

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13734 of 2018

Primary-cum-Middle Sanskrit School, Kishanpur Yusuf, P.O. - Kishanpur Yusuf, P.S. - Sarairanjan, District – Samastipur through its Headmaster Pramod Prasad Karna, Sone of Late Yogendra Prasad Karna, Resident of Village – Damodarpur Mahuli, P.O. - Akhtiyarpur, P.S. - Sarairanjan, District – Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. Special Director (Sanskrit) Secondary Education, Department of Education, Government of Bihar, Patna.
4. District Education Officer, Samastipur District, Samastipur.
5. Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna through its Chairman.
6. The Chairman, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.
7. The Secretary, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Durga Nand Jha, Advocate
For the Respondent State:		Mr. Madanjeet Kumar, GP-20
For the Respondent Board :		Mr. S.S.Sundaram, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-08-2018

This writ application has been filed on behalf of the Primary-cum-Middle Sanskrit School, Kishanpur Yusuf in the district of Samastipur through its Headmaster seeking quashing of the order as contained in Memo No. 3459 dated 19.07.2016 issued under the signature of the Secretary of the Bihar Sanskrit Shiksha Board (hereinafter referred to as ‘the Board’), whereby and



whereunder recognition of the petitioner-school has been granted with effect from 17.05.2011, i.e. from the date of the order passed in C.W.J.C. No. 5544 of 2006 (***Primary-cum-Middle Sanskrit School Vs. The State of Bihar & Ors.***), which was filed by the petitioner, which, according to the petitioner, is contrary to the said order.

It is the case of the petitioner that the said school ought to have been given recognition with all financial benefits with effect from 01.01.1985. In nutshell, the petitioner is claiming that since similarly circumstanced 205 Sanskrit Schools were recognised with effect from 01.01.1985 with financial aid, therefore, this school should also be extended the benefit of recognition with financial aid with effect from 01.01.1985.

Under the orders of this Court dated 17.05.2011 passed in C.W.J.C. No. 5544 of 2006 (***Primary-cum-Middle Sanskrit School Vs. The State of Bihar & Ors.***), the Board had accorded recognition in favour of the petitioner through Memo No.1329 dated 01.04.2016 with immediate effect and subsequently through Memo No.2824 dated 17.05.2016, approval of the teachers of the school was also accorded.

This is to be noted that the said order dated 01.04.2016 was passed during the pendency of a contempt application, being



M.J.C. No. 65 of 2012, instituted for disobedience of the order dated 17.05.2011 passed in the said C.W.J.C. No. 5544 of 2006, which was filed by the petitioner. This is also to be noted that the State of Bihar had preferred appeal against the decision of the learned single Judge dated 17.05.2011 passed in C.W.J.C. No. 5544 of 2006, giving rise to L.P.A. No. 59 of 2014 (*The State of Bihar & Another vs. Primary-cum-Middle Sanskrit School*). The decision rendered in C.W.J.C. No. 5544 of 2006 has been subsequently affirmed by a Division Bench in L.P.A. No. 59 of 2014. Initially, the recognition was granted with effect from 01.04.2016, but subsequently, through office order dated 19.07.2016, the Board has given retrospective recognition in favour of the School with effect from 17.05.2011, i.e. from the date of the order passed in C.W.J.C. No. 5544 of 2006. It is petitioner's claim that the said recognition should have been granted with effect from 01.01.1985, from which date other similarly circumstanced schools have been granted recognition, maintaining parity.

I have heard Mr. Durga Nand Jha, learned counsel appearing on behalf of the petitioner and Mr. S.S.Sundaram, learned counsel for the Bihar Sanskrit Shiksha Board. Mr.



Madanjeet Kumar, learned Government Pleader-20 is also in attendance for the State of Bihar.

