

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1312 of 2018

In
Civil Writ Jurisdiction Case No.8120 of 2016

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1. The State of Bihar
 2. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
 3. The Secretary, Higher Education, Govt. of Bihar, Patna.
 4. The Joint Secretary, Education Department, Govt. of Bihar, Patna.
 5. The Director, Higher Education, Bihar, Patna.
 6. The Deputy Director, Higher Education, Bihar, Patna.
 7. The Hon'ble Vice Chancellor, Magadh University, Bodh Gaya.
 8. The Registrar, Magadh University, Bodh Gaya.
 9. The Governing Body through its Secretary, G.D.M., College, Harnaut, District - Nalanda.

... .. Appellant/s

Versus

Janardan Prasad Singh, son of Late Ram Lakhan Singh, resident of village - Rupaspur, P.O. Gosainmath, P.S. Chandi, District - Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. A.R. Pandey, A.A.G.-15
For the Respondent/s	:	Mr. Chakrapani, Advocate
		Mr. Sanjay Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-02-2019

Heard Shri Ashutosh Ranjan Pandey, learned A.A.G.-15
for the State of Bihar and Shri Chakrapani, learned counsel for the
respondent-petitioner Janardan Prasad Singh, who was a Teacher
in G.D.M. College, Harnaut, District-Nalanda.



2. The matter had been heard by us on 07th February, 2019 and we had passed the following order after taking notice of the arguments which had been advanced then. The same is extracted herein under:

“Re: I.A. No.1 of 2019

Heard Shri Ashutosh Ranjan Pandey, learned AAG No.15 for the State of Bihar and Shri Chakrapani, learned counsel for the respondent.

The appeal is reported to be delayed by 136 days.

We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

I.A. No.1 of 2019 stands allowed accordingly.

Re: L.P.A. No.1312 of 2018

This appeal has been filed by the State of Bihar in relation to the claim of grant-in-aid being extended to G.D.M. College, Harnaut, District-Nalanda. It is not in dispute as per the pleadings that the said College had been granted affiliation prior to 09.12.1982. To be precise, the affiliation was granted on 09.09.1981 up to the Intermediate level.

An Association of teachers through Ajit Kumar and others filed CWJC No.10150 of 1993 in respect of such institutions claiming the benefit of grant-in-aid. One Janardan Prasad Singh the respondent herein and a teacher/employee of the College also filed CWJC No.12340 of 2010. In the said petition, orders were issued initially but both the petitions came to be heard together by a Division Bench and on 13th of December, 2013, the writ



petitions were withdrawn with liberty to pursue departmental remedies.

CWJC No.13136 of 2001 was filed for a similar claim by one Parvati Kumari in respect of Sanjay Gandhi Memorial Women's College, Sheikhpura contending that the said institution was also entitled to the benefit of grant-in-aid. The writ petition of Parvati Kumari was allowed, but the letters patent appeal filed against the same, being L.P.A. No.430 of 2014, by the State of Bihar was allowed on 08th of January, 2016. Against the aforesaid judgment of the Division Bench, Parvati Kumari and Another preferred special leave to appeal before the Supreme Court, that was converted into Civil Appeal Nos.1310-1313 of 2018 and the same was allowed on 30th January, 2018, remitting the matter back to this Court for a decision afresh. The judgment of the Apex Court dated 30.01.2018 is extracted herein under:

“Leave granted.

It is fairly and rightly conceded by learned counsel for the parties that the petitions could not have been dismissed on the ground that the management of the institution did not file the case. The Principal had the right to question the decision as to be given to the institution, as their salary would be dependent upon the grant that is paid. Moreover, the Principal was suing one of the petitions as such, being head of the institution, she was fully competent to sue for the benefit of institution. It was not necessary that management should be a party to the petition.

The Letters Patent Appeal of the Management was dismissed by the High the Court on the ground of delay. We condone the delay and set aside the impugned orders of the High Court and remit the matter to the High Court and request the High



Court that the matters be heard and decided on merits. Let the decision be rendered as early as possible, preferably within a period of six months.

The appeals are allowed to the aforesaid extent. Pending applications, if any, stand disposed of.”

The aforesaid judgment, in our opinion, set at rest one of the issues, namely, the entitlement of a Teacher or a Principal of the institution to maintain a petition for grant-in-aid.

After the matter was remanded back to the High Court, a Division Bench again heard the L.P.A. and ultimately, came to the conclusion that the institution involved therein namely, Sanjay Gandhi Memorial Women’s College, Sheikhpura, was not entitled to the benefit as it had been granted affiliation after the cut-off date i.e. 09.12.1982. Consequently, the appeal filed by the State of Bihar was allowed on 19.04.2018 and the judgment of the learned single Judge was set aside. It was also observed in the said judgment that no positive equality had been claimed by the said institution and consequently, it could not be said that the element of hostile discrimination was attracted therein.

From a perusal of the said judgment, we do not find any adverse comments having been made in respect of claims arising out of positive equality as involved in the present case. It is, therefore, evident that in the present case, the learned single Judge *prima facie* has rightly come to the conclusion that the claim of the respondent-petitioner deserves to be accepted as it was an act of discrimination. The learned single Judge has categorically referred to the benefit extended to Ram Bilas Singh College (*supra*) and has then allowed the writ petition.



