

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2790 of 2008

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Paras Nath Pandey Son of Sidheshwar Pandey, resident of Village Lachhubigha, P.S.
Nagarnausa, District- Nalanda.

..... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Secondary and Adult Education, Government of Bihar, Patna.
2. The Director, Secondary and Adult Education, Government of Bihar, Patna.
3. The Special Director, Secondary Education, Government of Bihar, Patna.
4. The Chairman, Sanskrit Shiksha Board, Bihar, Patna.
5. The Secretary, Sanskrit Shiksha Board, Bihar, Patna.
6. The Law Officer, Sanskrit Shiksha Board, Bihar, Patna.
7. The Commissioner cum Secretary, Department of Finance, Bihar Patna.
8. The Managing Committee, Sri Pachrang Baba Sanskrit Prathmik-Sah-Madhya (Middle) School, Lachhubigha, District-Nalanda through its Secretary.
9. The Additional Director General, Vigilance Investigation Bureau, Bihar.
10. The Superintendent of Police, Nalanda at Biharsharif.

..... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Satyabir Bharti, Advocate
For the State	:	Mr. Chandra Shekhar Singh, AC to GA-10
For the B.S.S.B.	:	Mr. S. S. Sundram, Advocate
		Mr. Shashank Shekhar Jha, Advocate
For the Private Respondent no. 8:		Mr. S. K. Ghosh, Sr. Advocate
		Mr. Ajay Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-04-2018

Heard learned counsel for the petitioner; State; Bihar

Sanskrit Shiksha Board (hereinafter referred to as the 'Board') and
respondent no. 8.

2. The petitioner has moved the Court for the following
reliefs:

“ (i) quashing the order dated 31.10.2007 contained



in memo no. 941 (Annexure-15) passed by the Deputy Director, Secondary Education, Bihar, Patna whereby and where under the claim of the petitioner for payment of salary has been rejected and the order dated 24.11.2001 contained in memo no. 649 passed by the Special Director, Secondary Education has been held to be in accordance with law;

(ii) for holding that the order dated 24.4.1999 passed by the Chairman, Bihar Sanskrit Shiksha Board, Patna is in accordance with law and that the petitioner was working as a founder teacher on the date of recognition of Shri Pachrang Baba Sanskrit Prathmik-Sah-Madhya (Middle) School, Lachhubigha, District Nalanda on the fifth sanctioned post;

(iii) directing the respondents for payment of salary to the petitioner with effect from 1.4.1980 as has been paid to the other teachers

(iv) to pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. The petitioner claims to have been appointed as Assistant Teacher in Shri Pachrang Baba Sanskrit Prathmik-Sah-Madhya School, Lachhubigha in the district of Nalanda on 25.12.1977 on the fifth sanctioned post by the Managing Committee of the School. It is further his claim that on 28.12.1997, he joined on the fifth Assistant Teacher post and kept on working without any break.



In the meantime, the school was recognized/approved by the Sanskrit Shiksha Parishad on 01.04.1980 and placed under the management and control of the Board. It appears that one Kanti Kumari claimed that she had been appointed on 09.01.1980 on the post vacated by the petitioner on account of his long absence and removal by the Managing Committee and the matter reached before the Chairman of Board. This led to filing of C.W.J.C. No. 2233 of 1983 by the petitioner, and by order dated 25.07.1997, the matter was remanded to the Chairman of the Board with the observation that payment of salary should be made to the parties in whose favour the matter is decided and for the period he or she has worked. In terms thereof, the Chairman of the Board passed order on 22.04.1999 in favour of the petitioner holding him to have been appointed and continuing on the post. Despite the Chairman having passed the order in favour of the petitioner when the arrears of salary were not paid to him, he moved in M.J.C. No. 3013 of 2000, but during the pendency of the contempt application the Special Director, Secondary Education by order dated 24.11.2001 communicated to the Secretary of the Board, the State Government's decision to interfere in the order of the Chairman of the Board holding that the petitioner was not working on the sanctioned post at the time of approval/recognition of the school and thus denied him the salary. The said order was communicated by the Secretary of



the Board under Letter No. 123 dated 06.02.2002 to the petitioner which led to him filing C.W.J.C. No. 5467 of 2002. The Court by order dated 29.03.2007 interfered with those orders and remanded the matter to the Special Director, Secondary Education, Bihar, Patna to pass fresh order, after giving opportunity of hearing to the petitioner and taking into consideration the order passed by the Chairman of the Board. Pursuant thereto, the impugned order dated 31.10.2007 has been passed by the Incharge Special Director, Secondary Education by which the prayer of the petitioner for payment of salary etc. has been rejected.

4. Learned counsel for the petitioner submitted that the order which the Court had interfered in C.W.J.C. No. 5467 of 2002 stated that it was under Section 23 of the Bihar Sanskrit Shiksha Board Act, 1981 (hereinafter referred to as the 'Act') which does not confer power on the Special Director as it is the State Government which can take action which is not the fact in the present case.

