

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16957 of 2015

- =====
1. The Managing Committee, Mahanth Shiv Ratan Das Sarvodaya College, Ismailpur, Bidupur (R.S.) Vaishali, through its Secretary, Ravindra Kumar Son of Ram Chandra Singh resident of Village - Bahuara, Post Office - Bidhupur R.S. Police Station - Raja Pakar, District - Vaishali.
 2. The Principal-cum-Secretary, Mahanth Shiv Ratan Das Sarvodaya College, Ismailpur, Bidupur (R.S.) Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director (Secondary Education), Bihar, Budh Marg, Patna.
4. Bihar School Examination Board, through its Secretary, Bihar School Examination Board, Patna.
5. The Presiding Officer, District Appellate Authority, Vaishali.
6. District Magistrate, Vaishali at Hazipur.
7. Sudhir Kumar Thakur son of Janardan Thakur resident of Village - Manibhakurahar, Police Station - Sarai, District - Vaishali at Hazipur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi with Mr. Vishwambhar Prasad, Advocates
For the State	:	Mr. Suman Kumar Jha, AC to AAG 3
For the BSEB	:	Mr. Gyan Shankar, Advocate
For the Respondent No. 7	:	Mr. Rajiv Verma, Sr. Advocate with Mr. Rohit Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 14-08-2018



Heard learned counsel for the petitioners; State; Bihar School Examination Board (hereinafter referred to as the 'Board') and respondent no. 7.

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

"(i) For quashing the order dated 31.8.2015 passed in Case No. M.V.9/2014 by the Presiding Officer, District Appellate Authority, Vaishali whereby and where under the order of termination from service of the Respondent no. 7, issued vide Letter No. S-28/2011 dated 23.03.2011 has been set aside and the Principal/ Secretary of the College has been ordered to make payment to respondent no. 7 from the grant/ fund received for session 2008-09 and further to allow him to make his attendance and the intervening period will not be treated break in service.

(ii) For quashing the order dated 08.10.2014 contained in Memo no. 11/Vi.Ko.06.14/2014.244 passed by the Director, (Secondary Education), Bihar, Patna whereby and where under the Managing Committee, MSRDS College, Ismailpur, Bidupur, Vaishali has been directed to ensure payment of proportionate admissible amount to respondent no. 6 (Sudhir Kumar Thakur) from the grant/fund made available to the College for the session 2006-08 and 2007-



09, failing which the grant for the next session may be stopped.”

3. The respondent no. 7 was initially appointed as Lecturer in the petitioner no. 1 college in the year 2000 and thereafter he was again appointed, pursuant to advertisement, in the year 2007. It appears that controversy started when on the one hand the respondent no. 7 alleged that the petitioner no. 2 was illegally preventing him from marking attendance and discharging his duties, whereas on the other hand, the petitioners claimed that on 30.1.2011, the Managing Committee in a special meeting had terminated the service of respondent no. 7. The respondent no. 7 approached the District Education Officer and an order in his favour was passed directing the petitioners to let him work and mark his attendance. When the same was not complied with, the respondent no. 7 approached the District Education Officer and thereafter the District Magistrate. The District Magistrate got the matter enquired into by the Additional District Magistrate, who gave a report in favour of respondent no. 7 and in terms thereof, the District Magistrate under letter No. 1196 dated 30.08.2011 directed the petitioner no. 2 to allow the respondent no. 7 to mark his attendance and take classes and also to issue letter setting aside his termination of service. When such order was not complied with, the respondent no. 7 moved the High Court in C.W.J.C. No.



18260 of 2012, which was disposed off by order dated 02.08.2013, remanding the matter to the Director, Secondary Education, Government of Bihar to look into the matter relating to payment of salary from the grant for the period 2008-2009. The respondent no. 7 approached the Director, Secondary Education, who by order contained in Memo No. 1244 dated 08.10.2014 directed the petitioners to release the grant amount for the period 2006-08 and 2007-09 in favour of the respondent no. 7. The respondent no. 7 thereafter appears to have moved before the District Teachers Employment Appellate Authority, Hajipur (hereinafter referred to as the 'Authority'), in Case No. MV- 9 of 2014 against his dismissal by the petitioner no. 1. The same resulted in passing of the impugned order dated 02.09.2015 setting aside the dismissal of respondent no. 7 with all consequential benefits.

