

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9372 of 2006

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1. Kanhaiya Tiwary, Son of Late Rajghir Tiwary, resident of Village- Parsurampur, Post- Dhanpokhar, P.S. & District- Bhabhua (Kaimur). At present Head Master of Gupteshwar Nath Sanskrit (High) Madhyamik Vidyalaya, Bhadrashila, Shivsagar, District- Rohtash.
 2. Deep Narain Singh, Son of Late Kedar Singh, R/o Village- Parsurampur, Post- Dhanpokhar, P.S. & District- Rohtash. Assistant Teacher, Gupteshwar Nath Sanskrit (High) Madhyamik Vidyalaya, Bhadrashila, Shivsagar, Rohtash, District- Rohtash.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Human Resources Development Department, Government of Bihar, New Secretariate, Patna.
3. The Deputy Director, Secondary Education, (Incharge Sanskrit Shiksha), New Secretariate, Patna.
4. The Bihar Sanskrit Shiksha Board, through its Secretary, Boring Canal Road, Patna.
5. The Managing Committee of Gupteshwar Nath Sanskrit Madhyamik Vidyalaya, Bhadrashila, Rohtash through its Secretary namely Mukteshwar Ojha.
6. Kameshwar Chaubey, Son of Late Namdhari Chaubey (alleged) Secretary to the Vidyalaya Managemnt Committee of Sri Gupteshwar Nath Sanskrit (High) Madhyamik Vidyalaya, Bhadrashila, Rohatash.
7. Basist Muni Pathak, Son of Late Gauri Shankar Pathak, Assistant Teacher, Sri Gupteshwar Nath Sanskrit (High) Madhyamik, Vidyalaya, Rohatash.
8. Sri Ram Pandey, Assistant Teacher, Sri Gupteshwar Nath Sanskrit (High) Madhyamik Vidyalaya, Bhadrashila, Rohtash.
9. District Education Officer, Rohtash at present Sasaram, District- Sasaram.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Purushottam Jha,
Mr. Shree Kant Pandey,
Mr. Madan Prasad Jha and



For the State : Mr. Vikash Kumar Jha, Advocates
Mr. Kumar Alok, S.C. 7
Mr. Satyeshwar Prasad, A.C. to S.C. 7
For the Respondent/s : Mr. Pramod Kumar Singh,
Mr. Durga Nand Jha,
Mr. Pramod Pandey and
Mr. Uday Shankar Pandey, Advocates
For the B.S.S.B. : Mr. Satyam Shivam Sundram and
Mr. Shashank Shekhar Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-02-2018

Heard learned counsel for the petitioners; State and respondents no. 6, 7 and 8.

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

“(i) For issuance of a writ in the nature of a writ of certiorari for quashing the impugned order bearing Memo No. 55 dated 10.07.2006 passed in Appeal No. 6/2004 by the respondent no. 3, whereby and whereunder he has quashed the order of the Chairman of the Bihar Sanskrit Shiksha Board bearing Memo No. 1302 dated 22.05.2004 (Annexure-21), illegally holding that (i) the constitution of the Ad-hoc managing committee of the school is irregular and (ii) the Advertisement made by the Managing Committee is defective and (iii) the appointment of the petitioner no. 1 on the vacant/sanctioned post of Headmaster of the school in question is not legal and (iv) the Respondent no. 8 is the senior to petitioner no. 2.

(ii) For issuance of a writ in the nature of a writ of mandamus directing the respondents no. 4 & 8 to make payment of salary to the petitioner for the period from August 2005 to till date against the post of Headmaster of the school as he has been duly appointed and is working as such till date.

(iii) And for issuance of any other consequential writ/order/direction for which the petitioners are fond to be entitled to under the facts



and circumstances of the case.”

3. The issue involved is simple. An Ad-hoc Managing Committee of Sri Gupteshwar Nath Sanskrit Madhyamik Vidyalaya, Bhadrashila in the district of Rohtas was constituted by the Bihar Sanskrit Shiksha Board (hereinafter referred to as the ‘Board’), and pursuant thereto, the said Committee issued advertisement for appointment of Headmaster in the school. In terms of the application received and interview held, the petitioner being no. 1 in the panel, was appointed on the post of Headmaster of the school and the same was also approved by the Board. After that, respondents no. 6, 7 and 8 filed Appeal No. 6 of 2004 before the Special Director, Secondary Education, Bihar, Patna against the order dated 22.05.2004, by which such approval had been granted of the appointment of petitioner no. 1 on the post of Headmaster. By the impugned order dated 10.07.2006, the Special Director has held that the Ad-hoc Managing Committee itself was not properly constituted and accordingly the approval of the appointment of the petitioner no. 1 on the post of Headmaster has been set aside.

