

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.458 of 2018

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1. Sanjay Gandhi Inter College, Jamira Road, Dharahara, Ara, District- Bhojpur through its Principal Shameshwar Prasad Singh, Son of Balkeshwar Singh, Resident of Professor Basti, K.G. Marg, Nawada, Ara, Police Station- Ara, District- Bhojpur. Petitioner

Versus

1. The State of Bihar through Collector, Bhojpur at Ara.
2. The Chairman, Bihar School Examination Board (Higher Secondary), Buddha Marg, Patna.
3. The Secretary, Bihar School Examination Board (Higher Secondary), Buddha Marg, Patna.
4. Dr. Ram Bahadur Sharma, Ex-Principal S.B. College, Ara, resident of Maharaja Hata, Ara, District- Bhojpur.
5. The Branch Manager, Allahabad Bank, Mahavir Tola Branch, Ara, District- Bhojpur.
6. Kumar Amresh Chandra Tripathi, Son of Late Chandrakant Tripathi, resident of Village and Post- Kayam Nagar, Police Station- Koilawar, District- Bhojpur.
7. Sanjay Gandhi Memorial Shikshan Sansthan through its Managing Director, Hare Krishna Upadhyay, resident of Village Gundi, Babhangawa, P.S.- Krishnagarh, District- Bhojpur. Respondents

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Appearance :

For the Petitioner	:	Mr. K.N. Choubey, Sr. advocate Mr. Ashok Kumar Garg
For the Respondent No.5	:	Mr. Nishi Nath Ojha, advocate
For the State	:	Mr. Fakhrudin Ali Ahmad
For the respondent No.6	:	Mr. Rajendra Narayan, Sr. advocate Mr. Makardhwaj Upadnyay, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 27.01.2018 passed by the learned Sub Judge-I, Ara in Title Suit No. 111 of 2016 by which the learned Sub Judge rejected the petition of the petitioner for restraining respondent No.6 from withdrawing money from the account of the college.

The petitioner claimed himself to be Principal of Sanjay Gandhi Inter College, Ara. The petitioner filed the suit for declaration that Sanjay Gandhi Inter College, Ara is run by private trust and the State authorities or the Bihar School Examination Board have no authority to constitute adhoc committee/ managing committee to run



the college. The contesting defendants filed written statement disputing the locus of the plaintiff to maintain the suit and the fact that the college was never run by the private trust. The college was always run by governing body constituted by the State authorities according to enactment. The plaintiff/ petitioner filed the petition for restraining the defendants from withdrawing money from the accounts of the college. The Incharge Principal and other defendants contested the petition that Incharge Principal has been duly appointed by the competent authority vide letter No. 8243 dated 19.02.2016 and he is discharging his duty. The learned Sub Judge after considering the facts held that the grant was issued for payment to the employees of the college and rejected the prayer of the petitioner restraining the Incharge Principal from withdrawing money and distributing the amount to the employees of the college vide order dated 27.01.2018.

Mr. K. N. Choubey, the learned senior counsel for the petitioner, submits that in view of dispute of the governing body and adhoc committee the leverage could not be granted to respondent No.6 to squander or misuse the grant of the college. The Bihar School Examination Board, Patna vide memo No. 08 of 2017 published in daily Newspaper Hindustan on 19.01.2017 notified that there is need to immediate constitution of Governing Body and Managing Committee in the college in which adhoc managing committee is functional in view of the provision under Section V of 17 (K) of Bihar School Examination Board Rule, 2011 as amended in 2013. It is submitted that constitution of managing committee by respondent No.2 is illegal in terms of Section 17B of Bihar School Examination Board (Senior Secondary) Affiliation Regulation, 2011. The respondent No.6 lost his claim for functioning as Incharge Principal in the college and he is not competent to act as Incharge Principal and withdraw money and disburse the same to the employees. The constitution of adhoc managing committee is against the rule and respondent No.6 is trying



to grab the amount by operating the bank account of the college but the learned court below illegally without appreciating the facts rejected the petition of the petitioner. It is further submitted that in the year 2012 when the S.D.O., Bhojpur started interference in the affairs of the college the petitioner filed CWJC No. 18330 of 2012 and this court vide order dated 13.01.2014 held that the S.D.O. has no power to interfere in the affairs of the said college. The managing committee of the college was constituted according to provisions as contained in Rule 5 Sub Rule 17 and Rule 5 Ka of Bihar School Examination Board (Higher Secondary) Rule 2013. The respondent No.6, Incharge Principal, filed CWJC No. 12492 of 2015 for the relief for posting him as Incharge Principal of the college being senior most lecturer of the college, for grant of all consequential reliefs and for direction to respondent No. 4 and 5 to take immediate steps for the constitution of adhoc committee but this court dismissed the writ petition on 27.10.2015 giving liberty to respondent No.6 to invoke the jurisdiction of the appropriate forum or civil court of competent jurisdiction but respondent No.2 in collusion with respondent No. 3 and 6 illegally constituted the adhoc committee. It is submitted that respondent No.6 filed a petition under Order VII Rule 11 of the Code of Civil Procedure but the same was dismissed on 01.12.2016. Respondent No.6 also filed Civil Misc. No. 251 of 2017 before this court against the rejection of petitioner under Order VII Rule 11 of the C.P.C. but this court also dismissed the petition on 16.02.2017.

Respondent No.6 has filed counter affidavit. Mr. Rajendra Narayan, the learned senior counsel appearing for respondent No.6, has submitted that respondent No.6 was duly appointed as Incharge Principal of Sanjay Gandhi Inter College, Ara in accordance with law. The managing committee was constituted under the Rules of Bihar School Examination Board (Higher Secondary) Rules, 2013. Ram Bahadur Sharma, respondent No.4, was



appointed as convener to constitute adhoc managing committee and to send list in terms of rules. The respondent No.6 is functioning as Incharge Principal and there is no question of misappropriation of any amount.

Having heard the submissions of the parties and on perusal of the order dated 27.01.2018, I find that the petitioner has filed the suit stating that Bihar School Examination Board has no authority to constitute adhoc committee according to Rule 17 of Bihar School Examination Board (Higher Secondary) Rules, 2013 and the adhoc committee appointed respondent No.6 to act as Incharge Principal of the college. The grant was issued to the college for disbursement of salary to the teaching and non teaching employees of the college. The petitioner filed the petition for restraining respondent No.6 from withdrawing or operating the account of the college and disbursing the grant to the teaching and non teaching staff. I find that the learned Sub Judge has rightly rejected the petition of the petitioner on the ground that the grant allotted to the college should be disbursed for payment of salary to the staff of the college and no amount is being squandered or misappropriated. Therefore, I find no substance in the submission of learned senior counsel for the petitioner. Accordingly, this Civil Misc. petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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