

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.6066 of 2015

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1. Managing Committee of Sarswati Bilash Sanskrit High School, Shokhara, District - Begusarai through its Secretary, Ravindra Mishra. S/o Madhusudan Mishra. Resident of Village - Phulwaria, P.S.- Phulwaria, District - Begusarai.
  2. Ashok Kumar Choudhary. S/o Late Devendra Choudhary. Resident of Village - Parihara, P.S.- Bakhari, District - Begusarai.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Special Director (Secondary Education), Education Department, Bihar, Patna.
3. The District Education Officer, Begusarai.
4. The District Programme Officer, Begusarai.
5. The Bihar Sanskrit Shiksha Board through its Secretary, Bihar Sanskrit Siksha Board , Patna.
6. The Chairman, Bihar Sanskrit Siksha Board, Patna.
7. Sushant Kumar. S/o Sri Gaurinath Mishra Bhaskar. Resident of Mohalla - Sheopuri, P.S.- Sadar, District - Begusarai.
8. Rita Kumari. W/o Vivekanand Mishra. Resident of Village - Phulwaria, P.S.- Phulwaria, District - Begusarai.
9. Reena Kumari. W/o Sudhir Kumar Choudhary. Resident of Naya Nagar, Dularpur, P.S.- Teghra, District - Begusarai.
10. Madan Mohan Mishra. S/o Late Chandeshwar Mishra. Resident of Village - Phulwaria, P.S.- Phulwaria, District - Begusarai.

.... .... Respondent/s

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#### Appearance :

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| For the Petitioner/s        | : | Mr. Siya Ram Shahi with<br>Ms. Shally Kumari, Advocates                            |
| For the State               | : | Mr. Md. Nadeem Seraj, GP 20 with<br>Mr. Sahilesh Kumar, AC to GP 5                 |
| For the Board               | : | Mr. Satyam Shivam Sundaram, Advocate                                               |
| For the Respondents No. 7-9 | : | Mr. Yugal Kishore, Sr. Advocate with<br>Mr. Ajay Kumar,<br>Mr. Virendra Prasad and |



Mr. Sanjay Kumar, Advocates  
For the Respondent No. 10 : Mr. Kundan Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 23-04-2018**

Heard learned counsel for the petitioners; State; Bihar Sanskrit Shiksha Board (hereinafter referred to as the 'Board') and respondents no. 7, 8 and 9. Despite valid service of notice, and respondent no. 10 having filed counter affidavit, when the case was heard at length today, nobody has appeared on behalf of respondent no. 10.

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

- “(i) For issuance of an appropriate writ in quashing the order passed by the Special Director (Secondary Education) Deptt. Of Education, Bihar vide Memo No. 14 dated 20.02.2015 contained in Annexure-8.*
- (ii) For issuance of an appropriate writ in quashing the order vide Memo No. 4530 dt. 26.11.2014 passed by Chairman, Bihar Sanskrit Shiksha Board, Patna contained in Annexure-7.*
- (iii) For issuance of an appropriate writ commanding the respondents to take steps to recover the amount paid to the respondents no. 7, 8 and 9 against their salary by a process of law.*
- (iv) For any other relief or reliefs for which the petitioner is entitled under law as well as on facts of the case.”*

3. The undisputed factual position is that the



respondents no. 7, 8 and 9 were appointed in May/June, 1997 on teaching and non teaching posts in Sarswati Bilash Sanskrit High School, Shokhara in the district of Begusarai which is recognized by the State of Bihar and the Board, being managed by a private Managing Committee. Upon their appointment, the matter was referred to the Board for approval but when the same was not forthcoming, the respondents no. 7, 8 and 9 moved this Court in C.W.J.C. No. 2463 of 2010, which was disposed off by order dated 15.03.2013, directing the Chairman of the Board to take a decision with regard to the request of approval of their service. When the order was not complied with, they again filed C.W.J.C. No. 10800 of 2014, directing final decision to be taken in accordance with law within three months. In terms thereof, the Chairman of the Board passed order contained in Memo No. 4530 dated 26.11.2014, granting approval to the appointment of respondents no. 7, 8 and 9. The same was challenged before the Special Director (Secondary Education), Education Department, Bihar, by the petitioner no. 2 in Appeal No. 25 of 2014, which was rejected by order dated 20.02.2015. After that, on 14.03.2015, the Secretary of the Board, by communication under letter No. 2405 dated 14.03.2015 to the District Education Officer, Begusarai directed for payment to respondents no. 7, 8 and 9. Upon proper bill being raised by the



