

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1278 of 2011

In

Civil Review No.202 of 2009

-
1. Bihar School Examination Board through its Secretary, Sinha Library Road, Patna.
 2. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna.
 3. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.

... .. Appellant/s

Versus

1. Mithilesh Kumari W/O Shri Surendra Prasad Yadav, D/O Shri Shatrughna Yadav Resident Of Village Sundarvirajit, Police Station Madhepur, District Madhubani.
2. Uma Kumari W/O Shri Ram Naresh Thakur, D/O Ram Bharosh Roy Resident Of Village Majhaura, Police Station Bahera, District Darbhanga.

... .. Respondent/s

with

Letters Patent Appeal No. 1532 of 2011

In

Civil Writ Jurisdiction Case No.5444 of 2007

-
1. Bihar School Examination Board through its Secretary Sinha Library Road, Patna
 2. The Chairman Bihar School Examination Board Sinha Library Road, Patna
 3. The Secretary, Bihar School Examination Board Sinha Library Road, Patna

... .. Appellant/S

Versus

1. Mithilesh Kumari W/O Shri Surendra Prasad Yadav, D/O Shri Shatrughan Yadav R/O Vill Sundarvirajit, P.S.Madhepur, Distt-Madhubani
2. Uma Kumari W/O Shri Ram Naresh Thakur , D/O Ram Bharosh Roy R/O Vill Majhaura, P.S.Bahera, Distt-Darbhanga

... .. Respondent/s

with

Letters Patent Appeal No. 293 of 2015

In

Civil Writ Jurisdiction Case No.15468 of 2009

-
1. The Bihar School Examination Board through its Secretary, Sinha Library Road, Patna.
 2. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna.



3. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
4. The Controller of Examination, Bihar School Examination Board, Sinha Library Road, Patna.

... .. Appellant/s

Versus

1. Manorma Kumari D/o Shri Shiawajee Prasad Singh, W/o Shri Rabindra Kumar R/o Vill, Dainikhon, P.S. Baheri, District - Darbhanga.
2. The Principal Nobiul Fatima Women's Primary Teacher Training College, Bahera, Distt. - Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Lalit Kishore, Sr. Advocate
Mr. Parth Sarthy, Advocate
Mr. Girijesh Kumar, Advocate

For the Respondent/s : Mr. Dinu Kumar, Advocate
Mr. Raju Giri, Advocate
Mr. P.K.Jain, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 02-11-2017

LPA No. 1532 of 2011 arises out of order dated 13.08.2008 passed in CWJC No. 5444 of 2007, whereas LPA No. 1278 of 2011 is the of-suit of same order dated 13.8.2008 passed in CWJC No. 5444 of 2007 as the review filed vide Civil Review No. 202/2009 for review of the order dated 13.8.2008 was dismissed by the Court on 17.8.2011 and against the order refusing review, LPA No. 1278 of 2011 has been preferred by the Bihar School Examination Board, whereas LPA No. 293 of 2015 arises out of



the order dated 27.6.2014 passed in CWJC No. 15468 of 2009, whereby the writ court following the order dated 13.8.2008 passed in CWJC No. 5444 of 2007 (Mithilesh Kumari and another Vs. The Bihar School Examination Board and others), disposed of the writ petition.

2. In all these three Letters Patent Appeal a common question of fact and law are involved and as such all the three appeals filed under Clause 10 of the Letters Patent of the Patna High Court Rules are heard together and are being disposed of by this common order.

3. CWJC No. 5444 of 2007 was filed by the writ petitioner, Mithilesh Kumari and one Uma Kumari for a direction to the respondents-Board to issue certificate of teachers training examination held for the Sessions 1985-87 and other consequential reliefs. CWJC No. 15468 of 2009 was filed by Manorma Kumari for a direction to issue original certificate of teachers training in favour of the petitioner as the petitioners passed the teachers training examination in 1985-87 conducted by the Bihar School Examination Board.

4. The issue involved in all the three appeals is whether the writ court was justified in directing issuance of certificate of passing of teachers training examination to the petitioners who



admittedly appeared from the Institution never recognised for imparting teachers training.

5. Mr. Lalit Kishore, Sr. Advocate appearing on behalf of the appellants-Bihar School Examination Board has submitted that the writ court has committed error of jurisdiction in directing issuance of certificate of training in favour of the writ petitioners notwithstanding the fact that the writ petitioners have appeared at the examination conducted by the Bihar School Examination Board from an institution which was never recognised. He submitted that the writ court should not have issued such a direction to issue certificate as granting certificate to the petitioners would amount to recognizing the institution which was never recognised for imparting teachers training course. He submitted that the law is well settled that in the absence of recognition of the institution, issuing direction for publication of result and issuance of certificate is unsustainable and the court should not exercise power to either direct for holding of examination or publication of result or issuance of certificate of unrecognised institution. In the present batch of Letters Patent Appeals the appellant-Board has challenged the order directing issuance of original certificate of passing training as writ petitioners belong to the institution which was never recognised.