Placing the facts asserted in the writ application, Mr. Jha contends that name of this school had also figured in the list of schools selected for grant of recognition in the report of Damodar Committee. Whereas, the State Government granted recognition in favour of 205 schools, certain schools including the petitioning school were left out. The said 205 schools were granted recognition in 1985 itself. Mr. Jha submits that the decision of the State respondents is discriminatory, in violation of Articles 14 and 16 of the Constitution of India since the benefit, which have been given to 205 schools, have not been extended to the petitioning school, though identically situate.

Before I advert to the relief, which has been sought in the present writ application and the submissions, which have been advanced by Mr. Jha, I must take note of certain relevant facts, which, in my view, are adequate for determination of the issue raised in the present writ application.

There were 12 writ applications filed before this Court, including one filed on behalf of the petitioner (C.W.J.C. No. 9692 of 1989), seeking direction to the State respondents to grant recognition in their favour on the plea that similarly situate schools



were granted such benefits in 1985 itself whereas cases of the petitioner and some other schools were pending since 1985. The Division Bench of this Court, considering the entire facts and circumstances of the case, noticed that in respect of the two schools, including the present school, approval for recognition was granted. The Division Bench found that the State of Bihar, out of 12 schools, could not distinguish between the cases of the two schools therein, including the petitioner-school vis-a-vis other 205 schools, which had been granted recognition with financial aid. Observing thus, the Division Bench passed the following order dated 12.01.2001 in case of ***Dilip Kumar Mishra and Others vs. The State of Bihar and Others*** (C.W.J.C. No. 9692 of 1989): -

“..... Therefore, in my view, the State’s action must be in conformity with the Rule of equity. In the instant case, so far the claim of these two petitioners is concerned, there appears no justifiable reason to deny the claim for recognition with financial aid.”

11. In the result, for the reasons stated above, the claim of abovementioned two schools is allowed with a direction to the Government to grant financial aid from the date of recognition. So far the remaining petitioners’ schools are concerned, as there was no recommendation for grant of recognition, it would not be possible for the Court to issue such direction.

The State of Bihar, feeling aggrieved with the Division Bench decision of this Court in case of ***Dilip Kumar Mishra***



(supra), approached the Supreme Court by filing Special Leave Petition (Civil) No.359 of 2002, which, after leave having been granted by the Apex Court, was registered as Civil Appeal No. 2502 of 2005. The Supreme Court set aside the decision of the Division Bench in case of ***Dilip Kumar Mishra*** (supra) and instead directed the State Government to consider the question of granting aid to the two recognized schools including the school in question, within a period of eight weeks from the communication of the order. The Apex Court, however, granted liberty to the petitioner to challenge the decision of the State Government, in the event the financial aid was refused, in appropriate proceedings.

Before granting such liberty, the Supreme Court, in no uncertain terms, held that there was no right to aid the grant, which would depend upon economic and other relevant considerations. The Supreme Court, referring to the Division Bench decision of this Court in case of ***Dilip Kumar Mishra*** (supra) observed that the High Court should not have directed grant of aid to the two schools, in question, in absence of any right to aid the grant. For the benefit of quick reference, relevant portion of the Supreme Court's decision in ***State of Bihar and Others vs. Dilip Kumar Mishra and Others*** (Civil Appeal No. 2502 of 2005), is being reproduced hereinbelow: -



“We are of the view that even if the 1993 Rules do not apply, atleast this particular policy of the Government would have to be given effect to. There is no right to aid the grant of which will depend upon economic and other relevant considerations. The High Court should not have without more directed the grant of aid to the two schools in question.

The appeal is accordingly disposed of by setting aside the decision under appeal and by directing the Finance Department of the State Government to consider the question of grant in aid to the two recognised schools who are respondents in these proceedings within a period of eight weeks from the communication of this order to it. In the event the financial aid is refused, it will be open to the respondents, if they are otherwise so entitled in law, to challenge such refusal in appropriate proceedings.”