petitioner no. 2, who was the Headmaster and in case the same was not done, then to make payment of the bills on the basis of individual affidavits given by the respondents no. 7, 8 and 9, on the basis of bill presented by the respondent no. 10. In the said communication, respondent no. 10 was described as the Secretary of the Managing Committee of the school. It further appears that within two days thereof, a sum of almost Rs. 22 ½ lakhs was paid to the respondents no. 7, 8 and 9. Being aggrieved by these developments, the petitioners have moved the Court in the present writ application.

4. Learned counsel for the petitioners submitted that the very appointment of the respondents no. 7, 8 and 9, is a fraud as there is not even a semblance of any procedure adopted, much less, as required under the Bihar State Non-Government Sanskrit High School (Service Conditions ) Rules, 1976 (hereinafter referred to as the 'Rules'). He submitted that in terms of the said Rules, especially Clause 1, 3, 4, 5, 6, 7 and 8 of Chapter 3, which deals with the procedure for making such appointment. Learned counsel submitted that for appointment, the same should be through publication in a prominent Hindi daily but if it is for a period of three months, it could be done on the basis of local advertisement. It was submitted that though the appointments have been made in regular terms but without any advertisement, as there is nothing to show that any



advertisement was issued even locally, much less in any Hindi daily newspaper. It was further submitted that even the draft of such advertisement had to be approved before such publication by the Secretary of the Board and thereafter even with regard to fixing of date for interview, prior approval of the Board was required. Learned counsel submitted that whatever has been brought on record, either by the Board or the private respondents, indicates that on the one hand, they are also citing the aforesaid Rules, whereas on the other hand, they take the stand that at the relevant time, such Rules were not required to be followed. It was further submitted that there is nothing on record to show that a Selection Committee was ever constituted and any recommendation has been made by the Selection Committee. It was further submitted that even one such communication by the then Secretary of the Managing Committee of the school dated 26.05.1997, to an expert who was included for interview, would indicate that he was accepting that the said Rules were required to be followed and further one Shashidhar Pathak has been indicated to be a member of such Selection Committee in the capacity of Incharge Headmaster, whereas two days prior to such issuance of the letter, in the meeting of the Managing Committee held on 24.05.1997, Shashidhar Pathak had already been removed from the post and another person had been recommended. Learned



counsel submitted that the haste shown in communication by the Secretary of the Board to the District Education Officer on 14.03.2015, directing for payment being made on the basis of bill submitted by respondent no. 10, in the capacity of the Secretary, who had already been removed by the order of the Special Director much earlier on 26.07.2013, was *mala fide*. It was submitted that the payment of almost Rs. 22 ½ lakhs was also made on the next working day i.e., 16.03.2015, 15.03.2015 being a Sunday. Learned counsel submitted that even later on, such payments have been made in favour of the respondents no. 7, 8 and 9. Learned counsel submitted that there is clear cut nepotism involved as the respondent no. 7 is the son of the then Secretary, respondent no. 8 is the daughter-in-law of respondent no. 10 and respondent no. 9 is also a close relative of them.

5. Learned counsel for the State submitted that a compliant was received in the District Public Grievances Cell in July, 2015; upon which the administration got an enquiry conducted by the District Programme Officer, Secondary Education-cum-RMMA, Begusarai, who in his report dated 19.09.2015, has found substance in the allegations, though made by another person Mr. Sushant Kumar.

