

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.394 of 2015

IN

Civil Writ Jurisdiction Case No. 24190 of 2013

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1. Shakti Nath Mishra, Son of Bishwananth Mishra, Resident of Village- Masahi, P. S.- Gaunaha, District- Weast Champaran, Bettiah.
 2. Bishwanath Ram, Son of Bhikham Ram, Resident of Mohalla- Balua Gopalpur, P.S.- Town, Motihari, District- West Champaran, Bettiah.
 3. Lal Narayan, Son of Satyadeo Prasad, Resident of Bhual Patti, P.S.- Thakraha, District- West Champaran, Bettiah.
 4. Bishmillah, Son of Haidar Mian, Resident of Village- Bhual Patti, P.S.- Thakraha, District- West Champaran, Bettiah.
 5. Rama Shankar Rajak, Son of Late Bhukhlu Rajak, Resident of Village- Bhutane, P.S.- Hathauri, District- Muzaffarpur.
 6. Rameshwar Ram, Son of Ramawtar Ram, Resident of Mohalla- Balua Gopalpur, P.S.- Town Motihari, District- East Champaran.
 7. Jayanti Bishwas, Wife of Samrendra Nath Bishwas, Resident of Mohalla + P.O.- Narkatiganj, P.S.- Shikarpur, District- West Champaran, Bettiah.
 8. Keshav Singh, Son of Late Mahanth Singh, Resident of Village- Bhual Patti, P.S.- Thakraha, District- West Champaran, Bettiah.

.... Appellants

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Programme Officer (Establishment), West Champaran, Bettiah.
5. The District Education Officer, West Champaran, Bettiah.
6. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna.

.... Respondents

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Appearance :

For the Appellants	:	Mr. Tej Bahadur Singh, Sr. Adv. Mr. Brisketu Sharan Pandey, Adv. Mr. Prince Mishra, Advocate
For the Respondents	:	Mr. Manoj Kumar Jha, AC to GP 26
For the NCTE	:	Mr. S. N. Pathak, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 02-05-2016

The only question, which needs determination in this appeal, is: Whether the degree of *Shiksha Shastri*, obtained from Sampurnanand Sanskrit University, Varanasi, is a valid qualification for appointment as a teacher under Bihar Special Primary Teachers Appointment Rule, 2010?

2. The appellants, in the present appeal, under Clause X of the Letters Patent of this Court, assail the judgment and order, dated 19.12.2014, passed in CWJC Nos. 24190 of 2013 and 6452 of 2014, whereby a learned single Judge of this Court, relying on the previous judgments and order of this Court, which have been mentioned in the judgment and order under appeal, has dismissed their writ applications holding that the said qualification is not a valid qualification for appointment as Teacher.

3. Brief facts of the case are that for the purpose of filling up of 34,540 posts of Assistant Teacher in different Primary Schools of the State of Bihar, certain directions were issued by the Supreme Court, in compliance whereof the State Government of Bihar framed Bihar Special Primary Teachers Appointment Rule, 2010 (hereinafter referred to as 'the 2010 Rules'). Through Advertisement No. 210 of 2010, applications were invited for filling up the said

posts. From the advertisement, which has been brought on record by way of Annexure-3 to the writ application, it appears that 20,594 posts of general teachers, 12,862 posts of Urdu teachers and 1084 posts of teachers, in physical education, were advertised. There is no mention of Sanskrit teachers in the said advertisement.

4. In tune with the provisions under the 2010 Rules, educational qualifications for the aspirants to the said posts were prescribed. Clause 5 (ii) of the said Advertisement prescribed the qualification for general teachers, Clause 5 (iii) for Urdu teachers and Clause 5 (iv) for teachers in physical education. For general teachers, it was prescribed that the candidate must possess qualification of 2-years training or should be B. Ed pass from an institution recognized by the Central Government or by any State Governments prior to 1995. After 1995, a candidate to be eligible for appointment against the said posts must have acquired the said qualification of 2-years training diploma/B. Ed or B. L. Ed from an institution recognized by National Counsel for Teachers Education.

5. The appellants claim to have obtained the degrees of *Shiksha Shastri* (equivalent to B. Ed) from Sampurnanand Sanskrit University, Varanasi. They applied against the said advertisement for the posts of general teachers and they were finally selected and appointed through

separate letters issued on 17.02.2012/06.02.2012. They submitted their joining in respective Schools of their postings.

