

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1181 of 2010
IN
Civil Writ Jurisdiction Case No. 5103 of 2008**

- =====
1. The State of Bihar, through the Commissioner-cum-Secretary, Art, Culture and Youth, Department of Bihar, Patna
 2. The Deputy Secretary, Art, Culture and Youth, Department, Government of Bihar, Patna
 3. The Director, Art, Culture and Youth, Department, Government of Bihar, Patna
 4. The Deputy Director, Art, Culture and Youth Department, Government of Bihar, Patna

.... Respondents/Appellants

Versus

1. Kula Nand Jha, son of Late Pandit Uma Kant Jha, resident of village Birsair, P.S. Sakri, District Madhubani, at present working as Director, mithila Hanumant National College of Health and Physical Education, Indira Nagar, Goi Mishra Lagma, Ghanshyampur, District DarbhangaPetitioner/Respondent
2. The Bihar School Examination Board, through its Secretary, Bihar, Patna
3. The Secretary, Bihar School Examination Board, Patna

.... Respondents/Respondents

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Appearance :

For the Appellants	:	Mr. Chittranjan Sinha, PAAG-2 with Mr. Ranjan Kumar Singh, AC to PAAG
For the Respondent	:	Mr. Ashok Kumar Singh, Sr. Advocate with Mr. Kripanand Jha, Advocate
For Exm. Board	:	Mr. Ajay Bihari Sinha, Advocate
For NCTE	:	Mr. S.N.Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 21-12-2016

Heard learned counsel for the appellant-State of Bihar,
learned counsel for the writ petitioner-respondent and learned counsel
for the Bihar School Examination Board.

The appeal is directed against the order dated 18.12.2008
passed by a learned Single Judge of this Court in CWJC No.5103 of
2008 by which the writ petition has been allowed and it has been held



that it was not open to the State Government to direct holding of internal examination in another institution since the respondent-Institution had been granted recognition by the State Government earlier on the basis of infrastructure being in place and it was wrong for the State Government to hold by impugned Notification dated 29.4.2003 to send the candidates to another institution to appear in the practical test whereas for recognized institution, like the petitioner's institution, there was no such requirement and the Notification was accordingly quashed.

Learned counsel for the writ petitioner, who was the Director, Mithila Hanumant National College of Health and Physical Education, Darbhanga, had challenged the Notification dated 29.4.2003 issued by the State Government by which the students of the said institution were directed to appear in another institution for sent up examination and then to fill up and submit their forms to the Board without fixing any date for final examination. The stand of the writ petitioner was that in case of recognised institutions, sent up examinations are internal examinations which could not be held in another college and thus the petitioner wanted that the Notification be re-issued by the State Government merely directing the Board to conduct the examination of the candidates of the writ petitioner institution and then leave it to the Board to do its job.



Earlier the writ petitioner had filed CWJC No. 10185 of 2002 for a direction to the State Government and the respondent Examination Board to hold examination of the students of the petitioner's institution for physical Teachers Training Course, which was disposed of by order dated 7.4.2003 with the direction to the appellant-State to arrange the examination for the said students at the earliest possible with the further direction that the authorities shall fix the date for examination not later than six weeks from the date of the order and accordingly they would direct the Bihar School Examination Board to hold the examination within a period of four weeks from the date of communication made by the State Government in accordance with law. Pursuant to the said direction of this Court by order dated 7.4.2003 the State Government came up with the notice in the newspaper on 29.4.2003 directing the writ petitioner-institution to send its candidates for practical examination (sent up test) from 5th May to 14th May, 2003 at the State Health and Physical Education College, Bihar, Patna. The writ petitioner aggrieved by the said direction filed MJC No. 716 of 2003 for modification/clarification of the order dated 7.4.2003 passed in CWJC No. 10185 of 2002, which was disposed of holding that the modification application was not maintainable and the petitioner, if so advised, may challenge the action of the respondent Bihar School