In the instant case, the respondent-Janardan Prasad Singh instituted CWJC No.8120 of 2016, that has given rise to this present appeal in respect of G.D.M. College, Harnaut, District- Nalanda.

The writ petition was allowed with a direction to the respondents to treat the institution entitled for such benefit and also quashed the adverse order that had been passed and that were communicated to Shri Janardan Prasad Singh, the respondent herein.

In the writ petition, the State of Bihar as well as the University had been called upon to file its response and we find from the averments made in the writ petition that paragraphs 15,16 and 17 categorically state that one Ram Bilas Singh College, Teyab, Teghra was granted affiliation and this institution is similarly situate as the institution of the respondent-petitioner.

A counter affidavit was filed by the State through Shri Sudhir Kumar Singh, Under Secretary, Department of Education, Government of Bihar, but we do not find any denial of the aforesaid positive fact having been asserted by the respondent-petitioner in the writ petition of extending a similar benefit to Ram Bilas Singh College (supra).

As noted above, no denial of the aforesaid fact had been made through any counter affidavit or in the writ petition nor do we find any averment in the grounds of appeal or the affidavit filed in support of this appeal by the appellant-State of Bihar.

The question therefore that now boils down for consideration is as to whether the benefit can be extended to the G.D.M. College, Harnaut, District-Nalanda and its employees; moreso particularly when the very fact of extension of such benefits to the



similarly situate institution has not been denied by the State.

Shri Ashutosh Ranjan Pandey, learned counsel for the State of Bihar is directed to file an affidavit of the appellant no.2 categorically answering the aforesaid fact of the extension of benefit to another institution and the reason, if any, as to why the said benefit cannot be extended to the respondent in terms of the judgment of the learned single Judge within one week.

Let the matter come up for admission on Thursday next (14.02.2019).”

3. In response to the earlier order, an affidavit came to be filed, whereafter we had called upon the State of Bihar to file a specific affidavit relating to the contention raised by the respondent-petitioner on the issue of discrimination, that was an outcome of State action having granted similar benefits as claimed by the respondent-petitioner to other identically situate institutions. The said order is extracted herein under :

“14.2.2019 An affidavit captioned as counter affidavit which, in fact, is a supplementary affidavit has been filed on behalf of the appellant in response to the earlier order passed by this Court intending to explain that the claim of benefit being extended to another institutions by the respondent-petitioner is not correct.

Let a reply to the same be filed within a week. Another affidavit has been filed on behalf of the respondent-petitioner bringing on record an addition fact of extension of the benefit of granting aid to



another institution, namely, Purvottar Railway College, Sonepur, a college affiliated under the J.P. University, Chapra.

Let a reply to the same be also filed by the appellant by the next date fixed.

While filing the affidavit, the State of Bihar-appellant will also take notice of paragraph 48 of the judgement in the case of State Government of Bihar & Ors. Vs. Parvati Kumar & Ors. decided on 8th of January, 2016 which has been again reiterated after remand from the Supreme Court by a Division Bench of this Court in paragraph 28 in the judgment dated 19.04.2008.

The appeal may come up on 21st of February, 2019.”

4. A supplementary counter affidavit captioned as “Second Supplementary Affidavit” has been filed by the State narrating therein that the respondent-Institution would not be entitled to any such benefit as claimed keeping in view the fact that the policy contained in Resolution No.1846 dated 21st of November, 2008 would be applicable.

5. On the other hand, Shri Chakrapani has maintained that as noted and which remains undisputed that the respondent-petitioner-Institution was granted affiliation up to the Intermediate level in respect of the posts sanctioned on 09.09.1981. The policy then applicable, which was prior to 09.12.1982, has to be implemented in the case of the respondent-petitioner as well. The



learned single Judge therefore has not committed any error in allowing the writ petition and the appellant-State cannot take a discriminatory stand so as to deny the same benefit to the respondent-petitioner. He has also invited the attention of the Court to the judgment in the case of State of Bihar vs. Parvati Kumari (supra) and the litigation that travelled up to the Supreme Court in that case. The same has been noted by us in our order extracted herein above.

6. The aforesaid facts also remain undisputed in view of the averments contained in paragraph 27 of the second supplementary affidavit.

7. In the background aforesaid, what we find is that the bone of contention narrows down to the admissibility of the grant-in-aid to the respondent-petitioner. The posts which are claimed to have been sanctioned by the respondent-petitioner under the deeming clause does not appear to be disputed. What appears to be disputed is the date of the applicability of the extension of the benefit of the grant-in-aid to the Institution. We are unable to find any material in the affidavits filed on behalf of the appellant-State, which may establish that the appellants' claim of having acquired the right to claim grant of funds from the State that had already crystallized prior to 09.12.1982 is in any way diluted. In the



absence of any such material to contradict the aforesaid established facts, we do not find that the learned single Judge has committed any error in proceeding to allow the writ petition filed by the respondent-petitioner.

8. For all the aforesaid reasons, there is no merit in this appeal, which is accordingly rejected.

9. It will be open now for the respondent-petitioner to proceed with the contempt matter stated to be pending before the learned single Judge.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A,

