

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.555 of 2017

1. Gayetri Prathmik-Sah-Madhya Sanskrit Vidyalaya, Nauwagarhi Town, P.S. L.N.M. University Campus, District Darbhanga through its Headmaster, Sunil Mohan Kanth, son of Sri Suryawanshi Kanth.
2. Sunil Mohan Kanth, son of Sri Suryawanshi Kanth, at present posted as Headmaster, Gayetri Prathmik-Sah-Madhya Sanskrit Vidyalaya, Nauwagarhi Town, P.S.- L.N.M. University Campus, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary (Secondary Education), Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
3. Joint Secretary to Government, Department of Education, Government of Bihar, Patna.
4. Deputy Secretary to Government, Education Department, New Secretariat, Patna.
5. Special Director (Sanskrit) Secondary Education, Department of Education, Government of Bihar.
6. The District Education Officer, Darbhanga, District Darbhanga.
7. Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna, through its Chairman.
8. The Chairman, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.
9. The Secretary, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Roy No. 2, Advocate
		Mr. Jai Prabhat Kishore, Advocate
For the B.S.S.B.	:	Mr. S.S. Sundram, Advocate
		Mr. Shashank Shekhar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 20-09-2019

Heard learned counsel for the parties.

2. This writ application has been filed by *Gayatri*

Prathmik-Sah-Madhya Sanskrit Vidyalaya, Nauwagarhi,



Darbhanga, (hereinafter referred to as the ‘School’) through its Headmaster. It is asserted in the writ application that the School was established in 1978 and was granted temporary recognition by *Kameshwar Singh Darbhanga Sanskrit University* (hereinafter referred to as “University”) for the Sessions 1980-82. Subsequently, *Sanskrit Shiksha Board* was constituted under Bihar Sanskrit Shiksha Board Act, 1981. The University had furnished to the Board a list of 116 Sanskrit Schools which were earlier under the University. The name of the School figured in the said list. It is also the case of the petitioners that a list of 110 Schools was prepared in a joint meeting of Education Commissioner and the Chairman of the Board, held on 28.04.1983, for approval of the affiliation granted either by the University or the Board. The grievance of the petitioners started with the State Government coming out with the decision of granting approval of recognition in respect of 205 Schools in which name of the present School was found missing.

3. It is the petitioners’ case that the School fulfilled all the criteria for recognition and despite the fact that the name of the present School was there in the list at Sl. No. 45, though various primary-cum-middle Schools were granted approval/recognition with financial aid placed much below in the list, such privilege



was not granted to the School. The School was directed to submit a duly filled-up proforma with necessary documents, which was complied with on 21.10.1986.

4. There is specific statement made in the writ application in sub-paragraphs (vii) and (viii) of paragraph-4 of the writ application that on 29.01.1987 the State Government granted recognition to various Schools which were included in the list of 205 recognized Sanskrit Schools, but the name of the present School was again left out. It is further case of the petitioners that on 19.04.1988, the Additional Secretary of the Department had recommended the names of remaining 68 Schools for recognition, whose names did not figure in the list of 205 recognized Schools. According to the petitioners, the name of the present School figured at Sl. No. 39, in a separate list of 46 Schools, in respect of which the reports and concerned records were submitted for recognition as recorded in the note-sheet of the Joint Secretary, which too, was placed before the Additional Secretary of the Department. This statement has remained uncontroverted.

5. A writ application was filed by the School in 1995 seeking direction to the Respondents to consider the case of the School for inclusion in the list of recognized Sanskrit Schools and for consequential benefits. The writ application was disposed of by