In view of the observations made by the Supreme Court in the order dated 08.04.2005 in case of *State of Bihar and Others vs. Dilip Kumar Mishra and Others* (supra), the question of grant of financial aid was again considered by the State Government, whereupon, by order dated 13.02.2006, passed by the Additional Finance Commissioner (Expenditure), Government of Bihar, plea for approval of grant of financial aid to the petitioner-school was turned down.

The said order dated 13.02.2006 came to be assailed by the petitioner by filing a writ application before this Court giving rise to C.W.J.C. No. 5544 of 2006 (*Primary-cum-Middle Sanskrit*



School Vs. The State of Bihar & Ors.). The petitioner also sought for a direction to the respondents to grant financial aid to the school in question as per policy of the Government itself, which was prevailing at the relevant time. The writ application was, as is evident, filed in the light of the observations made by the Apex Court in case of *State of Bihar and Others vs. Dilip Kumar Mishra and Others* (supra). A co-ordinate Bench of this Court, while allowing the writ application by judgment and order dated 17.05.2011, issued direction to the State Government to grant financial aid to the petitioner's school, as the discretion exercised by the State Government was not based on cogent or relevant reasons. The State Government was directed to pass an appropriate order within a period of two months.

An appeal, under the Letters Patent of the High Court, preferred by the State of Bihar, being L.P.A. No. 59 of 2014, could not succeed, which was dismissed by a Division Bench along with another appeal being L.P.A. No. 224 of 2014 by judgment and order dated 04.04.2017. It is in the background of the directions and observations made in the orders dated 07.05.2011 passed in C.W.J.C. No. 5544 of 2006, *Primary-cum-Middle Sanskrit School Vs. The State of Bihar & Ors.* (supra), and subsequent decision dated 04.04.2017 in L.P.A. No. 59 of 2014 and L.P.A. No.



224 of 2014, the State Government granted recognition with grant of financial aid through Memo No. 1329 dated 01.04.2016. The decision to grant recognition with financial aid was to take effect from the date of issuance of the said Memo. No.1329 dated 01.04.2017. However, the Board came out with another office order dated 19.07.2016 shifting the effective date of grant of recognition with financial aid to 17.05.2011 instead of 01.04.2016, 17.05.2011 being the date of the decision of this Court in writ proceedings, whereby the State respondents were directed to grant the petitioner recognition with financial aid.

The petitioner is now raising a grievance that the financial aid ought to have been made available to the school right from 01.01.1985 itself since similarly circumstanced other schools were given recognition with financial aid with effect from that date.

I do not find any merit in the claim of the petitioner for more than one reasons. Earlier, a Division Bench of this Court in case of ***Dilip Kumar Mishra*** (supra) had directed the Government to grant financial aid from the date of recognition. The said decision of the Division Bench was set aside by the Supreme Court, clearly observing that there was no right to aid the grant, which was dependent upon economic and other relevant



considerations, and such direction ought not to have been given. The said order was passed on 08.04.2005 by the Supreme Court. Evidently thus, till that date the school was not held to be entitled to receive financial aid. For the first time, by order dated 17.05.2011, passed by this Court in case of ***Primary-cum-Middle Sanskrit School Vs. The State of Bihar & Ors.*** (supra), the Court, upon considering the entire facts and circumstances of the case, directed the State Government to grant financial aid to the petitioner's school. In the said judgment and order dated 17.08.2011, there is no stipulation, however, that the school shall be entitled to get financial aid from a retrospective date. There is no such stipulation in Division Bench decision dated 04.04.2017 too rendered in L.P.A. No. 59 of 2014 (***The State of Bihar & Another vs. Primary-cum-Middle Sanskrit School***).

In the background of narration of facts, as above, there being no fundamental right or legal right, which the petitioner can claim, for financial aid with effect from any retrospective date, no order of such nature can be passed by this Court in the present proceeding under Article 226 of the Constitution of India. The State of Bihar has decided by the impugned order to grant financial aid with effect from the date of the order of this Court, which cannot be said to be unjustified.



I do not find merit in this application. It is accordingly
rejected.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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