6. Mr. Lalit Kishore submits that the Court should not exercise jurisdiction which will amount to perpetuating illegality as directing issuance of training certificate to the writ petitioners would lead to granting seal of validity to a course never recognised. He submitted that the institution is not recognised, the question of granting certificate to a candidate appearing from unrecognised institution would mean granting seal of validity to such unauthorised and illegal training course. In other words, it would amount to granting premium to the illegality committed by the training Institute.

7. Mr. Lalit Kishore submitted that in LPA No. 550 of 1999 the Institution filed I.A. No. 3572 of 1999 for a direction to the respondents to publish the result of the students who appeared in the teachers training examination in 1986-88 and 1088-90 and the said interlocutory application was dismissed vide order dated 21.8.2002 on the ground that the institution was not a recognised institution. He submitted that notwithstanding the institution was never recognised the writ court exercised discretion and issued direction vide order dated 13.8.2008 to the Bihar School Examination Board to examine the record of the Board as to whether the writ petitioners have actually appeared in the examination and passed the same or not and if they have passed,



the court directed for issuance of original certificate to the writ petitioners.

8. The writ court has not gone into the issue of recognition of the institution and as such the Board was constrained to file C.Rev. No. 202 of 2009 wherein the Board specifically took the plea that the institution was not recognised and as such the writ petitioners are not entitled to get their certificate even if they have appeared in the examination and passed the same. However, the court declined to review the order dated 13.8.2008 and dismissed the said Civil Review No. 202 of 2009 vide order dated 17.8.2009.

9. Mr. Lalit Kishore referring to the LPA No. 292 of 2015 has submitted that the writ court in CWJC No. 15468 of 2009 has simply relied upon the decision in CWJC No. 5444 of 2007 and disposed of CWJC No. 15468 of 2009 in terms of the order dated 13.8.2008 passed in CWJC No. 5444 of 2007 and thus the same error was committed by the writ Court in CWJC No. 15468 of 2009.

10. Per-contra, counsel appearing on behalf of the respondents have submitted that the case of the writ petitioners is required to be examined in equitable jurisdiction as the petitioners are not at fault for appearing at the examination and passing the



same examination from an unrecognised institution. However, they failed to establish that at any point of time the institution in question from where the writ petitioners have appeared in the examination was recognised.

11. The submission of the respondents that on the basis of their passing of training examination they were appointed as teachers and now refusal to grant certificate would lead to their termination and as such the Court should exercise equitable jurisdiction considering hardships occasioned due to non-issuance of original certificate.

12. We have heard counsel for the parties and considered the rival submissions of the parties. Since the only issue involved in this case is whether the writ court was justified in issuing direction for issuance of certificate in favour of the petitioners who appeared from a institution which was never recognised was justified or not?

13. It is now well settled that constitutional Court while exercising jurisdiction under Article 226 of the Constitution are expected to exercise discretion in accordance with law as courts are required to do justice according to law. For issuance of mandamus or direction including the direction for issuance of



certificate, it is condition precedent that the petitioners must establish lawful right for issuance of certificate.

14. From the pleading of the parties and materials available on record, it is not in dispute that the petitioners have appeared from an institution which was never recognised and if the institution is not recognised the examination conducted by the Examination Board will not confer lawful right in favour of the writ petitioner as the Court can issue direction for the performance of statutory duty or lawful duty in furtherance of statutory or legal right. Undisputedly, there is no statutory right in favour of the petitioners nor any legal right or right in equity accrued in favour of the writ petitioners as they appeared on their own volition and peril from an institution which was never recognised and as such the writ court was not justified in issuing direction for issuance of original certificate of passing of training in their favour. The original certificate of training presupposes recognised training certificate and as such recognised training certificate presupposes training from a recognised institution.

15. In the present case we find that none of the writ petitioners have undergone teachers training in a recognized institution and as such, they have not acquired statutory right, legal right or any right in equity. In the aforesaid circumstances,



the writ court was not justified in issuing direction for issuance of certificate as it would amount to giving seal of validity and recognition to an unrecognized teachers training institution.

16. In the facts and circumstances of the case, we find that the writ court has committed error of jurisdiction in issuing direction for issuance of certificate of traning to the writ petitioners who have not undergone training in recognized teacher training college. Accordingly, we set aside the orders dated 13.8.2007 and 27.6.2014 passed by the writ court in CWJC No. 5444 of 2007CWJC No. 15468 of 2009 respectively.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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