an order dated 30.08.1996 (Annexure-5) with a direction to the authorities to consider the petitioners' case of claim of parity with such other Schools which had already been recognized by the State Government. The representation made by the petitioners in the light of this Court's order was disposed of by an order dated 26.04.1997 passed by the Chairman *Bihar Sanskrit Shiksha Board*. The Chairman recorded that the School fulfilled all conditions stipulated under the Sanskrit School (Recognition and Condition) Rules, 1993. The petitioners, however, contend that the Chairman ought to have mentioned '1981' in place of '1993' as the School was established before coming into force of 1993 Rules when 1981 Rules were in vogue for grant of recognition in the category of 223 Schools. He also observed that the teachers and non-teaching employees of the School should be held entitled to all the benefits which employees of the category of 223 Schools were entitled to. The Chairman, however, recommended for seeking approval of the State Government stipulated under Section 6(2) of the Bihar Sanskrit Shiksha Board Act. The approval was, however, turned down by the Special Director, Secondary Education, which was communicated to the *Bihar Sanskrit Shiksha Board* through letter dated 02.09.1998. The Special Director in his order dated 02.09.1998 pointed out certain deficiencies with the School, the



reasons as to why the approval could not be granted. The said order/communication of the Special Director was put to challenge by the petitioners before this Court by filing a writ application giving rise to CWJC No. 5392 of 1999. It was the petitioners' case in the said writ application that Provisions of *Bihar Arajkiya Sanskrit Vidyalaya (Parastavit and Sharten) Niyamawali, 1993*, was wrongly applied by the Special Director in respect of the School in question which was established much before coming into force of the Rules, and that the School was claiming parity with such Schools which were granted recognition prior to coming into force of the said 1993 Rules. The writ application was allowed by an order of this Court dated 04.11.2004, and thus, the letter of Special Director dated 02.09.1988 denying prior approval on the basis of the provisions under the 1993 Rules was set aside. The matter was again remanded back to the Special Director for fresh consideration in the light of the observations made by the Chairman of the *Bihar Sanskrit Shiksha Board* in his order dated 26.04.1997 (Supra).

6. Since the Respondents were not implementing this Court's order dated 04.11.2004 passed in CWJC No. 5392 of 1999, a contempt application was filed before this Court registered as MJC No. 1212 of 2005. It transpires that after filing of the



contempt application, an inspection of the School was carried out to find out the actual status of the School. Based on the enquiry report, the Special Director by his order dated 12.12.2005, granted approval of recognition, on the ground that the School was fulfilling the required criteria provided under 1976 Rules. The Special Director, however, held that the recognition so granted, shall be treated to be without any financial assistance in the light of the 1993 Rules. The School had a grievance against such decision of refusal to allow financial assistance, referring to 1993 Rules, which were not applicable to the School, according to them. It is the petitioners' case which is not disputed that the recognition matter of the School was placed before the Board of Directors of the *Sanskrit Shiksha Board* to recommend the case of the School for grant of recognition at par with 205 Sanskrit Schools and a recommendation was accordingly made by the Board to the State Government in June, 2006. The contempt petition filed by the petitioners, in the meanwhile, came to be disposed of by an order dated 08.07.2008 allowing the petitioners a liberty to question the correctness of the decision of the Special Director. The petitioners again approached the Department for grant of the same status as was allowed to 205 Schools, mainly on the ground that there was no distinguishable feature between the case of present School and



category of 222 Schools which were granted recognition with financial aid. This claim of the petitioners, was, however, again turned down by an order dated 14.07.2009. The petitioners filed yet another writ application questioning the correctness of the order dated 14.07.2009 which gave rise to CWJC No. 13398 of 2009. The petitioners alleged hostile discrimination in their writ application in refusing to treat their case at par with those Schools which were granted recognition with financial assistance. The writ application was allowed by an order of this Court dated 25.10.2011 with the following observations and directions:-

“The petitioners have alleged hostile discrimination. The respondents have failed to answer the charge. The supplementary counter affidavit acknowledges that the matter requires examination. The Court considers it proper to direct that the petitioners be given a personal hearing. Any further materials which the petitioners propose to rely upon in support of the claim for grant of aid is permitted to be supplemented. The materials on which the respondents may propose to rely for denial must be furnished to the petitioners with an opportunity to meet the same.

In this manner after grant of personal hearing let a final, reasoned and speaking order dealing with all aspects and all facts of



law as discussed in the present order be passed within a maximum period of four months from the date of receipt/production of a copy of this order. The original records be returned to the counsel for the State.

