

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.62 of 2016

Uma Devi, Wife of Sri Uday Shankar Tiwari, Resident of Village- Sipahi, PO
Noniyapatti, P.S.- Siwan, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Welfare Department, Govt. of Bihar, Patna.
3. The Director, Rural Development Department, Government of Bihar, Patna.
4. Commissioner, Saran Division, Saran.
5. District Magistrate, Siwan.
6. District Welfare Officer, Siwan.
7. The Child Development Project Officer, Siwan.
8. Mukhiya, Gram Panchayat Raj, Bhagauna, P.S. - Siswan, District- Siwan.
9. Pramila Devi, W/o Sri Dharmendra Kumar Singh, Resident of Village- Subahi,
Gram Panchayat Raj, Bhagauna, P.S.- Siswan, District- Siwan.
10. The Principal Secretary, Education Department, State of Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sudhir Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh, GP-26
For the Private Respondent	:	Mr. Prashant Kashyap, Advocate
		Mr. Ashok Kumar, Advocate
		Mr. Kaushal Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-09-2016

Heard Mr. Sudhir Kumar Singh, learned counsel
appearing for the petitioner, Mr. Anil Kumar Singh, learned
Government Pleader No.26 for the State and Mr. Prashant Kashyap,
learned counsel appearing for the private respondent.

The petitioner is aggrieved by the order dated 5.6.2012
passed by the District Magistrate, Siwan in Misc. Case No.70 of
2009-10, whereby the petitioner has been terminated from the post
of *Anganbari Sevika* on ground that she did not possess requisite

qualification as the *Prathma* degree obtained by the petitioner from the Hindi Sahitya Sammelan, Allahabad is not recognised by the State Government.

Facts of the case briefly stated is, that the petitioner was appointed as *Anganbari Sevika* on 26.3.2004. Her appointment was cancelled on 3.12.2004. She came before this Court in CWJC No.6656 of 2005 and a Bench of this Court vide order passed on 7.9.2005 allowed the writ petition. A copy of the order is placed at Annexure-3. The private respondent thereafter came before this Court in CWJC No.13154 of 2005 praying for review of the order passed in CWJC No.6656 of 2005 which was declined. Liberty, however, was granted to the private respondent to raise her objection before the District Magistrate, Siwan.

An objection was thus raised by the private respondent giving rise to Misc. Case No.19 of 2007-08 and the writ petitioner was held disqualified on her educational qualification vide order passed on 4.9.2008 by the District Magistrate, Siwan, a copy of which is enclosed at Annexure-5. The writ petitioner filed a review application and whereupon the District Magistrate –cum- Collector, Siwan by order dated 15.5.2009 recalled his earlier order dated 4.9.2008 and restored the petitioner to her post.

Feeling aggrieved the private respondent came before



this Court questioning the order of the District Magistrate –cum- Collector, Siwan restoring the petitioner to her post giving rise to CWJC No.7599 of 2009. The writ petition was disposed of on 8.7.2009 giving liberty to the private respondent to approach the Divisional Commissioner in appeal. The private respondent filed appeal before the Divisional Commissioner, Saran giving rise to Appeal No.79 of 2009 and in appeal the order passed by the District Magistrate –cum- Collector, Siwan on review, was held illegal and was set aside. The matter was remitted to the District Magistrate, Siwan for reconsideration of the issue after hearing the parties and it is thereafter that the District Magistrate, Siwan upheld his earlier view as contained in the order dated 4.9.2008 present at Annexure-5 disqualifying the petitioner on her *Prathma* qualification obtained from the Hindi Sahitya Sammelan, Allahabad which order dated 5.6.2012 is impugned at Annexure-2 and has been affirmed by the Commissioner, Saran Division, Chapra in Appeal No. 106 of 2014 filed by the petitioner which was dismissed vide order passed on 23.6.2015 impugned at Annexure-1. The petitioner feeling aggrieved is before this Court.

While it was argued by Mr. Sudhir Kumar Singh, learned counsel appearing for the petitioner that the issue as regarding the *Prathma/Madhyama* qualification obtained from the



Hindi Sahitya Sammelan, Allahabad came up for consideration in CWJC No.6266 of 2007 (**Poonam Sharma vs. The State of Bihar**) which was heard along with CWJC No.7846 of 2007 (**Anita Kumari vs. The State of Bihar**) and this Court taking note of the affidavits on record upheld the degree awarded by the Hindi Sahitya Sammelan, Allahabad until 31.12.1987. In my opinion the petitioner has obtained her degree in the year 2000 and thus the said judgment would not come to her rescue.

Mr. Sudhir Kumar Singh has also referred to a number of orders passed by coordinate Benches of this Court in which taking note of a Government decision dated 25.8.2008, the Bench has proceeded to hold that the Hindi Sahitya Sammelan, Allahabad having been de-listed from the list of recognized institutions by the Human Resources Departments on 25.8.2008, the Government decision would be prospective in effect. He thus endeavours to argue that since it has been held that the de-recognition would be prospective with effect from the date of notification i.e. 25.8.2008, the petitioner having obtained her qualification in the year 2000, she stands protected.

