

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 116 of 2015

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Yagyanand Mishra, Son of Trayambakeshwar Mishra, R/O Village- Agrarpur, P.S.-
Lalganj, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. Bihar Siksha Borad through its Secretary, Patna.
4. The Secretary, Bihar Sanskrit Shiksha Board, Patna.
5. The Special Director, Department of Education, Government of Bihar, Patna.
6. The Managing Committee through Secretary Bihar Shukla Sanskrit Secondary School, Lalganj, Vaishali.
7. District Education Officer, Vaishali.
8. Ramendra Sah the then Secretary Bihar Shukla Sanskrit School, Lalganj.
9. Mini Kumari, Assistant Teacher, Bihar Shukla Sanskrit School, Lalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brij Bihari Tiwary, Advocate
For the State	:	Mr. Lalan Kumar, A.C. to G.P. 9
For the Sanskrit Shiksha Board	:	Mr. Satyam Shivam Sundaram and Mr. Shashank Shekhar Jha, Advocates
For the Respondent No. 9	:	Mr. Gajendra Kumar Jha and Mr. Surya Kant Mishra, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner, State,

Bihar Sanskrit Shiksha Board (hereinafter referred to as the 'Board')

and respondent no. 9.

2. The petitioner has moved before the Court for

the following reliefs:

*"I. In the nature of certiorari for
setting aside the order dated as contained in
memo no. 4403 dated 04.11.11 issued under the
signature of Secretary B.S.S. Board Patna.
(Bihar Sanskrit Shiksha Board Patna) whereby*



and where under the appointment of the petitioner has been held to be, illegal, irregular and in the contravention of non Govt. Sanskrit School service Education Rules 1976 and the payment of the petitioner for the service rendered by the petitioner with effect from 24.12.1999 till the passing of the order has been rejected and also for setting a side the order contained in memo no. 79 dated 10.09.2014 whereby and where under appeal preferred against the aforesaid order has been rejected.

II. In the nature of mandamus directing and commanding the Respondents authority restore the service of the petitioner.

III. For any other relief/reliefs for which petitioner is entitled in the facts and circumstance of the case.”

3. The claim of the petitioner is to quash the letter of the Board dated 04.11.2011 by which his appointment has not been approved as also the appellate order dated 10.09.2014 upholding the order dated 04.11.2011.

4. Learned counsel for the petitioner submitted that the Managing Committee of the School in question had taken a decision on 24.12.1999 to appoint the petitioner on the post of Sanskrit Teacher, though on *ad hoc* basis, with further direction that the Secretary would get the post advertised for making regular appointment. It was submitted that since then, the petitioner has continued on the post but has not been paid as the request of the Managing Committee of the school to the authorities to approve the



appointment and make available fund for payment has not been accepted and finally by the impugned order dated 04.11.2011, the request was refused and thereafter the challenge to the same before the Special Director (Secondary Education) has also been rejected in Appeal No. 09 of 2012, by order contained in Memo No. 79 dated 10.09.2014, which is against the provisions of law. Learned counsel submitted that the petitioner having continued for long, is entitled for his case to be considered for approval as he has worked without break and in view of the decisions of the Hon'ble Supreme Court in the case of **Secy., State of Karnataka v. Uma Devi** reported as **(2006) 4 SCC 1**, as well as in the case of **State of Karnataka v. M. L. Kesari** reported as **(2010) 9 SCC 247**, the persons who had continued for long were required to be considered for the purposes of regularizing their services as a one time exercise, but the same has not been done in the case of the petitioner. It was further submitted that the petitioner having worked on the post is entitled to remuneration as no work can be taken by a person without paying him for the said work.

5. Learned counsel for the respondents submitted that the petitioner was never appointed in terms of the legal provisions and thus rightly, the Board has rejected the claim of the petitioner for approving his appointment and denying payment to



him. It was submitted that even the Special Director has rightly not interfered in the said order of the Board.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition. The resolution dated 24.12.1999 itself speaks that the petitioner was being appointed purely on an *ad hoc* basis and that the Secretary should get advertisement published in the newspaper for making regular appointment. It is not denied that such exercise, till date, has not been done. Further, in the affidavit filed on behalf of the Managing Committee of the School, it is denied that the petitioner has continued to teach on the post in question in the school. It has been settled by a Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013 (1) PLJR 964**, that *ad hoc* appointments made contrary to the mandate of Article 14 without open competitive selection are illegal, *ab initio void* and cannot be regularized under any circumstances. The Full Bench, along with other decisions has also considered the decisions of the Hon'ble Supreme Court in the case of **State of Karnataka v. M. L. Kesari** (supra) and **Secy., State of Karnataka v. Uma Devi** (supra) and has clarified the position. This Court does not find any occasion to take a different view when the Full Bench has specifically and in



so many words clearly held that *ad hoc* appointments *de hors* the requirement of Article 14 and without open competitive examination are illegal and cannot be regularized. Thus, the Court cannot give a legal seal of approval on the appointment of the petitioner. Once the Court is unable to accept the legality of the appointment of the petitioner, there cannot be any direction either to approve his service or to pay salary to him. However, if the petitioner has discharged duties on the said post, he may have a claim against the body/persons responsible for having made the petitioner to work for which he has a remedy by approaching the Civil Court of competent jurisdiction for seeking his dues against such body/persons but in no case, he can have any claim over the State exchequer, in the facts and circumstances of the present case.

7. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

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