The impugned orders Dated 5.1.2006 and 14.7.2009 are set aside only to the extent that they deny grant in aid to the petitioners.

The writ application stands allowed.”

7. It is clear from the said order of this Court dated 25.10.2011 that the order of the Special Director dated 14.07.2009 was set aside to the extent the claim of the petitioner to grant-in-aid was denied. The respondents were directed to grant the petitioners personal hearing and pass a final, reasoned and speaking order dealing with the all aspects of the matter. In pursuance of this Court's order, petitioners again approached by filing a representation. As despite specific order of this Court, the State Respondents were refusing to decide the claim of the petitioners, a contempt application was filed giving rise to MJC No. 3058 of 2013. It appears that during the pendency of the contempt petition, the Respondents came out with a resolution No. 1178 dated 03.02.2011 issued under amended provisions of 1993 Rules allowing petitioners grant-in-aid. It was, however, the case of the petitioners that they were entitled to grant-in-aid at par with



205 Schools under the Rules prevalent before coming into force of 1993 Rules, and, therefore, decision of the State Government allowing grant-in-aid from the date of issuance of the notification dated 10.10.2013 was illegal. The contempt application was disposed of with a liberty to the petitioners to question the correctness of the decision before appropriate Forum. The petitioners again approached the authorities by filing representations.

8. In the aforesaid background, this writ application has been filed as no decision has been taken by the Respondents on their representations, and have sought following reliefs:

“(i) Issuance of a writ in the nature of certiorari for quashing the orders as contained in Memo No. 10/Mu.1-88/2011-710 dated 26.08.2014 issued under the signature of Special Director, Secondary Education whereby and whereunder the grant-in-aid has been allowed under 2013 Rules contrary to various orders of this Hon‘ble Court passed in different cases filed on behalf of petitioners’ School seeking parity with order of Schools which have been recognized and their staffs are being



regular pay scale since 1.1.1985 under 1976 Rules.

(ii) Issuance of further writ in the nature of certiorari for quashing the resolution contained in Memo No. 674 dated 8.9.2015 so far related to petitioners' School, issued under the signature of Joint Secretary to Government, Secondary Education, whereby and whereunder the name of petitioners School has been included in the list of 39 Prathmik-Sah Madhya Vidyalaya of the total list of 69 Schools declaring the working staffs of those Schools entitled to fixed pay w.e.f. 1.9.2015 superseding the earlier orders of this Hon'ble Court and even the orders passed by the different authorities of the State Government.

(iii) Issuance of consequential writ in the nature of Mandamus directing and commanding the Respondents to treat the petitioners School as recognized at par with 205 recognized Sanskrit Schools with financial aid w.e.f. 01.01.1985 in view of resolution of



the Board dated 1.4.2006 confirmed by the Board in its meeting dated 5.8.2006 and thereby to release the necessary fund for payment of salary etc. to working staffs of the School w.e.f. 01.01.1985 in the light of facts involved in the case in regular pay scale by including the name of petitioners School in the list of 222 recognized Schools.

(iv) Issuance of an appropriate declaration that the orders dated 26.8.2014 (Annexure-1) and Govt. resolution dated 8.9.2015 (Annexure-2) are illegal, in view of the facts involved in the case as also in the light of different orders passed by this Hon'ble Court in different cases filed on behalf of petitioners School from time-to-time and thus those two orders are fit to be quashed and working staffs of petitioners School are entitled to their due arrear salary etc. in regular pay scale at par with 222 recognized Schools w.e.f. 01.01.1985 after adjusting fixed pay paid and the name of petitioners School is fit to be deleted from the



list of 69 Schools enclosed with Govt. resolution dated 8.9.2015 inasmuch as working staffs of petitioners School are required to be paid their current salary on month to month basis”.

9. When this writ application was taken up for hearing on 5.3.2018, the Court had put a specific question to be answered by the State Respondents as to whether the teachers of the School can be treated at par with group of teachers of other 222 Schools. Since no response was forthcoming, the presence of Special Director (Senior Secondary Education), Government of Bihar, was directed.

