

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17369 of 2016

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1. The Governing Body of Sant Kabir Mahanth Ramdayal Das College, Mahanth Ram Lakhan Nagar, Bidupur Bazar, Vaishali through its Secretary-cum-Principal Jagdish Prasad Singh, S/o Late Sonelal Singh, Resident of Village- Mathura, P.S.- Bidupur, District- Vasihali.
 2. Jagdish Prasad Singh, S/o Late Sone Lal Singh, Resident of Village- Mathura, P.S.- Bidupur, District- Vasihali.
 3. Manoj Kumar, S/o Late Harinandan Prasad, Resident of Village- Bidupur Bazar, District- Vaishali.
 4. Ranjeet Kumar Chodhary, S/o Late Raghubir Prasad Chaudhary, Resident of Village- Masjeet Chowk, P.S.- Hazipur, District- Vaishali.
 5. Ashok Prasad Singh, S/o Ramashish Prasad Singh, Resident of Village- Rasalpur, Sohavan, P.S.- Bhagavanpur, District- Vaishali.
 6. Aamod Bhushan Prasad, S/o Late Shivshankar Prasad, Resident of Village- S.D.O. Road, P.S. Hazipur, District- Vaishali.
 7. Manoj Kumar, S/o Late Mahendra Prasad Srivastava, Resident of Village- Subhash Chowk, P.S. Hazipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Bihar School Examination Board, through its Secretary, Bihar School Examination Board, Patna.
4. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.



Ms. Shally Kumari, Adv.
For the State : Mr. Kameshwar Kumar-GP17
For the Board : Mr. Girijesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date : 17-08-2017

When the matter was heard yesterday, on 16.08.2017, a legal question had emerged as to whether the Bihar School Examination Board (*in short 'Board'*) has any power under the Bihar School Examination Act or Senior Secondary Affiliation Rules/Regulations, framed thereunder, to suspend affiliation of an institution .

2. An order, dated 28.06.2016, issued under the signature of the Secretary of the Board, in purported exercise of power, under Regulation 15(3) (ii) and (ix) of the Bihar School Examination Board (Sr. Sec.) Affiliation Regulation, 2013 (*hereinafter referred to as the 'Regulations'*), is under challenge, whereby, affiliation, granted by the Board to the Sant Kabir Mahanth Ramdayal Das College, Vaishali, has been suspended. Regulation 15 of the Regulations deals with withdrawal of affiliation to affiliated schools. Regulation 15(1) confers upon the Board, power to withdraw either in a particular subject of in



all subjects, affiliation allowed to an institution imparting secondary education, if the Board is satisfied that such institution is not fit to enjoy continuing affiliation to the Board. Sub-Regulation (3) of Regulation 15 of the Regulations lays down the conditions for withdrawal of affiliation. The conditions, which exist, according to the Board, for suspending affiliation, are covered by Clauses (ii) to (ix).

3. Mr. Siya Ram Shahai, learned Counsel, appearing on behalf of the petitioner, has submitted that in the absence of any power vested in the Board to suspend affiliation, such power cannot be exercised and for that reason the impugned order is beyond jurisdiction. According to him, the Act and the Regulations intentionally did not confer power of suspension on the Board, which is distinct from power of suspension of an employee under service jurisprudence. He has submitted that whereas in the later case, suspension cannot be treated to be punishment, which may not have adverse effects also, suspension of affiliation of an institution can have serious consequences, which may be irreparable, even if the Board finally decides not to withdraw affiliation.



4. Learned Counsel, appearing on behalf of the Board, on the other hand, has relied on Supreme Court decision in case of ***R.P. Kapur v. Union of India & Anr.***, reported in ***AIR 1964 SC 787***, to contend that power to suspend affiliation is inherent and since the Board has power to withdraw affiliation, it has also power to suspend affiliation. He has also referred to Section 16 of the Bihar General Clauses Act, 1897, to submit that where, by any Act or Regulation, a power to make any appointment is conferred, then the authority, having such power, shall also have the power to suspend affiliation.

5. The submission, which has been advanced on behalf of the Board, referring to Supreme Court's decision in case of ***R.P. Kapur*** (supra) and Section 16 of the Bihar General Clauses Act, 1897, is not convincing to this Court. The said proposition that the employer has inherent power to suspend an employee applies in service jurisprudence. The said *doctrine* cannot be made applicable to exercise power to suspend affiliation.

6. The impugned order, dated 28.06.2016, issued under the signature of the Secretary of the Board, therefore, cannot be sustained and is, accordingly, set-aside.



7. It is made clear that if in the opinion of the Board, any power of withdrawal of affiliation is to be exercised, under Regulation 15 of the Regulations, on the ground that the conditions stipulated under sub-Regulation (3) exist, the Board shall be at liberty to do so in accordance with the law.

8. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.08.2017
Transmission Date	N/A