4. Learned counsel for the petitioners submitted that without going into the factual aspects, the Special Director, Secondary Education could not have entertained the appeal for the reason that it was a dispute relating to the decision of the Managing



Committee of appointing the petitioner no. 1 on the post of Headmaster. It was submitted that though under the provisions of Section 24 of the Bihar Sanskrit Shiksha Board Act, 1981 (hereinafter referred to as the 'Act'), the appeal lies before the officer designated by the State Government, against the order passed by the Board or its Chairman, within 60 days of such order, by a person who is dissatisfied or by the Managing Committee, but the same is restricted to matters which exclude disciplinary power exercised by the Managing Committee on its teaching and non teaching employees. For such proposition, learned counsel relied upon a Division Bench judgment of this Court in the case of **Trigun Chand Thakur v. State of Bihar** reported as **2008(2) PLJR 718**, which has been followed by a co-ordinate Bench in order dated 06.07.2012 passed in C.W.J.C. No. 11023 of 2012 in the case of **Tribhuwan Yadav vs. The State of Bihar**, read with order dated 03.08.2012, in the same case. Learned counsel submitted that even on merits, the order impugned is misconceived, for the reason, that the appeal itself has been filed only against the order dated 22.05.2004 granting approval to the appointment of the petitioner no. 1 on the post of Headmaster without there being any challenge to the constitution of the Ad-hoc Managing Committee and still by the order impugned, the Special Director has held that the constitution of the Ad-hoc



Managing Committee was erroneous and on this ground alone, the appointment of the petitioner no. 1 on the post of Headmaster has been set aside. Learned counsel submitted that there was no relief against the constitution of the Ad-hoc Managing Committee and, thus, the Special Director could not have gone into that aspect. Learned counsel further submitted that the private respondents do not have any *locus standi* to file the appeal as they cannot be considered to be persons aggrieved in the matter of approval of the services of the petitioner no. 1, for the reason that pursuant to open advertisement in the newspaper, they had never applied and, thus, cannot be said to be persons aggrieved by such approval when they were never claimants for the post.

5. Learned counsel for the State submitted that from the facts discussed in the order impugned, the Constitution of the Ad-hoc Managing Committee itself becomes unsustainable and the Court may not interfere in the order. However, to a direct query of the Court as to whether in view of the decision of the Court referred above, the Special Director had the power to look into the aspect of approval given to the appointment of the petitioner no. 1 on the post of Headmaster, he was not in a position to defend the order.

6. Learned counsel for the private respondents took a similar stand as that of the State and submitted that for holding the



approval given by the Board to the appointment of the petitioner no. 1 on the post of Headmaster, the Special Director has rightly gone into the merits with regard to the very constitution of the Ad-hoc Managing Committee. He submitted that one of the private respondents being the senior most teacher, the list constituting the Ad-hoc Managing Committee sent by him had to be approved whereas the list sent by the petitioner no. 2, who was a junior teacher in the school, and the same having wrongly been approved, any decision of the said Ad-hoc Managing Committee or action taken by it becomes unsustainable and has rightly been interfered with by the Special Director.

7. Having considered the rival contentions, the Court finds that the order impugned cannot be sustained. As the memo of appeal filed before the Special Director, Secondary Education was not part of the records, upon the Court calling for a copy of the same, it was produced by learned counsel appearing for the private respondents. A perusal of the same discloses that the relief was restricted only to setting aside of the order of the Board dated 22.05.2004 by which the appointment of the petitioner no. 1 on the post of Headmaster has been approved. Though in the pleadings, there are also issues raised with regard to the constitution of the Ad-hoc Managing Committee, but nowhere any relief is claimed for



striking down such constitution or holding it to be illegal. Once no relief has been claimed against the constitution of the Ad-hoc Managing Committee, the Special Director could not have held such constitution of the Managing Committee to be erroneous as the said issue was never before him. Moving further, in view of the law settled by the Court in the case of **Trigun Chand Thakur** (supra), from perusal of the provisions of *Bihar Rajya Gair Sarkari Sanskrit Uccha Vidyalaya (Sevashart) Niyamavali, 1976*, it is clear that both, for the purposes of appointment and dismissal, the procedure prescribed is the same, that is, seeking approval from the Board and, thus, in that background, the decision of the Court in the case of **Trigun Chand Thakur** (supra), shall also apply in cases of appointment of Headmaster and his confirmation. Thus, the Court finds that the issue under challenge before the Special Director could not have been raised before him under the statutory provision i.e., Section 24 of the Act.

8. Coming to the question of *locus* of the private respondents, when upon an open advertisement, none of them had even applied for the post, the subsequent sending of the panel of selected persons to the Board and approval given in favour of petitioner no. 1, who was number one in the panel, the Court finds that the private respondents cannot be classified as persons



aggrieved. For coming into that category, the person or persons have to show that their right has been compromised, without which they cannot raise any grievance with regard to appointment of the petitioner no. 1 before the forum they have chosen i.e., the Special Director. The import of this would not mean that they are precluded from raising the issue of illegality, but the forum is equally important and in the present case, the Court does not find that the forum of the Special Director is the forum for them to raise a dispute, for the reason, that such forum can only be invoked if the statute permits, i.e., Section 24 of the Act and them not being covered in the category of aggrieved persons, as per the language of Section 24 of the Act, they could not have raised this dispute before the Special Director.

9. It is a different matter that they may have *locus* to agitate the matter of constitution of the Ad-hoc Managing Committee, but since the same was not under challenge, their appeal against the approval given by the Board to the appointment of petitioner no. 1 was misconceived.

10. For the reasons aforesaid, the writ petition succeeds. The order dated 10.07.2006 passed by the respondent no. 3 in Appeal No. 6 of 2004, is set aside.

11. Before parting, the Court would only observe that it has not gone on the merits relating to the constitution or otherwise of



the Ad-hoc Managing Committee of the school in question, which is left open to be decided as and when the matter is raised, before the appropriate forum, in accordance with law, after giving due opportunity of hearing to all concerned and affected persons.

(Ahsanuddin Amanullah, J.)

P. Kumar

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