

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13132 of 2008

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Shiv Narayan Jha, S/O Late Rajeshwar Jha, R/o Village- Karian, P.S. Rosra,
District- Samastipur, at present Peon Udyan Sanskrit Uchha Vidyalaya, Karian, P.S.
Rosra, District-Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through Commissioner-cum-Secretary Human Resources Department, Bihar Patna.
2. The Deputy Director (Secondary Education) Human Resources Development Department, Bihar, Patna.
3. Special Director, Secondary Education, Bihar, Patna.
4. The District Education Officer, Samastipur.
5. Bihar Sanskrit Shiksha Board, Patna, through its Secretary.
6. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
7. The Managing Committee, Udyan Sanskrit Uchha Vidyalaya, Karian, P.S. Rosra, District-Samastipur, through its Secretary.
8. The Headmaster, Udyan Sanskrit Uchha Vidyalaya, Karian, P.S. Rosra, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tara Nath Jha, Advocate
For the State	:	Mr. Pushkar Narain Shahi, A.A.G. 6
		Mr. Dharendra Kumar, A.C. to A.A.G. 6
For the Board	:	Mr. S. S. Sundram and
		Mr. Shashank Shekhar Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-04-2018

Heard learned counsel for the petitioner; learned
A.A.G.-6 for the State and learned counsel for the Bihar Sanskrit
Shiksha Board (hereinafter referred to as the 'Board').



2. The matter has been dealt in detail by the Court in its order dated 15.02.2018, which the Court deems it appropriate to reproduce hereinbelow, which would give the factual background:

“5. The petitioner has moved the Court for the following reliefs:

“That, this is an application for issuance of a writ in the nature of CERTIORARI for quashing the letter issued Vide No. 125 dated 28.02.2007 by the respondent no. 2 under which the application of the petitioner relating to the payment of the salary was rejected and further for issuance of writ in the nature of mandamus directing the respondents to make the payment of the salary to the petitioner from 01/04/1990 till the date in the prescribed pay scale with all consequential benefits and also to make payment of current salary and further also for issuance of an appropriate writ/order/directing the respondents to make the payment of dearness allowance from 1981 to 31/03/1989 and the arrear of salary from 01/12/1988 to 31/03/1989 and further for issuance of an appropriate, direction directing the respondents to make the payment of entire arrear of salary to the petitioner with interest in accordance with law.”

6. Before coming to the merits of the matter, the Court feels obliged to record the findings that there appears to be absolute lack of assistance on the part of the State and in fact a misleading stand has been taken. This would be obvious from the order recorded on 01.10.2010, where an impression has been created that the petitioner's school was among the schools which were recognized/sanctioned in the second phase. In that context, the stand of the State had been recorded that the matter with regard to sanction of one post of peon and one post of clerk in the schools taken over in the second phase was under consideration with the Government and legal opinion was being sought for further action in the matter. Thus, the Court had adjourned the matter for filing of counter affidavit informing the Court with regard to final decision taken by the Government as a



policy. Thereafter, it appears that for the same relief, the matter kept on being adjourned.

7. Having today heard the matter for quite some time, the issue seems to be simple and short. The petitioner's school appears to have been recognized by the State Government prior to 1981 and was among the schools in the list of such schools recognized, the total number being 442. Thereafter, in the year 1989, only 429 schools were taken over but the petitioner's school was not taken over. However, the salary of teaching and non teaching staff, which was recognized, was being paid by the grant given by the State through the Bihar Sanskrit Shiksha Board and the petitioner also received his salary. In the meantime, in the year 1985, further 205 schools were also recognized. Matters continued like that but after taking over of the 429 schools, the remaining 13 schools, including the school of the petitioner, seems to have been tagged with the list of 205 schools recognized in the year 1985 and 5 more schools, taking the number to 223. The said 205+5 schools were recognized as per the orders of the Court including the Hon'ble Supreme Court. The Court would pause here and record that there is no document on record to show that the 13 schools, including that of the petitioner, were ever derecognized or a separate order of recognition was again passed in their case and it appears that only for the sake of convenience, since other 13 schools were never taken over and were left in the category of only recognized schools, seem to have been clubbed together as a bunch with the remaining schools, which were recognized in the second phase, their number being, 205+5 i.e., 210 and therefore, the number became 223. However, the terms of recognition of the school of the petitioner was never varied at any point of time by the State Government and remained the same as was at the initial stage prior to 1981 in the same composite list of 442 schools. If this is the fact, the controversy with regard to only post of teachers being created is actually a ghost since that condition applies only with regard to 205+5= 210 schools which were recognized in the second phase in the year 1985 and