5. Learned counsel submitted that even on facts, the order impugned is contrary to the findings recorded in the original order passed by the Chairman of the Board dated 22.04.1999 in which findings of fact have been recorded in favour of the petitioner. Learned counsel submitted that the order impugned has been passed relying on the stand taken by the Board before the authority and on



the basis of various documents which have been indicated to show that the petitioner had been absenting himself from work, without such documents having been provided to the petitioner in order to give him a fair opportunity to rebut the same. Learned counsel submitted that once certain facts have been recorded in the order of the Chairman, anything contrary to the same, could only be recorded or a finding given after relevant documents on which the subsequent findings are recorded have been given to the petitioner, which in the present case has not been done. It was submitted that the order of the Chairman categorically records that the petitioner had continuously worked on the post.

6. Learned counsel submitted that the original order dated 24.11.2001/06.02.2012 has purportedly been passed under Section 23 of the Act which gives power to the State Government to issue direction but in the present case, the State Government has not issued any direction or passed any order and rather it is the Special Director, Secondary Education, who has done so which is wholly without jurisdiction. He further submitted that the power under Section 24 of the Act can be exercised only if any person or Managing Committee being aggrieved by the order of the Board or Chairman of the Board can file such appeal within 60 days of passing of such order to an officer appointed by the State Government. It was submitted that



in the present case, no such appeal was preferred by any person and, thus, initially the order being bad, the subsequent order passed upon remand is equally bad. Learned counsel submitted that if the original order passed under Section 23 of the Act has been set aside by the Court, it was only the State Government which could have passed the subsequent order and not the Incharge Special Director, Secondary Education, as has been done in the present case. On this issue learned counsel referred to the decision of the Hon'ble Supreme Court in the case of **Kanwar Singh Saini v. High Court of Delhi** reported as **(2012) 4 SCC 307**.

7. Learned counsel for the State submitted that the initial order communicated on 24.11.2001 has been passed by the State Government under Section 23 of the Act and the subsequent letter dated 06.02.2002, is a mere communication of the order, which was interfered by the Court and the matter was once again sent to the Special Director for passing fresh order after giving opportunity of hearing to all concerned. Learned counsel submitted that in terms of the order of the High Court passed on the writ petition of the petitioner himself, the jurisdiction cannot be questioned.

8. Learned counsel for the Board submitted that the Government has power under Section 23 to interfere in any of the orders of the Chairman or the Board and issue directions and thus, the



action by the State Government is within jurisdiction and as per the provisions of the Act.

9. Learned counsel for the respondent no. 8 has produced the records which the Court has cursorily gone through without going into the exact details. From the same, learned counsel submitted that with regard to the attendance made by the petitioner, especially for the month of January, 1978, the same has been signed by the petitioner for 30 days, including Sundays and Republic Day, which later on has been cancelled and which is peculiar only with regard to him whereas the other four teachers who have signed have not committed this mistake. Further, learned counsel has also produced the register of the year 1979, which goes to show that the letters sent to the petitioner as reflected in the order impugned dated 31.10.2007 were issued as the sequence has been maintained and many other letters written to the authorities also intervene in between and more importantly, one such letter dated 29.03.1979 has been sent through post for which the amount of stamp has also been indicated as Rs. 2.35/- which is the same amount of stamp affixed for sending various letters to various other authorities also.

10. Having considered the matter, the Court does not find any merit in the writ application. At the very beginning, the Court would like to record that the stand taken by learned counsel for



the petitioner on facts has been found to be totally incorrect. The first stand taken was that it was an admitted position that he was appointed on the 5th sanctioned post, but from the records and even from the orders of the Court, it transpires that the claim was initially appointment on the 7th post, which at the relevant time was unsanctioned. Learned counsel then submitted that he stood corrected with regard to the stand that appointment on the fifth sanctioned post was admitted. Secondly, with regard to the order dated 24.11.2001, the same clearly states that it was only a communication as there is a categorical statement in the penultimate paragraph that the State Government has passed the order under Section 23 of the Act. Faced with the situation learned counsel once again submitted that he stood corrected and sought apology for making such submissions which were contrary to the records. Be that as it may, the Court would only record its deep disappointment at such conduct which shakes the confidence of the Court in relying upon the submissions of learned counsel.

11. Coming to the points raised by learned counsel for the petitioner that the order passed could not have been passed under Section 23 of the Act by the Special Director; though the proposition sounds attractive in the first look, but on a slightly deeper probe, it becomes obvious that in the facts and circumstances of the present



case, the same may not be of much help to the petitioner. Undisputedly, the initial order dated 24.11.2001 has been passed by the State Government under Section 23 of the Act. The High Court while interfering with the order in C.W.J.C. No. 5467 of 2002, which was the writ petition filed by the petitioner assailing that order, had left it open to the Special Director, Secondary Education, Bihar, Patna to pass a fresh order affording an opportunity of hearing to the petitioner. Strictly speaking, even if it is accepted that the High Court could not have conferred jurisdiction on the Special Director to pass an order under Section 23 of the Act, but by the impugned order, the Incharge Special Director has not passed any fresh order and has only reiterated that the initial order dated 24.11.2001 deserves to be maintained and, thus, the request of the petitioner has been turned down. Had it been a case that the Incharge Special Director had passed a fresh order differing from the original order, which was admittedly passed by the State Government, the matter may have been different.