4. Learned counsel for the petitioners submitted that the respondent no. 7 having moved the Court in C.W.J.C. No. 18260 of 2012 for quashing of the order terminating his service and also directing for making payment of salary and the Court not interfering with the dismissal order, the respondent no. 7 not moving against the same, the issue has attained finality and could not have been re-agitated before the Authority. It was further submitted that even otherwise, the Authority lacked the competence to hear such matters



as the petitioner no. 1 is an Intermediate College and not a Higher Secondary School with education upto Std. XII. Learned counsel submitted that the order impugned of the Authority is based totally on the report given by the district authorities, who have no jurisdiction in the matter as the petitioner no. 1 being a Private Managing Committee of a Private College, any decision relating to service of its employees is amenable only to the Civil Court of competent jurisdiction which is not vested in the district authorities. Learned counsel submitted that besides the same, only on conjectures and surmises, the order has been passed which would be clear where it has been held, just before the operative portion, that the basis of passing of the order is that since the order of dismissal was communicated to the respondent no. 7 through Speed Post only after 45 days, the same was bad and appeared to be the result of a conspiracy, without there being any independent finding either with regard to there being any *mala fide* or conspiracy. Learned counsel submitted that the issue of *mala fide* and conspiracy on which the Authority has interfered has not been discussed in the entire order and on this ground alone, the order recording a finding without there being any independent and objective basis for the same is fit to be interfered with.

5. Learned counsel for the State submitted that since the point of jurisdiction has not been seriously pressed, he is not required



to take sides in a purely private dispute between the parties. The same stand has also been taken by learned counsel for the Board.

6. Learned counsel for the respondent no. 7 submitted that the facts which have come out during the enquiry by the Additional District Magistrate and also what has been recorded in the order impugned, clearly indicate that there was elaborate *mala fide* and wrong doing on the part of the petitioners and, thus, the order of dismissal as also preventing the respondent no. 7 from marking his attendance or engaging in classes is completely illegal and biased. It was submitted that in such background, the Authority cannot be said to have exceeded its jurisdiction and that the Court would also refrain from interfering in the matter as the petitioners have also not proved their *bona fide*. Learned counsel has also drawn the attention of the Court to various portions of the report of the Additional District Magistrate to indicate that the conduct of the petitioners reflected *mala fide* and conspiracy, behind the order of dismissal which, according to the report, indicated back dating. It was further submitted that the problem started from the year 2010 when for the first time, the Government sent grant-in-aid to the College in question and because the respondent no. 7 refused to share his amount with the petitioners, he was harassed and all action has been taken against him without any valid or legal justification.



7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned cannot be sustained. The moot question which the Court is required to go into is whether such order is based on any valid or legal basis which can be said to be sustainable for coming to the independent finding recorded by the Authority. From the entire reading of the order impugned, the Court finds that the emphasis is only on the report of the district authorities, especially that of the Additional District Magistrate, which, in the considered opinion of the Court, is wholly without jurisdiction, as has been rightly submitted by learned counsel for the petitioners, that in such matters, the district authorities have absolutely no role to play and the jurisdiction vests solely with the Civil Court of competent jurisdiction. This is one aspect of the matter. The other equally important aspect which has to be considered is whether the Authority whose order is impugned has given its independent finding with regard to the issues involved. In the present case, the Court finds that there is no independent discussion with regard to the issues raised and merits of either of the parties and only in the penultimate portion just before the operative portion of the order, it is stated that the order of termination of service communicated to the respondent no. 7 after 45 days shows *mala fide*, was under conspiracy and arbitrary. However,



this is without any supporting evidence or basis. At the cost of repetition, the sole reliance placed on a so called report of the district authorities which the Court has held to be wholly without jurisdiction, any order passed primarily and solely on such finding, as has been done in the present case, would render such order infirm and unsustainable in the eyes of law. As the parties have not pressed the matter of jurisdiction, the Court has also not considered the same.

8. For reasons aforesaid, the writ petition stands allowed. The orders dated 31.08.2015 passed in Case No. M.V. 9 of 2014 by the Authority and 08.10.2014 contained in Memo No. 11/Vi. Ko.06-14/2014.244 passed by the respondent no. 3 stand set aside.

9. As the Court has interfered in the impugned order, it goes without saying that the order of the Authority dated 12.03.2016/19.03.2016 imposing cost of Rs. 50,000/- against the petitioners also stands set aside.

10. However, since the matter relates to the employment of the respondent no. 7, the Court would not debar him from approaching the appropriate forum, in accordance with law, as may be available to him for redressal of his grievance.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	