6. In the year 2013, the appellants were asked to satisfy the validity of the degrees granted by Sampurnanand Sanskrit University, Varanasi, for the purpose of their appointment as Assistant Teachers under the 2010 Rules. The appellants submitted their replies. Thereafter, by letter No. 3303, dated 09.10.2013, issued by the District Programme Officer (Establishment), West Champaran, communicated to the appellants that the said degree was not a valid qualification for appointment as general teachers under the said 2010 Rule. It was mentioned in the said letter that the State Government of Bihar, in its Resolution No. 394, dated 11.04.1983, has treated the degree of *Shiksha Shastri* as equivalent to B. Ed degree for the purpose of teaching Sanskrit subject and for inspection of Sanskrit schools only. It was also indicated in the said communication that the 2010 Rules do not contemplate any qualification equivalent to B. Ed qualification for the purpose of appointment as Assistant Teachers. They were informed that the Appointing Authority, after due verification, has decided to terminate their services. The appellants were accordingly asked to show cause as to why after terminating their services, action be not taken for recovery of the amount received by them as salary for the period during which they worked as Assistant Teachers. The



appellants submitted their joint reply. Finally, the order, dated 19.11.2013, came to be passed under the joint signatures of the District Programme Officer and the District Education Officer, West Champaran, Bettiah, terminating the services of the appellants with effect from the respective dates of their joining, holding that the degree awarded by the Sampurnanand Sanskrit University, Varanasi, was not a valid degree for the purpose of appointment as Assistant Teacher under the special rules. The order stipulates that steps for recovery of the amount, received by the appellants against salary for the period during the period they worked as Assistant Teachers, shall be taken.

7. Aggrieved by the said order, dated 19.11.2013, the appellants preferred writ application, under Article 226 of the Constitution of India, before this Court, which gave rise to CWJC No. 24190 of 2013. In the light of the earlier orders passed by a learned single Judge in CWJC No. 19111 of 2013, decided on 25.11.2013 and CWJC No. 2372 of 2013, decided on 07.01.2014, a learned single Judge, however, dismissed the writ application. Aggrieved by the dismissal of their writ petition, the writ petitioners are in appeal before us.

8. We have heard Mr. Tej Bahadur Singh, learned Senior Counsel, appearing on behalf of the appellants and Mr. Manoj Kumar Jha, learned Assistant Counsel to

Government Pleader No. 26, appearing on behalf of the State respondents. We have also heard Mr. S. N. Pathak, learned Counsel for the National Council for Teachers Education.

9. Mr. Tej Bahadur Singh, learned Senior Counsel, has submitted that the degree of *Shiksha Shastri*, conferred by the Sampurnanand Sanskrit University, Varanasi, is recognized by the University Grants Commission as well as the National Council for Teachers Education. He has submitted that the District Programme Officer (Establishment), West Champaran, had issued an Officer Order, based on various letters and orders issued by the Primary Education Department/Education Department, Government of Bihar, giving the list of institutions, whose degrees were not to be recognized for appointment as Assistant Teachers. According to him, the name of Sampurnanand Sanskrit University, Varanasi, does not figure in the said list. He has contended that had it been the intention of the State of Bihar not to recognize the degrees issued by the said University, its name would have figured in the list. He has further submitted that the National Council for Teachers Education has issued a list of recognized institutions, wherein the name of Sampurnanand Sanskrit University, Varanasi, and its attached Colleges, find place.

10. Mr. Singh, learned Senior Counsel, has relied on a judgment of the Allahabad High Court, in the case



of **Sampurnanand Sanskrit University, Varanasi v. State of U.P.**, reported in **2005 (4) ESC 2412**, wherein the Allahabad High Court has held that the course of a *Shiksha Shastri*, as offered by Sampurnanand Sanskrit University, Varanasi, to be equivalent to B. Ed and the said qualification is valid B. Ed qualification up to the year 1995-96, before the provisions of National Council for Teachers Education Act, 1993, came into force and for the academic session 1999-2000, when the permission was granted by the Northern Regional Committee, Jaipur, of National Council for Teachers Education, for running the course in the faculty as well as affiliated colleges. The High Court held that the students, who had obtained *Shiksha Shastri* degrees from the University and Colleges for the academic sessions 1996-97, 1997-98 and 1998-99, cannot be treated to be eligible for the purpose of pursuing the teacher training course.

11. A counter affidavit has been filed, on behalf of the respondents-State of Bihar, taking specific plea that degree of *Shiksha Shastri* has been treated to be equivalent to B. Ed degree only for the purposes of teaching Sanskrit as is evident from the resolution of the Education Department of the State of Bihar, dated 11.04.1983. It is the plea of the State Government that Rule 2 (iv) of 2010 Rules which prescribes the eligibility conditions, does not contain any provision for equivalence of degree. It has accordingly been

submitted by Mr. Manoj Kumar Jha, learned Assistant Counsel to Government Pleader No. 26, that there is no illegality in the order terminating the services of the appellants from the posts of Assistant Teachers since they did not fulfill the minimum eligibility condition for appointment to the said posts.

12. What has emerged from the pleadings on record, as discussed above, is that the advertisement, inviting application for the posts of Assistant Teachers prescribed minimum eligibility criteria of having passed 2-years Teachers' Training Course or B. Ed course from an institution recognized by the Central Government or any State Government prior to 1995. After 1995, such diploma/degree must have been obtained from an institution recognized by the National Council for Teachers Education.

