the light of the Saran Singh Committee report, which according to them did not extend the recommendations to the cadre of the subordinate teachers. Mr. Akhilesh Kumar Pandey learned counsel, appearing for them, therefore submitted that the SLPs should be dismissed.

32. On behalf of the State of Bihar submissions were advanced by Mr. Nagendra Rai, learned senior counsel. He submitted that the notification passed by the State Govt. on 11.4.1977 ought to be read as confined to the Saran Singh Committee report only. There was no merger contemplated in the Govt. notification, and the order of this Court dated 19.4.2006 should not be read as confined only to the hearing of the Contempt Petition by the High Court. He submitted that the subordinate service employees have otherwise also prospects of promotions under their service rules. The Saran Singh Committee Report was only for the employees of the State Service and the subordinate service did not form part of the State Service. The report was meant for only those who did not have scope for promotion in the State Service, and therefore the SLPs be dismissed.

Consideration of the rival submissions

33. We have considered the submissions by the counsel for the rival parties. The above narration of the facts and legal submissions shows that when the first Writ Petition No.12122 of 1998 was filed by the appellant, the State Government did not even care to file a counter. The learned Single Judge went through the material on record and noted that the order for merger had yet not been passed, and the

matter was pending before the Govt. The learned Judge, therefore, passed the order directing the Secretary, Education Department to act on the Govt. resolution dated 11.4.1977. The State of Bihar chose to file an appeal before the Division Bench where for the first time it stated that there was no proposal for merger. The Division Bench which heard the appeal noted that the direction of the Single Judge was to act in terms of the Govt. resolution and therefore there was no reason for the State to feel aggrieved. When the State Govt. filed the SLP, this Court observed that the final direction given to the State was to implement the resolution in the manner it was meant to be implemented, and disposed of the SLP. Thus, it was clear at the end of the first round of litigation that the petition filed by the appellant had been allowed by learned Single Judge, and that order had been left undisturbed in the appeals therefrom by the Division Bench as well as by this Court.

34. As is seen from the further events that in spite of these orders the State Government did not take the steps to implement the notification dated 11.4.1977, in the manner accepted as valid in the first round of litigation. This inaction led Shri Janardhan Rai and some other teachers to file one more Writ Petition being CWJC No.8679 of 2002 for the implementation thereof, and the merger of subordinate

teachers into the Bihar Education Service Class-II. It is however seen that, at this stage there was a difference of opinion between the Finance Department and the Education Department of the State Govt. The Finance Department continued to maintain that the subordinate Education Service could not be merged into the Bihar Education Service Class-II. The Education Department however in its first affidavit, in this Writ Petition, recorded that the notification of 11.4.1977 did not state that it is concerning only 59 posts. Notings on the files of the Govt. clearly showed that the Education Department had understood that for the implementation of the notification, the merger of the two cadres was necessary, and had for that purpose prepared a draft resolution for the approval of the Finance Department. In view of this factual scenario, and also in view of the previous orders, the learned single judge allowed the CWJC No.8679/2002, and passed the order directing the steps for merger of the subordinate teachers into the Bihar Education Service. The appeal of State of Bihar was also dismissed by the Division Bench by observing that the controversy had already attained finality with the orders of the Supreme Court.

35. The order passed by this Court, thereafter, in the Civil Appeal filed by the State Govt. bearing No.4466 of 2003 dated 19.4.2006 has to

be read on this background. In the very first para this Court has recorded that the non-implementation of the notification passed in 1977 for such a long time had shocked its conscience. In the second paragraph, the Court has recorded the submissions of the rival parties. In the third para, the Court specifically recorded that the writ petitions filed in the High Court were allowed in favour of the teachers holding that such merger is contemplated in the concerned Government notification. All that is recorded thereafter is concerning the Contempt Petition, which was pending in the High Court, and which was concerning the non-implementation of High Court's order, which had directed the implementation of the Govt. notification dated 11.4.1977. As the further paragraphs of this order record, all that remained to be looked into was whether the implementation has been done in the manner required by the notification. It is also relevant that before dismissing the Civil Appeal filed by the State Govt., the Court recorded that the Govt. was also thinking of implementing the notification in the manner suggested by the respondents before the Court (that is the appellants herein). Therefore, ultimately the Court directed that High Court will examine the matter and if satisfied that the notification has not been implemented, deal with the contemnors in accordance with

law. Therefore, the Court vacated the stay on the contempt proceedings forthwith.

