

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13968 of 2014

=====

Ashok Kumar Singh, Son of Sri Radha Singh, At + P.O.-+ P.S.- Dinara,
District- Rohtas at Sasaram.

.... Petitioner/s

Versus

1. Veer Kumar Singh University Ara through its Registrar.
2. The Vice Chancellor, Veer Kumar Singh University Ara
3. The Registrar, Veer Kumar Singh University Ara
4. The Ad-hoc Committee, Sheopujan Shashtri Samata College, Dinara,
Rohtas through its Secretary.
5. The Secretary, Sheopujan Shashtri Samata College, Dinara, Rohtas

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate.

For the Respondent/s : Mr. Sarva Deo Singh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 22-07-2015

Heard learned counsel for the parties.

2. While learned counsel for the petitioner fairly submits that the order of suspension passed by the authorities of Sheopujan Shahshtri Samata College, Dinara, Rohtas (hereinafter referred to as 'the College') will not be amenable to a writ jurisdiction inasmuch as such affiliated college is not a 'State' within the meaning of Article 12 of the Constitution of India he would like this Court to make an observation that if the petitioner moves in terms of the Statues before the competent authority, namely, the Governing Body and the Syndicate, his case may be considered in accordance with law.

3. The moment, learned counsel for the petitioner accepts this fact that the petitioner's order of suspension was passed by the authority of an affiliated College, the applicability of the law laid down

by the Division Bench of this Court in the case of **Santosh Kumar vs. The State of Bihar & Ors. (C.W.J.C. No. 10530 of 2009)** is automatic. This aspect of the matter relating to maintainability of the writ application against an order of affiliated college again upheld by an order of this Court dated 25.06.2013 in C.W.J.C. No. 11453 of 2013 (**Uma Shankar Singh vs. The State of Bihar & Ors.**), wherein this Court had held as follows:

7. The issue that a writ petition will not lie against a Governing Body/ Adhoc Committee of an affiliated college has been well settled in the Full Bench judgment of this Court in the case of Smt. Manju Devi vs. the District Superintendent of Education, Bhagalpur & ors., reported in 1987 PLJR 962 and in the two Division Bench judgments of this Court in the case of Srimati Radha Kumari Singh @ Radha Kumari vs. the Governing Body of Mahanth Mahadevanand Mahila Mahavidyalay & ors., reported in 1977 PLJR 110 and Chandra Nath Thakur vs. Bihar Sanskrit Shiksha Board & anor., reported in 1999(1) PLJR 529. In fact all these judgments were considered in a recent Division Bench judgment dated 5.10.2012 in the case of Santosh Kumar vs. the State of Bihar & ors. (C.W.J.C.No. 10530 of 2009), wherein it was held as follows:

“In view of discussions made above and after noticing the various authorities cited by both the parties, we are of the considered view that earlier view of this court as reflected by Division Bench judgments in the case of Smt. Radha Kumari Singh (supra) and Chandra Nath Thakur (supra) as well as a Full Bench judgment in the case of Smt. Manju Devi (supra) does not require any reconsideration. We would, however, like to point out that earlier judgments indicated above, particularly in the case of Smt. Radha Kumari Singh (supra), it was clearly indicated that writ petition against a non statutory body such as Governing Body of a private college was not maintainable as there was no allegation of infraction of any statutory provision. In a given case where in exercise of statutory powers the university granting affiliation to a private college imposes reasonable conditions governing teachers or employees of an affiliated college, then in case of violation of Statutes or Rules of the University by an affiliated college a person having corresponding right may be entitled to seek mandamus. It cannot be said in absolute terms that a writ petition is not maintainable against a private aided college even if it is a minority institution but the duty sought to be

imposed upon a private body through mandamus must be of a public nature otherwise the affected employee will be denied relief in writ jurisdiction. The law laid down by the Apex Court in the case *Shri Anandi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti mahotsav Smark Trust and others (supra)* is based upon distinction between private rights and duties on the one side and rights and duties of public nature on the other side. It has been established by a long line of precedents that writ jurisdiction provides remedy in matters relating to public domain and for enforcement of rights flowing from Constitution or Statutes. In our view the term- "writ petition is not maintainable" is not fully apt rather proper expression should be- "writ shall not lie" when a writ petition is filed for seeking enforcement of duties other than public duties against a person or authority which is not "State" within Article 12 of Constitution.

In the facts of the case, we are of the considered view that no writ can be issued to grant any relief to the writ petitioner who is seeking a personal right of restoration of contract of service against Managing Committee of a private minority college. The writ petition is, therefore, dismissed on the ground that no writ would lie against private respondents in absence of any right in the petitioner with corresponding duty of a public nature upon the respondents."

8. Having regard to the settled law that a writ application would not lie as against an order of decision of a Governing Body of an affiliated college, this Court must clarify that the petitioner is not without remedy even under Bihar State Universities Act. There is a Statute framed by the Chancellor with the heading "Number, Grades, Qualification, Pay scale and other Condition of Service of Teachers of Admitted Colleges and their regulation by the University." In the said Statute though the power of appointment and consequential removal has been vested in the Governing Body of an affiliated college, under Clause 19 of the same Statute a right has been vested in the teachers of the admitted college to make a representation regarding condition of service which has to be considered by the Syndicate, inasmuch as the Syndicate has been vested with power to cancel any order or to quash any proceeding of the Governing Body of the College or pass any order affecting the condition of service of any such teacher. Clause 19 of the Statute being relevant is quoted hereinbelow:

"19(1) Every teacher of an admitted college shall have the right to make representation, regarding his conditions of service, covered by the laws of the University, to the Governing Body through the Principal of the college concerned and to send a copy of the representation direct to the Syndicate.

(2) The Syndicate may, whether the said representation is taken into consideration by the Governing Body of the college concerned or not, cancel any order or quash any proceedings of the



governing Body of the college or pass any order affecting the conditions of service of any such teacher, provided that before taking action under this clause, the Syndicate shall call upon the Governing Body concerned to state why the order or proceedings should not be set aside or quashed and if any statement is received within a reasonable time allowed for the purpose, the Syndicate shall consider the same and pass necessary orders, which shall be final.

(3) The Syndicate shall from time to time satisfy itself, by enquiry of otherwise, that the conditions of service of teachers of admitted colleges are being properly enforced and adhered to in the admitted colleges; and may from time to time if necessary, make statutes for better regulating the condition of service."

9. Thus, from the reading of the aforementioned Clause 19 of the Statutes it can be safely said that a teacher of an affiliated college in the event of his being denied payment of salary' which is again part of his condition of service, can file a representation which has to be disposed of by the Syndicate of the University in the manner indicated above.

4. Having regard to the fact that this Court had given liberty to the petitioner in case of Uma Shankar Singh (supra) to avail remedy under Clause 19 of the Statute in that case, it would also give same liberty to the petitioner in this case. But then, the petitioner will initially have to move before the Governing Body and if he is dissatisfied with the order of the Governing Body, he will have the option to move before the Syndicate of the University.

5. With the aforementioned observation and liberty, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--