

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.679 of 2016
IN
Civil Writ Jurisdiction Case No. 4649 of 2014

- =====
1. Nand Kishore Prasad S/O Late Badri Narayan Prasad Resident of Mohalla-Madhopur (Panchu Mistri Gali), Post Office- Basudeopur, Police Station Kotwali, District Munger.
 2. Md. Imtiyaz, son of Md. Mumtaz, Resident of Mohalla Hazrat Ganj, Khankah Gali No. 10, Post Office Munger, Police Station Kasim Bazar, District Munger.
 3. Uday Chandra, son of Late Nathuni Lal Das, Resident of Mohalla Sri Krishna Road, Near Kalibari Asthan, Lallu Pokhar, Post Office Munger, Police Station Kasim Bazar, District Munger.
 4. Smt. Saroj Jha, D/O Sri Amarnath Jha W/O Late Sushil Jha Resident of Mohalla Veer Kunwar Singh Colony, Dalhatta, Post Office- Basudeopur, Police Station- Kotwali, District Munger.

.... Appellant/s

Versus

1. The Patna High Court through Registrar General, Patna.
2. The Registrar General, Patna High Court, Patna.
3. The District & Sessions Judge, Munger.

.... Respondent/s

with

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Letters Patent Appeal No. 866 of 2016
IN
Civil Writ Jurisdiction Case No. 1564 of 2014

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1. Shashi Kala Kumari Wife of Sri Shambhu Kumar Mandal, resident of Village- Usmanpur, PS- Kharik, District- Bhagalpur.

.... Appellant/s

Versus

1. Chandula Kumari wife of Sri Sadanand Mandal, resident of Village- Usmanpur, PS- Kharik, District- Bhagalpur.
2. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The Block Development Officer, Kharik, District- Bhagalpur.
6. The Child Development Project Officer, Kharik District- Bhagalpur.
7. The Mukhiya, Gram Panchayat Raj, Usmanpur, Block- Kharik, District- Bhagalpur.
8. The Panchayat Secretary, Gram Panchayat Raj, Usmanpur, Block- Kharik, District- Bhagalpur.

.... Respondent/s

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Appearance :

(In LPA No.679 of 2016)

For the Appellant/s : Mr. Dhurjati Kumar Prasad, Advocate

For the Respondent/s : Mr. Piyush Lall

(In LPA No.866 of 2016)

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advpcate

With Mr. Ravindra Kr Sinha No.2

For the Respondent/s : Mr. SC26- AMARNATH DEO

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CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

CAV JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**Date: 27-10-2016**

The short question, which the present appeals, preferred under Clause 10 of the Letters Patent of this High Court involve is as to whether *Sahitya Alankar* qualification awarded by the Hindi Vidyapeeth , Deoghar, is equivalent to Bachelor degree or not for the purpose of appointment or grant of promotions in the Government Department or in the establishments of this High Court or the Civil Courts under the High Court. The learned single Judge by the orders under appeal has held that the *Sahitya Alankar* qualification awarded by Hindi Vidyapeeth , Deoghar cannot be treated to be *at par* with B.A. degree for appointment or the promotion.

2. Since the primal legal issue involved in both the appeals is same and their result is dependent upon determination of the said issue, both the appeals have been heard together with the consent of the learned Counsel appearing for the parties and are being disposed

of by the present common judgment and order.

3. We have heard Mr. Ganpati Trivedi, learned Senior Counsel and Mr. Dhurjati Kumar Prasad, learned counsel appearing on behalf of the appellants and Mr. Piyush Lal, learned counsel appearing on behalf of the Patna High Court.

4. L.P.A. No. 679 of 2016 (Nand Kishore Prasad & Ors Vs. Patna High Court Through the Registrar General, Patna High Court and ors) arises out a judgment and order, dated 22.02.2016, passed in CWJC No. 4649 of 2014, whereby a learned single Judge has held that since Hindi Vidyapeeth, Deoghar is neither an educational institution nor a University, the degree issued by such Institution cannot be treated to be equivalent to graduation degree. The appellants had raised grievance in the writ proceedings that their claim for promotion from Class IV post to Class III post in Civil Court at Munger had been wrongly turned down on an erroneous ground that *Sahitya Alankar* degree, which they were having, could not be treated to be equivalent to graduation degree. This High Court in its administrative side had also rejected their claim for treating their *Sahitya Alankar* qualification as equivalent to graduation degree. There is no gainsaying that graduation degree is one of the basic requirements for promotion to Class III post, which the appellants are claiming to have on the basis that they have *Sahitya Alankar*

qualification awarded by Hindi Vidyapeeth , Deoghar .