36. Thus, all that remained thereafter to be done was to decide the pending Contempt Petition in Writ Petition CWJC No.8679 of 2002. The state of Bihar understood the decisions so far correctly, and therefore passed the resolution dated 7.7.2006 accepting the view point, which had found favour with the High Court as well as this Court, recommending the merger of the two cadres and upgradation of the teachers. The resolution also recorded that the merger would not have any serious financial implications nor would it affect seniority of many employees since most of the employees, to be merged, had either retired or were on the verge of their retirement.

37. In this background when the Bihar Education Service employees filed their Writ Petition being No.CWJC 10091 of 2006, the State Government rightly defended its resolution dated 7.7.2006. However, the learned Single Judge failed to understand the import of the decision of this Court, and thought that he had the liberty to reopen the controversy despite the decisions rendered in the first two rounds. He, therefore, passed the order allowing that Writ Petition. Now what we find is that the State Government once again changed its stand, and

issued a Notification canceling the Resolution dated 7.7.2006. And when the appellants preferred their LPA, the State Government continued to maintain its changed position. To say the least this was not expected from the State Government. Unfortunately enough, the Division Bench also approved this re-opening of the controversy once again.

38. In the present appeals we are concerned with the legality of the Govt. Resolution dated 7.7.2006 which the State Govt. defended before the single judge but gave up the defence in the appeal before the Division Bench. The State Govt. went to the extent of contending that the decision in CWJC No.8679/2002 could not be treated as binding, although it had been confirmed by Division Bench and by this Court. Unfortunately enough we must record that the Division Bench also failed to interfere with this digression on the part of the State Govt. and the learned Single Judge. The Division Bench ignored that, assuming that perhaps two views could be canvassed earlier while interpreting the notification dated 11.4.1977, the order dated 19.4.2006 passed by this Court at the end of the second round of these proceedings left no ambiguity whatsoever, and the State Govt. was expected to follow and honour the same. The State Govt. did act accordingly, and issued the Govt. resolution dated 7.7.2006 to honour the judgments. But

immediately after the decision of the single judge in CWJC 10091 of 2006, went to the other extreme to rescind the same, and not to defend it in appeal. We have noted the contents of the Govt. resolution dated 7.7.2006. In our view it is well reasoned and justifiably issued to reduce the rigour of stagnation. Whether the resolution of the problem was seen as based on the notification of 11.4.1977 or independently under the resolution dated 7.7.2006, there was no reason to interfere therein.

39. The hierarchy of the Courts requires the High Courts also to accept the decision of this Court, and its interpretation of the orders issued by the executive. Any departure therefrom will lead only to indiscipline and anarchy. The High Courts cannot ignore Article 141 of the Constitution which clearly states, that the law declared by this Court is binding on all Courts within the territory of India. As observed by this Court in para 28 of the **State of West Bengal and others Vs. Shivananda Pathak and others** reported in **1998 (5) SCC 513:-**

“If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment.....”

In the same vein we may state that when the judgment of a Court is confirmed by the higher court, the judicial discipline requires that

Court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. We may as well note the observations of Krishna Iyer, J. in **Fuzlunbi Vs. K. Khader Vali and another** reported in **1980 (4) SCC 125:-**

“.....No judge in India, except a larger Bench of the Supreme court, without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio of the judgment of the Supreme Court.”

40. That apart, even if one looks to the merits of the rival contentions, there is no dispute that although the rules do provide for a channel of promotion to the subordinate teachers, actually the chances of promotion for them are very less. There is a serious stagnation as far as the subordinate teachers are concerned. The Saran Singh Committee was essentially constituted to go into this very issue. As can be seen from the report of the committee, the various service associations in the State were clamouring for appropriate provision for promotion on par with the Bihar Engineering Service. It is true that the report of the committee does refer to the 59 posts in the miscellaneous cadre while examining the problem. However, after directing the shifting of the engineers in the Education Department to the Public Works Department, and the doctors to the Health Services in sub-clause

(1) and (2) of para 11.10, the committee recommended in sub-clause (3) that “the remaining posts should be included in the general cadre and manned by officers of Bihar Education Service as far as possible”. The notification issued by the State Govt. on 11.4.1977 approved the recommendation of the committee, but the wording used while approving the recommendation is bit different.