12. However, when no fresh order has been passed and only the initial order has been reiterated, the same being by the State Government, cannot be said to be without jurisdiction, moreso, in light of the order dated 29.03.2007 passed in C.W.J.C. No. 5467 of 2002. The Court would indicate here that it was obligatory on the part



of the petitioner in the writ petition filed by him to point out such fact to the Court that even liberty given to the Special Director, Secondary Education, was not proper and he has chosen to appear before the Incharge Special Director, and was satisfied with the same. It is equally well settled that even acquiesce cannot confer jurisdiction on the authority but when the authority has merely gone into the facts as a fact finding forum and has not taken a different view, as what has been done at the level of the State Government initially, in terms of the power conferred under Section 23 of the Act, has only been held to be justified, for reasons which the Court would discuss later in the order, such order cannot be said to be totally without jurisdiction. The Court, at this juncture, would also indicate that if the petitioner was and is so seriously pressing the point of lack of jurisdiction of the authority who has passed the impugned order, then by the same analogy, in the writ petition filed by him at the first instance i.e., C.W.J.C. No. 2233 of 1983, the matter relating to appointment of the petitioner and Kanti Devi itself could not have been gone into by the Board or its Chairman as has been discussed by the Court in the aforesaid writ petition in order dated 25th July, 1997, where the judgment of the Court in the case of **Chandra Nath Thakur vs. Bihar Sanskrit Shiksha Board** reported as **1988 PLJR 866**, has been taken note of, which has interpreted Section 6 of the Act and held that



the Board is mainly concerned with control of Sanskrit education and not over the institutions imparting Sanskrit education and further that it does not envisage an exclusive control or overall control but only a limited control by the Board so far as the institutions are concerned and further that the Board cannot exercise any disciplinary power in regard to teaching and non teaching staff nor has it any power to grant any approval in respect of order of dismissal passed against a teacher by the Managing Committee.

13. Thus, if the issue related to the stand taken by the respondent no. 8 that it had dismissed the petitioner from service, the same could not have been adjudicated by the Chairman and as per the contention of the petitioner himself before this Court, such jurisdiction which was not the power conferred under the statute could not be conferred even by the Court.

14. Be that as it may, from perusal of the records and the various orders, one thing which is admitted and without any controversy, is that all the facts are highly contested and disputed by the parties. In matters where ultimately, it would boil down as to whether the State Government is liable to pay the entire salary, right from the beginning to any person, obviously it shall have a major impact on the interest of the State as the money has to come from the State exchequer. Thus, in a casual manner, such issues which are



totally dependant upon facts, cannot be dealt with or adjudicated before the High Court in its writ jurisdiction under Article 226 of the Constitution of India. Even otherwise, the jurisdiction under Article 226 of the Constitution of India being discretionary, the Court in the background of there being highly disputed issues on facts, which necessarily have to be decided in accordance with law, after adducing evidence, can only be done before the appropriate forum prescribed in law i.e., the Civil Court of competent jurisdiction. In view thereof, it shall be open to the petitioner to move before the appropriate forum, in accordance with law, to get a finding, primarily on facts, in his favour and only then he can have a claim with regard to benefits which will flow from the decision by the Civil Court. Until such time, the authorities cannot be directed to make any payment to the petitioner. Coming to the impugned order, as the same clearly indicates, being based on records, which the Court has also verified today, which may go against the petitioner and show that his claim is not admissible, unless such facts are thrashed out and a definite finding is recorded by the competent Court/forum/authority, this Court is not persuaded or inclined to interfere in the matter, at this stage. The view taken by the Court is fortified by the fact that earlier in the present case, when the Court had directed the Vigilance Investigation Bureau to conduct an enquiry into the entire matter,



especially with regard to the findings recorded relating to dates and events as recorded in the orders of the officials of the Board and the State authorities and also with regard to the missing records of the State relating to the present case, the report submitted revealed serious irregularities. The findings in the enquiry were detailed and exhaustive and, thus, the Court had directed the lodging of a proper F.I.R. in the matter by the Nalanda District Police. Thus, even in the enquiry conducted by the Vigilance Investigation Bureau when serious irregularities have been found in the matter which have a direct bearing on the basic issue involved in the present case, in such highly disputed factual background, clearly only the Civil Court of competent jurisdiction is the appropriate forum for getting such issues settled once and for all.

15. Accordingly, the writ petition stands dismissed with liberty to the petitioner to avail the remedy before the competent forum in terms of the discussions made in this order.

16. The Court would like to record that the order was dictated in open Court and no other point was advanced by any of the parties.

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

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