

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5540 of 1995

- =====
1. Ashok Kumar Jha, son of Shri Satanjeev Jha, resident of Village Depura P.S. Benipatti District Madhubani.
 2. Baijanti Kumari, w/o Shri Rati Kant Thakur, resident of village Dhakjari P.S. Arer District Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Special Director, Human Resources Development Department, Govt. of Bihar, Patna.
4. The Sanskrit Shiksha Board through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Barun Kumar Choudhary, Advocate
Mr. Prabhat Kumar Jha, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 26-10-2018

Heard Mr. Barun Kumar Choudhary for the petitioners.

There is no representation on behalf of the respondents.

The writ petition was filed for a direction to the respondents for making payment of salary due to the petitioners since 05.11.1988. Though the case of the petitioners has taken several rounds but in the nature of the order which we propose to pass, it would not be required for us to delve deep into the matter. Suffice it to say that this writ petition was taken up for consideration on 06.08.1996 when a direction was issued by a



learned Single Judge of this Court requiring the petitioners to support their claim for salary by adducing such documents which would confirm that their appointment was within the sanctioned strength. Although the petitioners claim that their appointment was within the sanctioned strength but paragraphs 9 and 10 of the counter affidavit filed on behalf of the Sanskrit Siksha Board puts a spanner to the claim raised, inasmuch as, it is the specific stand of the respondent Sanskrit Siksha Board that the appointment of the petitioners was not within the sanctioned strength and there is nothing on record which would controvert this position. For the sake of convenience paragraphs 7 to 10 of the counter affidavit of the Sanskrit Siksha Board is reproduced hereunder :

“7. That in fact letter No. 957 dated 18.11.1989, it appears, was never acted either by the State Government or by the Board, as immediately thereafter on 18.12.1989 the ordinance came to existence which specifies the sanctioned strength of the teachers.

8. That in view of the aforesaid facts the petitioners claim that they were appointed against sanctioned strength is not substantiated and the sanctioned strength of this particular is 4+1.

9. That the petitioners are not working within the sanctioned strength according to the



ordinance, and therefore, they are not entitled for grants.

10. That in any event the State Government has cancelled primary units vide letter No. 966 dated 14.12.1995 and letter No. 1056 dated 21.12.1995.”

While on the issue we would also place on record that the issue regarding the status of taken over Sanskrit schools under the various ordinances promulgated, came up for consideration before the Supreme Court in the case of ***Krishna Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** since reported in ***(2017) 3 SCC 1*** and the Lordships of the Supreme Court after discussion have held that the promulgation of repeated ordinance was a constitutional fraud by the State and did not enure to the benefit of the schools. While clarifying the status of the taken over Sanskrit schools under the ordinance in question, the Supreme Court in paragraph 81 of the judgment though protected the salary drawn by the teachers under the ordinance in question but since in the present case the petitioners were never paid any salary, in view of the law laid down by the Supreme Court, no order can be issued for payment of salary in view of the legal position settled by the Supreme Court which neither gives relief to the taken over Sanskrit schools under the ordinance nor gives relief to the



teachers appointed thereunder except restraining recovery of the salary drawn.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05 .12.2018
Transmission Date	NA