6. Learned counsel for the Board submitted that the



approval given by the Chairman was on the basis of records produced before him, copies of which have been brought on record in the counter affidavit. It was further submitted that nothing beyond such records was ever brought before the Chairman. However, he could not controvert the fact that there is nothing on record to show that the Selection Committee was ever constituted or the mode through which even local advertisement was made and further that any approval was given by the Board for going ahead with such recruitment. On a direct query of the Court as to whether the Rules would be applicable after coming into effect of the Bihar Sanskrit Shiksha Board Act, 1981 (hereinafter referred to as the 'Act'), the stand is that strictly speaking, it may not have statutory force, but the same, at the relevant time was being followed, especially for the purpose of recruitment in various schools and in the alternative, the argument was that if it has to be taken that there were no Rules, then in the absence thereof, no appointment could have been made, for it is only the Rules which prescribed the mode of appointment, which includes vesting of power on various authorities, including the Managing Committee of the school in question.

7. Learned counsel for the respondents no. 7, 8 and 9 submitted that a Division Bench of this Court has already held in the case of **Kashi Prasad vs. State of Bihar (C.W.J.C. No. 2084 of**



**1982)** by judgment dated 10.8.1987, that after coming into effect of the Act, the Rules not having been framed under the Act, has no statutory force. It was further submitted that in absence of there being any Rules, the Managing Committee was competent to go ahead with recruitment, which it has done. Learned counsel submitted that as far as the issue of *mala fide* is concerned, from the communication of the then Secretary to one of the experts under letter dated 26.05.1997, it was made clear that he was withdrawing from the Selection Committee in view of the provisions of Clause-5 of Chapter-3 of the aforesaid Rules and, thus, him having not taken part in the interview, the selection would not stand vitiated. However, at this juncture, when the Court put a direct query to learned counsel as to how he could justify such stand when on the one hand, the stand taken before the Court is that the Rules are not required to be followed, then why the Secretary had taken recourse to such Rules and further as to how Shashidhar Pathak has been shown to be the Incharge Headmaster, being part of the Selection team, when he had already been removed from the post prior to that day, learned counsel had no reply. Learned counsel drew the attention of the Court to order of a co-ordinate Bench dated 03.02.2015 in C.W.J.C. No. 1997 of 2015 in the case of **Ravindra Mishra vs. The Chairman, Bihar Sanskrit Shiksha Board and Ors.** as well as



order dated 06.04.2011 passed in C.W.J.C. No. 13063 of 2010 in the case of **Vijay Shankar Ray vs. The State of Bihar and Ors.** for the proposition that the Secretary/Principal is not permitted to take up such cause and file writ petition.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the appointment of respondents no. 7, 8 and 9 have to be held to be *void ab initio*. There seems to have been absolutely no procedure followed which can justify the said exercise. If at all the Court would accept that the Rules do not have statutory force, then also in such absence, it was incumbent upon the Managing Committee to take prior approval of the Board to go ahead with recruitment if at all the State and the Board were to be made liable for making payment to such teacher. It would be another story if the Managing Committee had made appointment on a private basis without raising any claim before the State or the Board for payment and in that event, may be, there could have been some justification that the Managing Committee could independently act, being a private school. However, when such appointment leads to liability on the State/ Board to make payment for such appointment, the private Managing Committee of a private school cannot unilaterally go beyond its jurisdiction and embark upon recruitment to create such



liability without any approval or following any settled principle in law, much less any statutory requirement. Thus, to that extent, the Court holds that if an appointment is made, which ultimately would make the State/Board to take up liability to make payment, then there has to be prior approval of the State/Board and once the same is done, it would but necessarily require that a semblance known to law is followed and more importantly a procedure which is undertaken after due notice to all and after fulfilling the eligibility criteria etc. In the present case, it is an admitted position that there are no records to show as to how advertisement was made, even locally and thereafter any Selection Committee was ever constituted and further there was any recommendation of the Selection Committee. This is one aspect of the matter. The other equally important aspect is whether fraud has been committed in the entire exercise. The Court finds that the exercise does reflect fraud for the reason to be recorded hereinafter. All materials brought on record which were also produced before the Chairman of the Board only indicate that there is a draft of local advertisement and that a communication was made to the expert of the Selection Committee but there is nothing to show that the Selection Committee was ever constituted and there is any recommendation of the Selection Committee. Further, even the communication by the then Secretary indicates that he is accepting