10. When the matter was taken up subsequently on 26.03.2018, the Court noticed the stand of the State Government taken in the supplementary counter affidavit, paragraphs 4 and 5 read thus:-

“4. That in this context it would be worthwhile to state here that in order to grant recognition to Non-Govt. Sanskrit Schools and provide Grants-in-Aid the Education Deptt., Govt. of Bihar constituted one man committee known as Dr. Damodar Thakur Committee and the State Govt. by its resolution dated



21.05.1983 directed the said committee to submit its report within six months.

5. That it appears that the Dr. Thakur Committee submitted its report in phases. In 1st phase, the Committee submitted report in respect of 204 Schools after found them suitable and fit for recognition. In the second phase, the Committee recommended in respect of 22 more Schools. It is made clear that the name of the School in question does not figure in the said list”.

11. In view of the stand of the State of Bihar as noted above, the Special Director, Secondary Education, who was present in Court, was asked to inform whether any Sanskrit School, which did not figure in the list of “*Dr. Damodar Thakur Committee*” had been granted recognition. As he had failed to answer, the Court had directed personal appearance of the Principal Secretary, Education Department, Government of Bihar, Patna. The Principal Secretary appeared on 02.04.2018. On his request, however, the matter was adjourned for 23.04.2018 with a direction to file an affidavit stating whether the School can be distinguished from other Schools which have been granted recognition with regular scale to the teaching employees of the Schools on the basis that their names did not figure in the report of



the Damodar Committee. The matter was subsequently taken up on 25.10.2018 when a second supplementary counter affidavit was filed, sworn by the Principal Secretary himself, from which, it could be easily culled out that there was no distinction between the School in question vis-a-vis other 17 Schools, which have been granted recognition. The Court in that background, had expected the Principal Secretary to take a decision on question of grant of recognition, maintaining parity, instead of requiring this Court to adjudicate upon the issue, in view of the conclusions arrived at by the Principal Secretary himself, as mentioned in the counter affidavit.

12. I have heard Mr. Durga Nand Jha, learned counsel appearing on behalf of the petitioners and learned Standing Counsel-3, for the State of Bihar, I have also heard Mr. Sundaram, learned counsel for the Board.

13. Mr. Jha has contended that in view of the decision rendered by this Court on 04.11.2004 in CWJC No. 5392 of 1999, the Respondents cannot take a plea that 1993 Rules or even subsequent rules shall have any application for allowing grant-in-aid. He has submitted that the finding recorded in the said order of the Court dated 04.11.2004 to the aforesaid effect has attained finality.



14. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that the Rules prevalent at the time of consideration of the claim of the petitioners for allowing grant-in-aid, can only be made applicable and in view of the subsequent Rules framed in 1993, and amendment incorporated in the said Rules in 2013, the School can claim grant-in-aid with effect from 10.10.2013 only and not from an earlier date. He has placed reliance on paragraphs 12 and 18 of Supreme Court's decision in case of **Chairman-cum-Managing Director, Coal India Limited & Ors. Vrs. Ananta Saha & Ors.** dated **06.04.2011** reported in **(2011) 5 SCC 142**, which read thus:

“12. The submission made by the delinquent that at the time of his initial appointment, the CMD, CIL was the competent authority to initiate the disciplinary proceedings and if the rules have subsequently been amended, that would not be applicable in his case as the amendment made unilaterally cannot govern the service conditions of the employees appointed prior to the date of amendment, and that such amendment would not apply retrospectively, is preposterous.

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*18. This Court in **State of Tamil Nadu v. M/s. Hind Stone etc. etc., AIR 1981 SC 711; V. Karnal Durai v. District Collector,***



Tuticorin & Anr; (1999) 1 SCC 475; Union of India & Ors. v. Indian Charge Chrome & Anr; (1999) 7 SCC 314; and Howrah Municipal Corporation & Ors. v. Ganges Rope Company Ltd. & Ors., (2004) 1 SCC 663, has clearly held that the law which is to be applied in a case is the law prevailing on the date of decision making.

