

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8707 of 2017

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1. Sambhu Kumar Singh, Son of Late Amar Nath Singh, Resident of Village- Rupas (Rahimpur Tola), P.O. - Rupas, P.S. - Athmalgola, Barh, District - Patna, General Secretary, Madhyamik Shikchhak Sansthan, Pradesh Madhyamik Shikchhak Sangh, Bihar.
 2. Ganesh Prasad Singh, Son of Late R.N. Singh Resident of Shivajipath, Yarpur, P.O. - G.P.O., P.S. - Gardanibag, District - Patna, General Secretary, Bihar Intermediate Teacher and Non Teaching Mahasangh, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna.
3. Director, Secondary Education, Government of Bihar, Budh Marg, Patna.
4. Bihar School Examination Board through its Chairman, Sinha Library Road, Patna.
5. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
6. Anand Kishore, Divisional Commissioner, Patna Cum-Chairman, Bihar School Examination Board, Sinha Library Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, P.A.A.G. 1
		Mr. Satyabir Bharti, Advocate
		Mr. Amit Bhushan, A.C. to G.P. 17
		Ms. Aparna Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-07-2017

Heard learned counsel for the petitioners and Mr. Lalit
Kishore, learned PAAG-1, both for the State and the Bihar School



Examination Board (hereinafter referred to as the 'Board').

2. The petitioners have moved the Court for the following reliefs:

"1. That the present petition is being preferred assailing validity and correctness of order under memo no. 462 Patna dated 08.06.2016 permitting the private respondent Sri Anand Kishore, Divisional Commissioner, Patna to function and discharge the duty as a Chairman of Bihar School Examination Board, Patna till further order ignoring/violating the provisions/section-4(B) of the Bihar School Examination Board, Act-1952 which deals the said issue related to filling vacancy in the office of the Chairman and for other necessary relief/reliefs to the basis of facts and circumstances of case enumerated and stated hereinafter."

3. Basically, the contention is that the respondent no. 6 has been made the Chairman of the Board in violation of the statutory provisions specifically Sections 4A and 4B of the Bihar School Examination Board Act, 1952 (hereinafter referred to as the 'Act').

4. Learned counsel for the petitioners submitted that initially the Chairman of the Board was appointed under notification contained in Memo No. 421 dated 26.06.2014 under Section 4(1)(2) and 4(4) of the Act and his term was for a period of three years. He further submitted that subsequently the Board was also constituted under notification contained in Memo No. 605 dated 26.09.2014, by



which, besides the Chairman, six other members were also nominated. However, the tenure was for a period of three years in terms of the earlier notification with regard to the Chairman. Learned counsel submitted that pursuant to the resignation of the erstwhile Chairman of the Board, there being a vacancy, the respondent no. 6, who was the Divisional Commissioner, Patna was appointed as Chairman of the Board in addition to his own duties till further orders. Learned counsel submitted that a procedure is prescribed under the Act, especially Section 4A thereof which stipulates that the Chairman shall be a whole time office bearer of the Board. Learned counsel submitted that the very initial term of appointment of the respondent no. 6, being in addition to his other charge, is unsustainable for the requirement of the statute is that the Chairman has to be a whole time officer of the Board. Learned counsel submitted that even if the Government could take recourse to Section 4B of the Act, upon such vacancy on the post of Chairman, it was the Director of Secondary Education, Bihar who had to be made the Chairman and only if he was unable for any reason to be the Chairman, any other person appointed by the State Government could carry on the office of the Chairman and that too for the unexpired portion of the term for which the Chairman would have continued in office. Learned counsel submitted that there is no



discussion as to whether the Director of Secondary Education, Bihar had been considered and whether he was unable to hold office and further that after him, the consideration should have been first with regard to the other members of the Board and only thereafter, was the Government free to choose any other officer. Learned counsel submitted that the procedure not being followed with regard to the appointment of the Chairman, has rendered such appointment a nullity in the eyes of law. Even on facts, it was contended there have been grave irregularities in the conduct of the business of the Board where many examination papers of students have not been traced out and persons not competent to act as examiners have performed such duty. He further contended that on a large scale, the appointment of examiners was of Primary and Middle School teachers, though the requirement is that the examiners should be teachers of the secondary grade and that too who have experience of at least three years of teaching. It was further contended that the Board has made appointments of various persons on various posts without following the due procedure which is totally illegal. Learned counsel also drew the attention of the Court to Annexure-6, which is copy of the representation dated 21.01.2017 by 529 employees of the Board to the Chairman as well as the Secretary of the Board pointing out various irregularities being committed in the functioning of the



Board.

5. Mr. Lalit Kishore, learned PAAG-1, has opposed the writ petition and has taken a preliminary objection being that of *locus* of the petitioners. It was submitted that no ground has been made for issuance of any writ of *quo-warranto* by the Court as nothing has been pleaded or brought on record even to indicate that the respondent no. 6 lacked inherent disqualification or ineligibility for the post and at best the petitioners could have argued with regard to procedural deficiency. Learned counsel submitted that coupled with this, the Court would not shut its eye to the fact that the petitioner no. 1 is the so called Union of secondary teachers who in the present transaction this year had boycotted being examiners for the 2017 secondary examination held by the Board. Learned counsel submitted that they had held the system to ransom as the career of almost 30 lakhs students was at stake which would have resulted in answersheets not being evaluated and results declared in time so that they may pursue their future academic career elsewhere, thus causing irreparable loss to them. Learned counsel submitted that, under such circumstances, alternative arrangements were made keeping the public interest in mind. However, he added that he is not required to go into the factual aspect as basically the petitioners contentions are with regard to the appointment not being in terms of the statutory