41. It cannot be disputed that it was for the State Govt. to take appropriate decision on the recommendation. The recommendations made by the committee will of course have to be seen as the material placed before the Govt. However, ultimately, it is the decision of the Govt. which is relevant and therefore one has to look at the wording in the notification of the State Govt. Here the approved recommendation in the wording used by the State Govt. is as follows:-

“Various Posts such as Teacher (except the teachers of Netarhat) and the posts of Stadium managers etc should be included in the Bihar Education Service cadre and the Officers of the cadre should be appointed on these posts.”

(emphasis supplied)

This notification was clearly understood by the Education Department. Earlier it had prepared the draft resolution for the approval of the Finance Department recommending the merger of the two

cadres. And later the State Govt. had also rightly passed the resolution 7.7.2006 (in concurrence with the Finance Department) after the decision of this Court at the end of the second round of litigation.

42. Much emphasis was laid by the Bihar Education Service Association on the absence of common service rules, to oppose the merger of the subordinate service employees into the State Service Class-II. In this context we must note that the decision to merge the cadre is a matter of policy as held by this Court in **S.P. Shivprasad Pipal Vs. Union of India and others** reported in **1998 (4) SCC 598**. It is for the state to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable. As stated earlier, the resolution dated 7.7.2006 is well reasoned and justified, and cannot be called arbitrary or unreasonable to be hit by Article 14. It deserved to be upheld. It is possible that the merger may affect the prospects of some employees but this cannot be a reason to set-aside the merger. Once the State Govt. has taken the necessary decision to merge the two cadres in a given case, the State Govt. is expected to follow it by framing the necessary rules.

43. One of the pleas raised by the employees of the Bihar Education Service was that the subordinate teachers did not belong to

the State Service. We may note at this stage that in their list of dates and events of the Civil Appeals, the appellants have specifically referred to the fact that these subordinate services are included in Appendix-16 of the Bihar Service Code, and therefore, it is contended that it will be incorrect to state that the subordinate service is not a part of the State Service. If we refer to the code we find that all the posts in subordinate service other than those classified as Class-I and Class-II State Services are mentioned at Item 119 in Appendix-16 of the Bihar Service Code, 1952. Thus, there is no merit in this objection as well.

44. This entire discussion leads us to only one conclusion that the learned Single Judge who heard the petition CWJC No.10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association, had no business to re-open the entire controversy, even otherwise. The State Govt. had already passed a resolution dated 7.7.2006 after the order of this Court dated 19.4.2006. While examining the legality of that resolution (which was defended by the State Govt. at this stage before the learned Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles

analogous thereto, does not permit any such re-examination, and the learned Judge clearly failed to recognize the same.

45. For the reasons stated above, these appeals (arising out of SLP Nos.26675-76 of 2010) are allowed. The judgment and order passed by the Division Bench of Patna High Court in LPA No.418/2009 and other LPAs dated 21.5.2010, and that of the learned Single Judge dated 31.10.2007 in CWJC No.10091/2006 are set-aside and the said Writ Petition is hereby dismissed. Consequently the notification dated 19.11.2007 issued pursuant to the decision of the Single Judge will also stand quashed and set-aside. The State Govt. Resolution dated 7.7.2006 is upheld. The state shall proceed to act accordingly. I.A. Nos.19-20/2011 are dismissed. As stated by Mr. Patwalia, learned senior counsel for the appellants, the appellants no longer press for the action for contempt arising out of CWJC No.8679/2002. Contempt Petition Nos. 386-387/2011, will also accordingly stand disposed of, as not pressed.

46. The attitude of the State Govt. in this matter has caused unnecessary anxiety to a large number of teachers. The State Govt. must realise that in a country where there is so much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important. They have to be

treated honourably and given appropriate pay and chances of promotion. It is certainly not expected of the State Govt. to drag them to the Court in litigation for years together.

47. Though the appeals stand disposed of as above, we do record our strong displeasure for the manner in which the State of Bihar kept on changing its stand from time to time. This is not expected from the State Govt. The manner in which the learned Single Judge proceeded with the Writ Petition No.1009/2006 to reopen the entire controversy, and also the Division Bench in LPA No.418/2003 in approving that approach is also far from satisfactory. If the orders passed by this Court were not clear to the State Govt. or any party, it could have certainly approached this Court for the clarification thereof. But it could not have setup a contrary plea in a collateral proceeding. We do not expect such an approach from the State Govt. and least from the High Court. Having stated this, although we have expressed out displeasure about the approach of the State Government, we refrain from passing any order as to costs.

.....J.
(Surinder Singh Nijjar)

.....J.

(H.L. Gokhale)

New Delhi

Dated: November 23, 2012

SUPREME COURT OF INDIA



JUDGMENT