Thus, in view of the above, submissions made by the delinquent are not worth consideration.”

15. The submission made on behalf of the Respondents State of Bihar to the effect that Rules of 1993 will have application in case of the petitioners, cannot be accepted, in view of clear finding recorded in this Court’s order dated 04.11.2004 passed in case of this School in CWJC No. 5392 of 1998, relevant portion of which, reads thus:-

“From the materials on record, it appears that the school was established in the year, 1978 and it has sufficient infrastructure. The matter was examined by the Board and ultimately, it recommended the case of the petitioner – school for its recognition but ultimately, on one pretext or the other, prayer for recognition has been declined. From Annexure-1, the order impugned, it is evident



that the school has 5 kathas 16 dhurs of land but land measuring of 3 kathas 16 dhurs was registered in the name of the Governor and it has security amount of Rs.2500 instead of Rs.3000/-. It further appears that at the time of establishment of the petitioner – school, the same was governed by 1981 Rules and according to 1981 Rules, the petitioner – school fulfilled all the requirements and accordingly, the school in question and several other schools were approved by the Sanskrit University and the matter was ultimately referred to the State Government where 223 schools were recognised barring the petitioner – school”.

(Emphasis mine)

16. In view of the averments made in the counter affidavit and supplementary counter affidavit filed on behalf of the State of Bihar, this becomes an admitted fact that there is no distinction between School in question and 17 other Schools which had been granted recognition with financial aid. Those 17 Schools were not in the recommended list of Dr. Damodar Thakur Committee. It has been stated in the counter affidavit itself that the Deputy Director of Education (Sanskrit) had directed the Headmasters of 68 Sanskrit Schools including the School in question out of list of 110 Schools submitted by the University to



furnish relevant information/documents to consider the case of recognition of respective Schools by the Government. One man committee was constituted/headed by Dr. Damodar Thakur to examine and to screen the Sanskrit Schools for considering the cases of their recognition. In the counter affidavit sworn by the Principal Secretary himself, it has been stated that it is not clear as to under what circumstance, Dr. Thakur Committee did not recommend for grant of recognition of the School in question. It has been added that after an incident of fire which had broken out in the Education Department on 13.09.2016, the original records could not be traced and, therefore, he is not in a position to state the reason why the recommendation was not made by Dr. Thakur Committee for grant of recognition in favour of the School in question.

17. It is not a case of the Respondents that such Schools which did not figure in the list of the Schools recommended by Dr. Thakur Committee were illegally granted recognition with financial aid contrary to statutory Rules. It is, thus, not the case of the State that giving the same treatment, as given in those cases would perpetuate illegality.

18. It is, thus, evident from the discussions as noted above, that there were at least 17 Sanskrit Schools which did not



find in the list of the Schools recommended for recognition with financial aid. The circumstance in which School in question was excluded by the Dr. Damodar Thakur Committee, has not been explained. The petitioners' claim of parity of the School in question with 17 other Schools has, thus, remained uncontroverted and established.

19. In such circumstance, I do not have any hesitation in recording my definite conclusion that the teaching and non-teaching employees of the School shall have to be treated at par with the teaching and non-teaching employees of such Schools which have been granted recognition with financial assistance (17 in number), though, their names did not figure in the report of Dr. Damodar Thakur Committee. This writ application is, accordingly, allowed.

20. The impugned order dated 26.08.2014 issued by the Special Director, Secondary Education, Government of Bihar, stands modified to the extent that the School in question shall be treated to have been recognized under 1981 Rules.

21. Before I part with the present judgment and order, I must record that this order has been passed in peculiar set of facts and circumstances of the present case, treating the case of the



petitioners at par with other Schools as noted above, and shall not be treated as precedence.

22. Taking into account, the series of litigation which the petitioners were compelled to undertake, as noticed above, for the relief which has been granted by the present order, I had intended to allow exemplary cost. However, on persuasion of learned counsel for the State, I have restrained myself from imposition of cost.

23. This writ application is, accordingly, allowed with aforesaid directions and observation without costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25/10/2019
Transmission Date	N.A.