5. L.P.A. No. 866 of 2016 arises out of a judgment and order passed by a learned single Judge, dated 01.02.2016, in C.W.J.C. No. 1564 of 2014. Respondent No.8 of said C.W.J.C. No. 1564 of 2014, is the appellant herein. She was given extra weightage of marks for her selection for appointment on the post of Anganbai Sevika. Her appointment came to be questioned by Chandula Kumari, (Respondent No.1 of LPA No. 866 of 2016) by filing a writ application under Article 226 of the Constitution of India, which gave rise to the said C.W.J.C. No. 1564 of 2014. The challenge was mainly on the ground that no weightage of marks could have been given in favour of the appellant by treating her qualification of *Sahitya Alankar* at par with B. A. degree for the purpose of her selection for appointment to the post of Anganbari Sevika. It transpires that dispute in relation to selection of the appellant for her appointment on the post of Anganbari Sevika had gone to the Divisional Commissioner, Bhagalpur, who upheld selection of the appellant on the ground that judgment of this Court holding that *Sahitya Alankar* qualification was not *at par* with B. A. degree will have prospective effect and, therefore, selection of appellant required no interference. Learned single Judge has negated this logic by the order under appeal, and has held that the validity of the degree will relate back to

the very date of its issuance. He has accordingly set aside the order of the Divisional Commissioner, Bhagalpur, dated 07.03.2013, wherein appointment of appellant as Anganbari Sevika was held to be justified.

6. Mr. Dhurjati Kumar Prasad, learned Counsel, appearing on behalf of the appellant in LPA No. 679 of 2016, has submitted that the learned single Judge has not taken into account Memo No. 8/R1-303/84 Ka-541, dated 11.01.1991, whereby the State Government has given permanent recognition to qualification of *Sahitya Alankar* issued by Hindi Vidyapeeth, Deoghar, as equivalent to B. A. degree. He has also submitted that *Sahitya Alankar* qualification is to be treated as equivalent to B. A. degree for appointment to Class III post in terms of letter No. 1952, dated 16.04.1994, issued under the signature of Registrar (Establishment), Patna High Court. He has also submitted that the decision of the learned single Judge is not in consonance with the Bihar Civil Court Staff (Class III & Class IV) Rules, 2009, and, therefore, the judgment and order under appeal requires interference by the Division Bench in an appellate jurisdiction.

7. Similar arguments have been advanced by Mr. Ganpati Trivedi, learned Senior Counsel, appearing on behalf of appellant in LPA No. 866 of 2016.



8. Mr. Piyush Lal, learned Counsel, appearing on behalf of the respondents State of Bihar, has submitted that the question as to whether *Sahitya Alankar* qualification is equivalent to B. A. degree or not has been elaborately dealt with in case of ***Reeta Srivastava and ors. vs. State of Bihar and ors***, reported in ***2012(3) PLJR 353***, wherein a learned single Judge of this Court specifically and univocally has held that *Sahitya Alankar* degree is not equivalent to Graduation degree. The said decision in case of ***Reeta Shrivastava*** (supra), has been subsequently considered and upheld by a Division Bench of this Court by an order, dated 09.07.2013, passed in LPA No. 24 of 2013. He has also placed reliance on another Division Bench decision, dated 26.11.2012 passed in LPA No. 953 of 2012(Surendra Rai and another Vs. State of Bihar and ors), wherein similar contention raised on behalf of the persons having *Sahitya Alankar* qualification from Hindi Vidyapeeth , Deoghar, has been turned down.

9. In response to this contention, a plea has been taken on behalf of the appellants that those cases relate to appointments/promotions in Bihar Education Service and in that background the Division Bench has held in those cases that qualification of *Sahitya Alankar* is not recognized for the purpose of appointment or promotion to a teacher.



