

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1561 of 2018

In
Civil Writ Jurisdiction Case No.2417 of 2016

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Rajesh Kumar Son of Sri Mahesh Prasad, Resident of village - Rafiganj, P.S.
Rafiganj, District – Aurangabad. Appellants

Versus

1. The State Of Bihar through it's Law Secretary
 2. The Convener, Co - Ordination Committee - Cum - District and Sessions Judge, Patna.
 3. The District and Sessions Judge, Darbhanga.
 4. The Registrar, Civil Courts, Darbhanga.
 5. The Registrar General, Patna High Court of Judicature at Patna
-(Respondents in the writ petition)... .. Respondents
- =====

Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Manish Kumar No 13, Advocate Mr. Rohit Kumar No. 5, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha- GA7
For the High Court	:	Mr. Piyush Lal, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-09-2019

The appellant in the present case is seeking to challenge the judgment dated 20.09.2018 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 2417 of 2016.

2. By the impugned judgment the learned Single Judge has refused to interfere with the order as contained in Memo No. 2406 dated 29.07.2013 issued by the District & Sessions Judge, Darbhanga terminating the services of the petitioner-appellant on the post of Clerk in the establishment of the Civil Court,



Darbhanga. It appears that the petitioner-appellant is holding a qualification/citation of 'Sahityaalankar' - Hindi Vidyapeeth, Deoghar and is claiming the same as equivalent to a Bachelor degree from a recognized university.

3. In the writ application the petitioner claimed that pursuant to the advertisement (Annexure '4' to the writ application), he applied for the post of Clerk, the office of the District & Sessions Judge, Patna (respondent no. 2) issued the Admit Cards and as the petitioner came out successful in the written examination, he was called for interview and finally selected vide communication as contained in Memo No. 737/Conv. dated 05.12.2012 issued under the signature of the respondent no. 2 (Annexure '7' to the writ application). He was accordingly issued the appointment letter.

4. While the petitioner was working as a Clerk for about 8 months, after his appointment, he was served with a termination letter intimating him that his service has been terminated with immediate effect for the reason that he was appointed on the basis of a degree/citation of 'Sahityalankar' from Hindi Vidyapeeth, Deoghar. The petitioner submitted in his writ application that the impugned order has been passed without complying with the



principles of natural justice and the order of termination is fit to be set aside on this ground alone.

5. In response to the writ application, the respondents no. '3' and '4' filed a counter affidavit in which they took a categorical stand in paragraph '8' that the Hon'ble High Court vide its Memo No. 9215-47-A.D. (Misc) dated 02.07.2013 communicated its decision after considering Rule 10 of the Bihar Civil Court Staff (Class III & IV) Rules, 2009 (hereinafter referred to as the 'Rule of 2009'). The High Court's view is reflected in its letter dated 2nd July, 2013 as contained in Annexure 'D' to the counter affidavit saying that "the certificate of "Sahityalankar" awarded by the Hindi Vidyapeeth, Deoghar is not a recognized qualification in respect of the appointment to Class III posts in the Civil Courts". The stand of respondents no. '2' and '3' is that in the backdrop of above communication the impugned order has been passed.

6. It further appears that during the pendency of the writ application the General Administrative Department, Government of Bihar came out with notification dated 08.04.2016 to give effect to the judgment of the learned Single Judge of this Court rendered on 07.05.2012 in the case of **Reeta Srivastava Vs. The State of Bihar & Ors.** reported in **2012 (3) PLJR 353** wherein a view has



been taken that 'Sahityalankar' citation/degree cannot be treated as equivalent to graduation from a recognized university. Prior to the judgment in the case of **Reeta Srivastava** (supra), the State of Bihar had recognized 'Sahityalankar' as a degree equivalent to graduation but the Human Resources Development Department, Government of Bihar had, for purpose of appointment of the Teachers in Elementary/Middle/Higher Secondary Schools, came out with a Memo No. 3152 dated 25.08.2008 and 1346 dated 27.08.2008 by which the 'Sahityalankar' degree had been declared invalid for purpose of appointment of teachers. The Notification No. 541 dated 11th January, 1991, however, continued to exist which was cancelled vide Notification dated 08.04.2016 in the light of the judgment of the this Court in the case of **Reeta Srivastava** (supra) but the said notification saved appointments/promotions made/granted prior to 07.05.2012 i.e. the date of judgment in the case of **Reeta Srivastava** (supra).

