

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3357 of 2012

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Dharamraj Kumar, Son of Krishanandan Prasad, resident of Village – Gondu Bigha, Police Station – Hilsa, District – Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Education Department, Government of Bihar, Patna.
2. The Chairman, Bihar Sanskrit Shiksha Board, East Boring Canal Road, Patna.
3. The Secretary, Bihar Snaskrit Shiksha Board, East Boring Canal Road, Patna.
4. The Special Director (In-charge Sanskrit Education) Secondary Education, Bihar, Patna.
5. The District Education Officer, Nalanda.
6. Sri Chandra Shekhar Singh, Secretary of the Managing Committee of the School namely Sanskrit Primary sah Madhya Viyalaya, Gondu Bigha, P.O. and P.S.- Mohaddinagar, District- Nalanda.
7. Raj Kumar, son of Late Manjari Singh, resident of village – Gondu Bigha, P.S. – Hilsa, District – Nalanda, at present posted as Headmaster in Sanskrit Primary cum Middle school, Gondu Bigha, P.S. Hilsa, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Jha, Advocate
For the Respondent/s : Mr. Nadim Seraj, GP-5
Mr. Shalini AC to GP-5
For the B.S.S. Board : Mr. S. S. Sundram, Advocate
Mr. Shashank Shekhar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 27-06-2018

Heard Mr. Purushottam Jha, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of State as well as Board.

2. Petitioner has challenged the decision as contained in Memo No.232 dated 28.11.2011 of the Special Director, Secondary Education, Human Resources Development Department, Government



of Bihar, contained in Annexure 6, particularly, the decision passed in Appeal No. 6 of 2010.

3. Mr. Purushottam Jha, learned counsel for the petitioner submits that the decision of the Special Director, Secondary Education is unsustainable on fact as well as on law. He submits that the Special Director has not considered the locus standi of the appellant Rajkumar in Appeal No. 6 of 2010 and has wrongly entertained the appeal.

4. The second contention of Mr. Purushottam Jha in the instant case is that the Special Director has no jurisdiction to entertain the appeal, as in the matter of disciplinary proceeding the Division Bench of this Court in the case of **Trigun Chand Thakur Vs. The State of Bihar**, reported in **2008 (2) PLJR 718** has held out that the appeal does not lie before the Special Director against the decision in the disciplinary proceeding.

5. The third contention of the petitioner in the present case is with reference to Rules 8 and 9 of 1976 Rules, which reads as follows:

“8. सचिव / अध्यक्ष, संस्कृत शिक्षा परिषद् समिति की अनुशंसा प्राप्त होने पर एक मास के भीतर समिति को अपना विनिश्चय संसूचित करेंगे। यदि इस अवधि में विनिश्चय की सूचना न मिले तो एक निबंधित स्मार सचिव /अध्यक्ष, संस्कृत शिक्षा परिषद् एतदर्थ समिति को भेजेगी और उसके पन्द्रह दिनों के



भीतर अधिकारी की समुचित राय या आदेश संसूचित नहीं किया गया तो यह समझा जाएगा कि समिति की अनुशंसा अनुमोदित कर दी गयी।

9. यदि समिति सचिव/अध्यक्ष, संस्कृत शिक्षा परिषद् के विनिश्चय से व्यथित हो तो उसे आदेश प्रप्ति की तिथि से एक पखवारे के भीतर कमशः अध्यक्ष /सरकार के पास अपील करने का अधिकार होगा। अपील पर अध्यक्ष/सरकार का विनिश्चय अंतिम होगा और समिति इसे कार्यरूप देगी।”

6. The last submission of Mr. Jha in the present case is that the Special Director exercising appellate power has not considered the submissions advanced on behalf of the writ petitioner herein and as such the order contained in annexure-6 is violative of principles of natural justice, as the case of the petitioner was not considered.

7. Adverting to the question of jurisdiction to entertain appeal with reference to Rule 8 and 9 of 1976 Rules and the judgment in the case of the **Trigun Chand Thakur** (supra), particularly, in paragraph 10 the Court is of the view that the aforesaid decision is of no help to the petitioner for the reason that the disciplinary proceedings is a different proceeding, which has nothing to do with the decision with approval or with non-approval. In the instant case, there was no *lis* as to the disciplinary proceeding, which was adjudicated by the Special Director and as such the judgment referred to by the learned counsel for the petitioner is not applicable in the case, as the disciplinary proceeding and approval or rejection of the



decision with regard to appellant (petitioner herein) is a different facts situation and is not covered by the judgment referred by the learned counsel for the writ petitioner.

8. The third contention of the Mr Jha that the appellant **Rajkumar** has no *locus standi* to maintain appeal No. 6 of 2010 is concerned, from the order it does not appear that any such issue was raised before the Special Director. The only issue, which is required to decide in the present writ application, is whether the decision without considering the submission of the writ petitioner is sustainable in the eye of law or not. The quasi judicial authority is required to rigorously apply the principles of natural justice and fair play in the decision making process. The Special Director exercising statutory power of appeal is expected to obliquely consider the materials available on the record and the submissions advanced by the parties. On perusal of Annexure-6, it does not appear that the appellate authority has objectively considered the submission of the writ petitioner.

9. Under the aforesaid circumstances, the order contained in Annexure 6, so far as order in Appeal No. 6 of 2010 is concerned, is unsustainable. It is, accordingly, quashed. The matter is remitted back to Special Director for decision afresh after hearing the parties. The Special Director is expected to decide the appeal afresh in accordance with law after giving proper opportunity to the parties and on



consideration of the submissions advanced on behalf of the parties as well as on consideration of the materials placed by parties during the course of hearing on remand.

10. The Court hopes and trusts that the decision in the instant case, on remand may be taken by the respondent Special Director within a maximum period of six months from the date of receipt/production of a copy of this order.

11. The writ application is allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2018
Transmission Date	