10. The question, which we, therefore, need to determine is as to whether said *Sahitya Alankar* qualification can be treated to be equivalent to B.A. degree for the purpose of appointment against posts other than teachers. Learned counsel for the appellants have laid great emphasis on an order issued by the Personnel and Administrative Department, Government of Bihar, dated 11.01.1991, to make out a case that *Sahitya Alankar* qualification is equivalent to B. A., if the candidate had taken English as one of the subjects at that level. It is their plea that the appellants have acquired the *Sahitya Alankar* qualification with English as one of the subjects. It has also been argued, with reference to the notification, dated 08.02.2016, wherein it has been mentioned that the Government notification, dated 11.01.1991, stands cancelled with effect from 07.05.2012. It has, therefore, been mentioned that the decision of this Court, dated 09.07.2013, in CWJC No. 13343 of 2011 (*Reeta Srivastava* (supra)), shall not adversely affect the appointments made and promotions granted to persons before 07.05.2012, by treating their *Sahitya Alankar* qualification as equivalent to B.A. degree. In this background, it is submitted that the order, dated 11.01.1991, has remained in force till 07.05.2012, which is the date of decision of this Court in case of *Reeta Srivastava* (supra).

11. After having gone through the materials on record and

considered the rival submissions on behalf of the parties, in our opinion, the answer to the question raised in the present appeals lies in the Division Bench decision of this Court in case of *Ganesh Prasad Srivastava Vs. Punjab National Bank & ors* reported in *2004(1) BLJR 73*. This Court in case of *Ganesh Pd. Srivastava* (supra), examined status of Hindi Vidyapeeth, Deoghar, which is a voluntary Organizations established for the purpose of propagating and promoting Hindi. The Court took into account a press note issued by the Central Hindi Directorate, Ministry of Human Resources Development, Government of India, wherein the Government of India has recognized certain Hindi Organizations, including the Organization in question for the “sole purpose of propagation and promotion of Hindi”. This is also mentioned that in case of employment in Government or Semi Government service, if Hindi was required to be a special qualification, then the candidates having such certificates of such Organization may be eligible for the said employment but in case any qualification other than the Hindi was required, the certificate granted by the Voluntary Organizations cannot be treated to be equivalent to a certificate, degree or diploma conferred by the different Universities and the same will not be recognized as qualification of High School, Intermediate or B.A.

12. The Division Bench in case of *Ganesh Pd. Srivastava*

(supra), accordingly held that qualification of Sahitya Alankar obtained from Voluntary Organizations, including Hindi Vidyapeeth, Deoghar, was only with respect to standard of Hindi prescribed in the equivalent Hindi examination and in no case it could be treated as or at par with Bachelor degree awarded by the University or Educational Board *etc.* established by the State.

13. We do not find any reason to take a different view than what has been taken by the Division Bench of this Court in case of ***Ganesh Pd. Srivastava*** (supra).

14. Much emphasis has been given on the plea that the decision of this Court in case of ***Reeta Srivastva*** (supra), should be applied prospectively as has been rightly done by the General Administrative Department of the State Government by issuing above notification, dated 08.02.2016. However, we are of the opinion that learned single Judge has rightly recorded in the order under appeal, dated 01.02.2016 that validity of the qualification will relate back to the very date of its issuance. There cannot be any dispute over the proposition of law that law declared by a Court will have retrospective operation unless it lays down that it will have prospective effect. There are several pronouncements on this point made by the Supreme Court. Reference, however, may be made to the decisions in case of ***P.V.George and others vs. State of Kerla and others*** reported in

(2007) 3 SCC 557, paragraph 29 of which reads thus:-

“29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a Court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.”

15. The decision rendered by Division Bench in case of *Ganesh Prasad Srivastava* (supra), has been subsequently followed by this Court by the Division Bench in case of *Surendra Rai Vs. State of Bihar* (supra).

16. What essentially emerges from the Division Bench decision in case of *Ganesh Pd. Srivastava* (supra), that *Sahitya Alankar* qualification cannot be treated to be the qualification equivalent to B.A. degree. Such qualification can be used only if knowledge of Hindi is required for any purpose in the matter of promotion, grant of increment or even appointment etc, but it cannot substitute to the qualification of B. A. degree.

17. Considering the above, we do not find any infirmity in the orders under appeal, requiring interference in Letters Patent appellate jurisdiction.

18. These appeals are accordingly dismissed, being without

merit.

19. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

I.A. Ansari, CJ:- I agree.

(I. A. Ansari, CJ)

ArunKumar/-

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