13. The question of recognition of the degree of *Shiksha Shastri* conferred by Sampurnanand Sanskrit University, Varanasi, was considered by the State Government of Bihar in the year 1983. The State Government of Bihar, upon consideration, decided that the said degree is to be recognized as valid only for teaching Sanskrit and inspection of Sanskrit Schools. The qualification, as prescribed in the advertisement inviting applications, does not contemplate any equivalence of qualification. It is the specific case of the appellants that qualification of *Shiksha Shastri* is, as a matter of fact, a B. Ed qualification obtained from an institution

recognized by the State of Uttar Pradesh. It is, therefore, their case that they fulfill the eligibility criteria as prescribed in the advertisement inasmuch as there is no question of equivalence of qualification.

14. We do not find much substance in the said submissions advanced on behalf of the appellants. The advertisement prescribed that a candidate must possess qualification from an institution having recognition from the Central Government or State Governments, if such qualification has been obtained prior to 1995. After 1995, such qualification ought to have been obtained from an institution having recognition of National Council for Teachers Education.

15. In the present appeal, we are of the view that the State Government of Bihar had, way back in the year 1983, considered the question of validity of various certificates/degrees issued by Sampurnanand Sanskrit University, Varanasi and decided that the certificates/degrees, issued by the said University, shall have the recognition only for the purpose of teaching in Sanskrit and inspection of Sanskrit Schools. The appointment of these appellants were not made on the post of Sanskrit Teachers; rather, they were appointed to the post of general teacher. The State Government's decision of 1983 whereby it recognized the certificates/degrees issued by the Sampurnanand Sanskrit University, Varanasi, only for the purpose of teaching Sanskrit

and inspection of Sanskrit Schools, is not under challenge. Once the State Government had taken a decision that the said degree shall be recognized as B. Ed only for the purpose of Sanskrit teaching, the appellants cannot be said to be holding requisite qualification for appointment as general teachers in terms of the Advertisement No. 210 of 2000.

16. Learned Counsel, appearing on behalf of the respondents-State of Bihar, has rightly placed reliance on a Division Bench decision of this Court in the case of **Dhirendra Kumar Singh and Others v. The State of Bihar and Others**, reported in **2008 (1) PLJR 583**, wherein this Court held that it was inept for this Court to enter into the question of deciding equivalence of qualification. Paragraph Nos. 7 and 9 of **Dhirendra Kumar Singh** (supra) are relevant for the present purpose and are being extracted herein below:

"7. Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification to be equivalent to another qualification is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide



upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teachers' training courses referred therein are training qualifications of different grades and cannot by any means be equivalent with each other, a priori. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject.

9. We do not find any substance in the contentions of the learned counsel for the petitioners to treat different qualifications under different courses offered at different level of education to be one single class. The very fact that the Government in the Act of 1983 has provided for appointment opportunity also to a person holding equivalent qualification, as may be declared by the Government, really makes it very clear that all qualifications are not equivalent to B. Ed on their own force. It is for the Rules making authority to provide from time to time eligibility criterion for recruitment to any post. it is for such Rule making authority to add or delete any of these qualifications in the eligibility criteria at any time by primary or subordinate legislation. Merely by not adhering to past inclusion of any training for eligibility at any later stage without anything more does not impinge upon Article 14 of the

Constitution of India on the ground of hostile discrimination.”

17. In the above view of the matter, particularly, when the State Government has specifically decided to recognize the degree of *Shiksha Shastri*, issued by Sampurnanand Sanskrit University, Varanasi, only for the purpose of teaching Sanskrit and inspection of Sanskrit Schools, the said qualification cannot be said to be a valid degree for the purpose of appointment to the post of general teacher pursuant to the Advertisement No. 210 of 2000.

18. We are, therefore, of the view that degree of *Shiksha Shastri*, issued by Sampurnanand Sanskrit University, Varanasi, cannot be said to be valid qualification for appointment as Assistant Teachers in general subjects as prescribed in Clause 5 (ii) of the said advertisement.

19. We do not find any reason to interfere with the decision, under appeal, which does not suffer from any factual or legal infirmity, to the extent it relates to the question that qualification of *Shiksha shastri*, issued by Sampurnanand Sanskrit University, Varanasi, is not a valid qualification for appointment as Assistant Teachers under 2010 Rules..

20. However, in the facts and circumstances, we direct that there shall be no recovery of salary received by the appellants for the period during which they had worked as

Assistant Teachers on the basis of their selection and appointment, there being no allegation of misrepresentation or fraud against them. The order, impugned in the writ application, dated 19.11.2013, shall not be given effect to the extent it relates to recovery of the amount received by the appellants as salary. The judgment and order, under appeal, dated 19.12.2014, stand modified to this extent.

21. This appeal stands partly allowed and disposed of accordingly.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I. A. Ansari, ACJ.)

Prabhakar Anand/-

AFR/NAFR	AFR
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