not the petitioner's school which was already recognized much earlier in the first phase itself. This issue has not been directly dealt with by the State, either in the pleadings or in submissions to the Court, for the same has never been even taken note of by the Court in any of its previous orders. Today also, the State was only harping on the point that the petitioner's school is among the 223 and in all those 223 schools, only the teaching posts were recognized. However, learned counsel for the Bihar Sanskrit Shiksha Board has taken the stand, both in the counter affidavit and submissions before the Court, that posts of non teaching staff was also recognized in the case of the petitioner's school and, thus, till 31.03.1990, payments were also made upon the funds received from the State Government and thereafter, it has been stopped in view of the order of the State Government not to pay for non teaching posts, treating the school of the petitioner to be covered by the condition as was applicable with regard to the other 210 schools where only the teaching posts were recognized.

3. In the aforesaid background, the Court was forced to direct for the personal appearance of the Principal Secretary, Department of Education, who had appeared on 06.03.2018, and after being aware of the issue had taken four weeks time for the authorities to look into the matter and then come with a final stand. In terms thereof, an affidavit has been filed on behalf of the State in which they have reiterated their previous stand that since the school of the petitioner was not included in the initial 429 schools and was clubbed in the list of 223 schools, who were later recognized, in their case, sanction being only for teaching posts, the petitioner holding a



non teaching post was not entitled to payment. However, the said stand was also in the background that the relevant records were not traceable since in the year 2016, a major portion of the Education Department was gutted in fire leading to loss of many documents.

4. Be that as it may, after hearing learned counsel for the parties at length today, the Court finds that the petitioner has made out a case for interference. At the cost of repetition, nothing has been brought on record on behalf of the respondents to show that the petitioner's school was separate from the 442 schools initially recognized by the State Government prior to the year 1981. May be, later in the year 1989, only 429 schools were taken over and the petitioner's school was left out, but the recognition was never withdrawn, due to which payments were also made. However, after 31.03.1990, when payment was stopped, the petitioner approached the Court and the matter was remitted to the Special Director who passed order taking the stand that since from the initial list of 442 schools, 13 schools, including that of the petitioner were left out in the year 1989 from being taken over, the Government was still considering the matter. However, the Board did not make payment taking the plea that by Letter No. 1489 dated 17.11.1993, issued by the then Human Resources Development Department to the Chairman/Secretary of the Board, it was informed that since the



petitioner's school was in the list of 222 (which later with the addition of one more school came to 223), where the post of Clerk and Peon had not been sanctioned by the State Government, payment could not be made. The petitioner again moved this Court challenging such direction of the State Government and on remand, the impugned order dated 28.02.2007, has been passed rejecting the claim of the petitioner for salary. Today, when the State authorities take a stand that the post of non teaching staff i.e., Clerk and Peon had not been sanctioned for the entire 223 schools, who were recognized in the year 1985, had already been noted by the Court in its earlier order. The same was merely for the purpose of convenience of passing a composite order, but from the facts of the case and materials on record which have neither been controverted nor anything contrary to the same having been brought on record leads to the only conclusion, that as far as recognition is concerned, there was only one such order in the case of the petitioner's school, i.e., prior to 1981, which was along with 441 other schools, the total number being 442. There is also nothing on record or even in the pleadings that at any point of time, after the initial recognition of the school, such recognition was either withdrawn or any of the conditions varied from the initial terms. Mere inclusion of the school of the petitioner in the subsequent list of schools which were



recognized in the year 1985 would not lead to any presumption, either on facts or in law, that henceforth from that day i.e., 1985, the petitioner would be treated as a freshly recognized school, amenable to fresh conditions as may be prescribed by the State Government. Thus, whatever fresh conditions have been prescribed with regard to such new recognition granted basically to 205+4+1=210 schools, cannot be made applicable in the case of the school of the petitioner. The school having remained in the initial list of recognized schools prior to 1981, with regard to whom such posts was sanctioned and, thus, in those schools persons holding such post have been regularly paid their salary, the Court holds that the petitioner shall also be governed by the same conditions of recognition as is applicable to those 429 schools which were subsequently taken over in the year 1989. Having held that, the consequential effect would be that the petitioner is entitled to his salary for the post from the time the same has not been paid till his superannuation and other benefits, as may be due to him in law.

5. Accordingly, the writ petition stands allowed in the aforementioned terms. Let such payment be made to the petitioner within two months from the date of production of a copy of this order before the respondent no. 3.

6. Before parting, the Court categorically records that



despite repeated opportunity given to the State to produce any document to show that the facts are contrary to what has been recorded in this order, failure to do so has been a major factor in the Court allowing the writ petition.

(Ahsanuddin Amanullah, J.)

P. Kumar

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