The argument of Mr. Singh has been contested by the learned State Counsel as well as the counsel for the private respondent in reference to a Division Bench pronouncement of this

Court since reported in **2010(4) PLJR 318 (State of Bihar vs. Mamta Kumari)**. It is submitted by the learned counsel for the State and the private respondents that the issue has been examined threadbare by the Division Bench and the conclusion at paragraph 30 would answer the issue raised herein.

Mr. Sudhir Kumar Singh, learned counsel appearing for the petitioner responding to the argument of the respondents has referred to the observation of the Division Bench at paragraph 22 of the judgment to submit that even though an opinion was so expressed but that was limited to *Madhyama* qualification and not *Prathma* qualification possessed by the petitioner.

I have heard learned counsel for the parties and I have perused the records.

Although the orders relied upon by Mr. Sudhir Kumar Singh, learned counsel for the petitioner which has been delivered by the coordinate Benches in cases arising from CWJC No.10245 of 2009 (Jyoti Kumari vs. The State of Bihar), CWJC No.12318 of 2008 (Seema Kumari vs. The State of Bihar), CWJC No.1919 of 2013 (Kumari Avantika Vs. The State of Bihar) as well as CWJC No.6266 of 2007 (Poonam Sharma vs. The State of Bihar) which was heard along with CWJC No.7846 of 2007 (Anita Kumari vs. The State of Bihar) held the field for some time and the degrees awarded by the



Hindi Sahitya Sammelan, Allahabad as until the issuance of the circular of the State Government in its Human Resources Department dated 25.8.2008 stood protected but the views expressed came up for consideration before the Division Bench in the case of **Mamta Kumari** (supra) including the Division Bench approval to the Bench decision in the case of **Poonam Sharma** (supra) since reported in **2009 (3) PLJR 54 (State of Bihar vs. Poonam Sharma)**. The conclusion drawn by the Division Bench in paragraph 30 of the judgment in the case of **Mamta Kumari** (supra) would seal the fate of the petitioner. Though Mr. Sudhir Kumar Singh has made a reference to paragraph 22 of the judgment to distinguish the case of the petitioner in submitting that *Prathma* decree has been excluded from the opinion and matter has been remitted for consideration but in my opinion the submission is not worth acceptance in view of the clear opinion given by the Division Bench in respect of the status of Hindi Sahitya Sammelan found in paragraph 30 of the judgment and for the sake of ready reference I am persuaded to reproduce the same hereinbelow:

“30. This Court is also not impressed with the submissions of the learned counsel for the respondents writ petitioners that it was only on 25.8.2008 that the State Government had issued an order naming the institutions and a degree which were not to be taken into consideration for appointment on the post of Teachers in Panchayat/Prakhand/Nagar Panchayat in terms of the Bihar Panchayat Prarambhik Shikshak



(Niyojan & Seva Sart) Sanshodhan Niamawali, 2008 and Bihar Nagar Nikaya Prarambhik Shikshak (Niyojan & Seva Sart) Sanshodhan Niamawali, 2008. It is true that the Government by the aforementioned order dated 25.8.2008 had circulated names of 28 institutions and their qualifications to be not equivalent to Matriculation/Intermediate including Hindi Sahitya Sammelan, Allahabad but then that was in keeping with a forged letter circulated earlier on 23.2.2007 describing the certificate of Prathma/Madhyama (Visharad) from Hindi Sahitya Sammelan, Allahabad to be equivalent to Matriculation and Intermediate, whereafter, it was thought necessary to give exhaustive list of such institutions and their qualification which were not to be taken into account for appointment on the post of Teachers in Panchayat, Prakhanda and Nagar Panchayat. Prescription of such qualification in order to remove confusion created by act of forgery cannot be said to be only prospective in nature and at least the respondent writ petitioners cannot draw any advantage on the basis of the same specially when they have failed to produce a copy of paper to show that any point of time, the Madhyama (Visharad) examination conducted by the Hindi Sahitya Sammelan, Allahabad was recognized as an equivalent qualification of the Intermediate for the purposes of appointment of Teachers in the State of Bihar.”

The argument advanced by Mr. Sudhir Kumar Singh to submit that a disqualification of the said institution was prospective with effect from 25.8.2008 also stands answered by the Division Bench.

Mr. Sudhir Kumar Singh at this stage attempted to question the appointment of the private respondent and to submit that it has to be done in accordance with the opinion of the *Gram Sabha* but there being no such relief prayed in this writ petition nor

there are any material to show that the private respondent was not entitled to succeed to the post consequent upon the termination of the petitioner, the said submission is only taken to be rejected.

In the circumstances discussed, no case for indulgence is made out in the impugned order.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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