

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1458 of 2014

IN

Civil Writ Jurisdiction Case No. 12329 of 2010

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1. Ravindra Kushwaha, son of Late Balrup Kushwaha, resident of Village - Bariyarpur Tola, Jetha Hasi, P.O. - Barhara, P.S. - Kotwali Deoria, District - Deoria, at present Secretary, Shree Devaraha Shikshan Sansthan, Indira Nagar (Pagara Mathia), Post - Sahdigri, District - Gopalganj.
 2. Suresh Chandra Pandey, son of Shri Indradeo Pandey, resident of Village - Mathia, Post - Sahdigri, District - Gopalganj, at present Secretary of Shree Devaraha Baba Sanskrit Primary Cum High School, Mathia, Post - Sahdigri, District - Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Education, New Secretariat, Patna.
2. The Director/Special Director (Secondary Education), Department of Education, New Secretariat, Patna.
3. The Bihar Sanskrit Shiksha Board, East Boring Canal Road, Patna through its Chairman/Director.
4. The Secretary, Bihar Sanskrit Shiksha Board, East Boring Canal Road, Patna.

Respondents/Respondents-Ist Set.

5. Sri Yogendra Tiwary, son of Sri Narmadeshwar Tiwary, resident of Village - Damanpura, P.O. - Pathardeva, P.S. - Baghauchghat, District - Deoria (Uttar Pradesh).
6. Sri Ramashankar Yadav, son of Gorakhnath Yadav @ Gorakh Yadav, resident of Village - Bheda Pakarkala, P.O. - Jaddu Parasia, P.S. - Bhaluani, District - Deoria (Uttar Pradesh).
7. Sri Birendra Kumar @ Birendra Kumar Chaurasia, son of Ramo Chaurasia @ Ramdeo Chaurasia, resident of Village - Bheda Pakar, P.O. - Jaddu Parasia, P.S. - Bhaluani, District - Deoria (Uttar Pradesh).
8. Sri Kailash Nath Pandey, son of Brahmanand Pandey, resident of Village - Kishunpall, P.O. - Lahilpar, P.S. - Rampur Karkhana, District - Deoria (Uttar Pradesh).
9. Sri Brajesh Yadav, son of Late Akshyaware Yadav, resident of Village - Parasia - Karkatahi, P.O. - Vaikunthpur, P.S. - Khukhundu, District - Deoria (Uttar Pradesh).
10. Sri Kailash Yadav, son of Ram Bahal Yadav, resident of Village - Mathauli, P.S. - Vijayipur, District - Gopalganj.
11. Sri Rajendra Mishra, son of Late Vishwanath Mishra, resident of Village - Mathauli, P.S. - Vijayipur, District - Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ardhendumauli Kumar Prasad, Advocate
Mr. Rajesh Mohan, Advocate
Mr. Shashi Shekhar Kumar Pd, Advocate
For the Respondent/s : Mr. Partha Sarthy, GA-11
For the Sanskrit Board : Mr. Shashnak Shekhar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 22-08-2017

Challenging an order dated 04.05.2011 passed by the writ Court in C.W.J.C. No. 12329 of 2010, the appeal has been filed under Clause 10 of the Letters Patent. However, the appeal is filed in the year 2014 after the order and the direction, contained in the order passed on 04.05.2011, has been complied with. The facts, in brief, goes to show that the respondents, who were teachers in the Institute, filed the writ petition in question being C.W.J.C. No. 12329 of 2010 ventilating certain grievance with regard to service conditions and action taken against them. When the matter came up before the writ Court on 04.05.2011, the Writ Court found that the matter warrants certain adjudication and due enquiry to be conducted and held that as the Bihar Sanskrit Shiksha Board is competent enough to conduct the enquiry, the petitioners in the writ petition were directed to move the Secretary, Bihar Sanskrit Shiksha Board, who was directed to hear them and take a decision. As already indicated hereinabove, this order passed on 04.05.2011 was challenged by the petitioners and the petitioners rightly or wrongly on advice given submitted to the jurisdiction of the Board and the Board decided the issue on merit by passing an order on 26.03.2013 and challenging this order passed by



the Board on 26.03.2013, an appeal, bearing Appeal No. 20/2013, was filed before the Appellate Authority and the Appellate Authority on 18.09.2013 held that an appeal against order passed by the Board is not maintainable as it has no competence or jurisdiction to entertain the appeal.

2. Being aggrieved by the aforesaid decision, the petitioner filed writ petition bearing C.W.J.C. No. 1935 of 2014 challenging the order dated 26.03.2013 passed by the Board and the order dated 18.09.2013 passed by the Appellate Authority. It seems that this writ petition came up before the Court on 27.03.2014 and the question arose as to when the writ Court on 04.05.2011 in C.W.J.C. No. 12329 of 2010 has held that the matter should be decided by the Board, how the question of jurisdiction of the Board can be decided by the Appellate Authority and, therefore, the petitioners withdrew the writ petition bearing C.W.J.C. No. 1935 of 2014 with liberty to challenge the order passed on 04.05.2011 in C.W.J.C. No. 12329 of 2010 and that is why this appeal has been filed.

3. Even though learned counsel for the appellants vehemently argued that while referring or granting liberty to the original petitioners in C.W.J.C. No. 12329 of 2010 to raise their grievances before the Sanskrit Shiksha Board and in impliedly



holding that that Board has jurisdiction, the learned Writ Court has committed error on law inasmuch as with regard to a private institute and its management, the Sanskrit Shiksha Board has no jurisdiction. If this aspect of the matter has to be considered, we are of the considered view that once the petitioners had accepted the order passed on 04.05.2011 in C.W.J.C. No. 12329 of 2010 and the matter was decided by the Board, all the issue should have been considered in the writ petition subsequently filed by the petitioners i.e. C.W.J.C. 1935 of 2014 and there being no discussion of law laid down while deciding C.W.J.C. No. 12329 of 2010 on 04.05.2011 with regard to the jurisdiction of the Board, this issue was open and the petitioners should have ventilated this issue and there was no impediment in the writ Court deciding the issue when the petitioners challenged the order of the Board and the appellate authority in C.W.J.C. No. 1935 of 2014.

4. That being so, we are of the considered view that the petitioners should ventilate all the grievances in C.W.J.C. No. 1935 of 2014, which was wrongly withdrawn by the petitioners and, therefore, we allow this appeal in part, direct for restoration of C.W.J.C. No. 1935 of 2014 and grant liberty to the petitioners to raise all the grounds, as are raised in this appeal, including the question of jurisdiction of the Sanskrit Shiksha Board, in C.W.J.C. No. 1935 of



2014 and the writ Court shall proceed to decide the matter in accordance with law, without being prejudiced by the order dated 04.05.2011 passed in C.W.J.C. No. 12329 of 2010 and decide the issue as to whether the petitioners are amenable to the jurisdiction of the Board and, therefore, this question is left open, to be considered in the writ petition, bearing C.W.J.C. No. 1935 of 2014.

5. Accordingly, C.W.J.C. No. 1935 of 2014 is restored to its original file and it will be placed for orders before an appropriate Bench.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2017
Transmission Date	