Examination Board, as contained in Annexure-1(Notice dated 29.4.2003) to the modification application in accordance with law. The writ petitioner did not challenge the said Notification even after the direction issued by this Court by order dated 13.5.2003 and chose to file a contempt petition being MJC No.964 of 2004, which was dismissed by order dated 14.2.2008 as having no merit after taking into account the factum regarding the rejection of the modification petition by order dated 13.5.2003 and the fact that the Notification for the examination dated 29.4.2003 had already been issued by the State authorities but the students of the writ petitioner's institution did not appear in the examination and the applicant preferred to raise the matter in MJC No. 716 of 2003 before this Court. It is only after the rejection of the contempt application the writ petition out of which the appeal arises, has been filed.

In the meantime, the National Council for Teachers Education (Recognition, Norms and Procedure) Regulation, 2005 was issued on 17.8.2005 and came into force on its publication on 13.1.2006 in the Gazette of India. Under the said Regulation the power of the NCTE to grant recognition by Regulation under the scheme of the Act was extended to Physical Teachers Training Institutions also and the State Government lost its power to grant recognition and any affiliation by the Examination Board could also



only be done after recognition had been granted by the NCTE upon consideration of the application made, by the Regional Committee of NCTE.

Learned Single Judge has taken into consideration various aspects of the matter and several decisions and has also distinguished the Division Bench decision of this Court in LPA No. 972 of 2007 rendered on 23.5.2008 holding that there was nothing on the record to show that the State Government directed the Board to allow the students of the college to appear in examination and there was no dispute at any point of time that Government issued any such direction.

However, it is pointed out by learned counsel for the appellant that the sequence of events in the present matter were not at all taken into consideration by the learned Single Judge while issuing the aforesaid direction and the fact that the petitioner's institution itself did not come forward when the State authorities had, pursuant to this Courts order dated 7.4.2003, issued the notice dated 29.4.2003 for sending the candidates for the sent up test. Even after the challenge to the said Notification by way of modification/clarification petition was rejected as not maintainable by order dated 13.5.2003 passed in MJC No.716 of 2003, the writ petitioner-respondent chose to sleep over the matter and did not challenge the notice dated 29.4.2003 in appropriate



proceedings, which would have been another writ petition, but belatedly after coming into force of the 2005 Regulations, the challenge was made in the year 2008. It is thus submitted that by delay and laches the right of the writ petitioner-respondent to challenge the Notification dated 29.4.2003 was lost, particularly keeping in view the fact that 2005 Regulation had come into force in the meantime.

Learned counsel for the respondent has sought to reiterate what has been stated in the impugned order under appeal but is unable to answer this aspect of the matter. Learned counsel is further unable to show why the writ petitioner had slept over the matter for nearly five years before again approaching this Court, which created the situation in the meantime that the powers of the State Government have been taken away. Since the matter related to the old batches of 1987-88 to 1999-2000 there was no justification after coming into force of the NCTE Act in 1993 with effect from 1.7.1995 and more particularly coming into force of the 2005 Regulations from 13.01.2006. We are, thus, of the view that no such challenge in view of the entirely changed circumstances was permissible to the notice dated 29.4.2003 which was not challenged earlier despite the clear direction of this Court by order dated 13.5.2003 while dismissing the modification petition as not maintainable.



A stand has taken by learned counsel for the writ petitioner-respondent that the petitioner was pursuing his remedy on the basis of legal advice through the contempt petition. We are afraid that no such remedy was available to the writ petitioner in view of the fact that no adjudication can be made in a contempt petition in which the only issue is whether there has been any wilful disobedience of the order of this Court or not. If the writ petitioner was aggrieved by the notice dated 29.4.2003 he ought to have challenged it immediately and not allowed the earlier direction of this Court to become redundant by coming into force of the statutory regulations of 2005.

Thus, for the aforesaid reasons, the appeal is allowed. The impugned order dated 18.12.2008 passed by the learned Single Judge is set aside and the writ petition is also dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Arun Kumar, J)

AFR/NAFR	
CAV DATE	
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