that he is acting under the provisions of the Rules and has further referred to one Shashidhar Pathak, as the Incharge Headmaster, whereas he was also present in the meeting a few days prior to that date, when the said person has been removed from the post. Furthermore, there is no denial with regard to the relationship of respondents no. 7, 8 and 9 with the then Secretary and respondent no. 10 and, thus, in the aforesaid background, the issue of *mala fide* against the then Secretary and the respondent no. 10 cannot be said to be unfounded. The Court is further surprised at the communication made by the Secretary of the Board dated 14.03.2015, where he had given direction to the District Education Officer, Begusarai to make payment to the respondents no. 7, 8 and 9 and has referred to the respondent no. 10 as the Secretary, when it is an admitted position that by order dated 26.07.2013 of the respondent no. 2, respondent no. 10 had already been removed from the post of Secretary of the Managing Committee of the school. Thereafter, the haste shown by the authorities in making payment of more than Rs. 22 ½ lakhs to the respondents no. 7, 8 and 9 on the very next working day also raises serious question with regard to the *bona fide* of such conduct.

9. The Court would also indicate that the stand on behalf of respondents no. 7, 8 and 9, that the Managing Committee



was competent to take a decision is noticed only for the sake of rejecting it, for the reason, at the cost of repetition, that any such recruitment which would entail payment from the State coffer would necessarily give some control and approval from the authorities and cannot be at the sweet will of the private Managing Committee, which appears to be the case in the present writ application. Moreover, if no Rules had to be followed then the reference to the Rules and the attempt to create some sort of justification and even asking the Board for approval to proceed with the recruitment was not necessary, but once such approval was sought, the Managing Committee could not have proceeded without the approval being sent. Thus, the respondents no. 7, 8 and 9 cannot blow hot and cold, as the stand taken by them appears to be totally self contradictory. As far as reliance placed by learned counsel on the decision of a co-ordinate Bench in the case of **Ravindra Mishra** (supra) is concerned, the Court would only indicate that it was in a totally different background. There, the fact was that teachers had a grievance against the authority and in that context, the Court had held that the Secretary cannot be permitted to take up the cause on behalf of the others and the writ petition was dismissed. Here, the matter relates to payments having been made to the respondents no. 7, 8 and 9 on the basis of them being accepted as teachers in the



school on being appointed by the Managing Committee and on the basis of vouchers signed and submitted by the Secretary of the Managing Committee of the school, and thus, such funds being wrongly given, the Managing Committee and the Headmaster will have a cause of action as they are there to ensure that the interest of the Institution is protected and wrong payment from Government coffer is not made to somebody who wrongly claims to be an employee and is not a genuine claimant. Similarly, in the case of **Vijay Shankar Ray** (supra), the matter related to appointment of teachers which was made by the Managing Committee and duly ratified by the Board, and the petitioner before the Court was the Principal and in that background it was held that he cannot be allowed to pursue the case for the reason that it was the Managing Committee which had made the appointment and the same was also ratified by the Board. In the present case, both the Managing Committee and the Headmaster are before the Court in the cause which the Court finds to be justified.

10. Having regard to the aforesaid, the writ petition stands allowed. The appointment of respondents no. 7, 8 and 9 are held to be *void ab initio* as the same is a total and complete fraud on the system. As a consequence, all subsequent orders passed in their favour stand set aside. They are required to refund the money taken



by them on the basis of such so called appointment within three months from today. The same shall be refunded and deposited in Government account. The respondents no. 3 and 4 shall ensure that the same is done. Upon failure to do so, the respondents no. 3 and 4 shall ensure recovery, in accordance with law, including through coercive measures against respondents no. 7, 8 and 9.

**(Ahsanuddin Amanullah, J)**

P. Kumar

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