provisions. Learned counsel submitted that the statute contemplates two contingencies. Firstly, the appointment of a Chairman on a regular full time basis in the normal course of business, and secondly, when a vacancy arises due to death, resignation or otherwise, prior to the completion of the full term of the Chairman. He submitted that in the present case, the vacancy admittedly is prior to both expiration of the term of the Chairman and on account of resignation being tendered and accepted by the Government. Learned counsel submitted that the contention of learned counsel for the petitioner that the Director of Secondary Education, Bihar has to be appointed Chairman first is erroneous for the law itself contemplates that for any reason, if he is unable to hold the office, the State Government may appoint any other person. Learned counsel submitted that once the Director of Secondary Education, Bihar has not made any grievance about his non consideration or appointment on the post of Chairman for the remaining period, such contention or cause cannot be espoused by any other person, as in law, it shall be presumed that for valid reason, he has not been made Chairman. Learned counsel submitted that equally erroneous is the submission of learned counsel for the petitioners that thereafter the consideration zone should be restricted to the members of the Board, which is not even whispered in the provisions of Section 4B of the



Act. Learned counsel submitted that as far as the tenure of the Chairman is concerned, though in a case where the post is filled up, upon the death, resignation or otherwise of the incumbent, before the term expires, for the remaining period, but in terms of Section 4(4) of the Act, the said term shall stand extended to a further period which may elapse between the expiration of the said three years and the date of the first meeting of the next succeeding Board. He submitted that even otherwise, the term of the person, who had resigned from Chairmanship was till 25.06.2014 and thereafter in terms of the aforesaid provisions of Section 4(4) of the Act, the Chairman shall continue to hold office till the first meeting of the next succeeding Board. Learned counsel contended that as the petitioners have tried to prejudice the mind of the Court by citing various instances with regard to malfunctioning of the Board, he would also draw the attention of the Court to the fact that from the position where the Board was when the respondent no. 6 took over, there has been marked improvement and the system is becoming better day by day. He also pointed out that the very fact that employees have represented to the respondent no. 6 i.e., the Chairman and the Secretary of the Board, pointing out irregularities, it is an admission of having faith in the Chairman and the Secretary that they would address the issues and look into the grievances.



6. Having considered the contentions, this Court finds no merit in the present writ application. First and foremost, the petitioners have not pointed to the Court any discrepancy with regard to there being any infraction of the provisions of the statute in the appointment of the respondent no. 6 or there being even procedure irregularities, much less any inherent disqualification relating to eligibility of respondent no. 6 to hold such post. Rather, on the other hand, the Court is in agreement with the submissions of Mr. Lalit Kishore, learned PAAG-1, that the law has made a provision for the contingency which we are concerned for the present, where upon resignation of the erstwhile Chairman, before his term expires, the post of Chairman needs to be filled, specifically Section 4B of the Act. Once the discretion of the Government extends to appointing any other person of the State Government as Chairman, the appointment of respondent no. 6 cannot be faulted. The contention of learned counsel for the petitioners that he has to be a whole time officer of the Board is clearly erroneous for the reason that under the normal course of business, when a Chairman is being appointed and there is a fresh constitution of the Board, such Chairman has to be a whole time officer of the Board. However, the said provision under Section 4A(1) of the Act has to be read with Section 4B of the Act, which deals with a situation where the office of the Chairman



becomes empty prior to the expiration of the full term of the incumbent Chairman. The mere fact that the statute permits the Director of Secondary Education, Bihar or any other person appointed by the State Government to hold the post of Chairman, itself presupposes that a person would be only discharging the duty in addition to his substantive post and if the power to appoint in terms of Section 4B is read in terms of the provisions of Section 4A(1) of the Act. The two provisions would be self contradictory, if once a person is appointed full time, he would no longer either be the Director of Secondary Education, Bihar or any other person and shall only be the Chairman of the Board. Thus, the law itself makes it amply clear that the arrangement under Section 4B would be of a person who already is holding some other post including that of Director of Secondary Education, Bihar. Coming to the question of the tenure not exceeding the remaining tenure of the erstwhile Chairman, as has rightly pointed out by Mr. Lalit Kishore, learned PAAG-1, Section 4(4) makes it clear that there should not be any vacancy/ vacuum in the system and even if the said term of three years expires, it shall stand extended to any further period which may elapse between the expiration of the said three years till the date of the first meeting of the next succeeding Board.

7. The Court would also like to dwell on another aspect



of the matter, which in the present day is of more importance. The same is with regard to persons moving the Court for oblique reasons. In the present case, when the persons, who are members of a Union which claims to be that of Secondary Teachers, they were the persons who, till the present time were the examiners. It does not need to be over-emphasized that the illegalities committed have been at the level of both examination and more importantly, at the level of evaluation/examination of copies and thus, they were an important part of the system which has resulted in the present day malady/malaise. Secondly, instead of coming to the Court seeking its intervention to improve the situation, targeting an individual and that too, on frivolous and unavailable grounds in law, the Court finds the same is either as a proxy or for oblique reasons and not with clean and *bona fide* intention.

8. Moreover, as far as the factual aspect of any irregularities being committed by the Board or otherwise, there being no specific allegation against the Chairman i.e., respondent no. 6, who is functioning, as no tangible material has either been pleaded or brought on record to indicate any accusation, which would be worth considering as far as respondent no. 6 is concerned. Such objection, in the opinion of the Court, remaining unsubstantiated deserves to be rejected outright.



9. In view of the discussions made hereinabove, the writ petition stands dismissed with a cost of Rs. 50,000/- to be deposited with the Bihar State Legal Services Authority within two weeks from today, failing which the Registry shall place the matter before the Bench for appropriate orders.

(Ahsanuddin Amanullah, J.)

P. Kumar

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