7. Again the General Administration Department, Government of Bihar came out with a Notification dated 24.08.2017 by which the appointments made up to 04.08.2016 on the basis of degrees/citations granted by Hindi Vidyapeeth, Deoghar prior to 07.05.2012 were saved.



8. Before the learned Single Judge, respondents no. '2' and '3' took a plea that the General Administration Department's Notification in relation to the government services could not bind the Court and the appointments made in the High Court as well as the Civil Court would be guided by the guidelines and resolutions adopted by the Standing Committee. Reliance was placed on the Division Bench judgment of this Court in L.P.A. No. 679 of 2016 (**Nand Kishore Prasad Vs. The Patna High Court & Ors.**) and its analogous matter being L.P.A. No. 866 of 2016 (**Shashi Kala Kumari Vs. Chandula Kumari & Ors.**). It was submitted that in terms of the Rule 10 of the Rules of 2009, Hindi Vidyapeeth, Deoghar is not a recognized university, hence, the degree/citation of 'Sahityalankar' cannot be treated as equivalent to a graduation degree from a recognized university.

9. Learned Single Judge has accepted the submissions of respondents no. '2' and '3' and came to a conclusion that in view of the resolution of the Standing Committee as well as the judgment of the Hon'ble Division Bench of this Court rendered in the case of **Nand Kishore Prasad** (supra) which is point specific on the validity of the 'Sahityalankar' degree, no infirmity may be found in the termination letter.



10. In the Letters Patent Appeal before us, once again the arguments made before the learned Single Judge has been agitated. On 13.08.2019 this Court had framed *prima-facie* issue which would be required to be determined in the present case. The order dated 13.08.2019 is reproduced hereunder:

“Heard Shri Y.V. Giri, learned senior counsel for the appellant.

This appeal arises out of a judgment of a learned Single Judge in relation to an appointment against Class-III post in the District Judgeship of Darbhanga. The appellant claims to be in possession of the educational qualification as prescribed in Rule 10 of the Bihar Civil Court Staff (Class-III & Class-IV) Rules, 2009 as was applicable then in relation to appointments when the appellant came to be appointed.

It appears that on 29th July, 2013, the services of the appellant came to be terminated on the ground that the educational qualification of the appellant is that of Sahityalankar from Hindi Vidyapeeth, Deoghar which is not recognized and accordingly his services were dispensed with. This was challenged before the learned Single Judge in the writ petition giving rise to the present appeal where the High Court filed a counter affidavit, *inter alia*, stating therein that Rule 10 of the 2009 Rules was taken into consideration by the Standing Committee of the High Court in respect of a clarification sought by the District & Sessions Judge, West Champaran (Bettiah). The Standing Committee resolved that the District & Sessions Judge, West Champaran at Bettiah be informed that Rule 10 of the 2009 Rules recognizes the degree conferred by recognized Universities alone. The certificate of Sahityalankar awarded by Hindi Vidyapeeth, Deoghar is not a recognized



qualification in respect of appointment to Class-III posts in Civil Courts.

The learned Single Judge after having considered the submissions raised came to the conclusion that any clarification or subsequent executive instruction issued by the State Government on 8th April, 2016 as clarified on 24.08.2017 would not bind the High Court and consequently dismissed the writ petition.

The appellant, therefore, contends that the aforesaid approach of the learned Single Judge cannot be sustained in view of the Division Bench judgment of this Court in the case of **Sanjay Kumar Vs. State of Bihar & Ors.**, reported in **2019 (4) BLJ 789**. The contention is that the Government order dated 8th April, 2016 as clarified in 2017 leaves no room for doubt that any such degree obtained from prior to 2008 and any appointment made prior to 8th April, 2016 would be sustainable. This clarification was issued for all departments of the Government.

The matter also has been referred to a Full Bench in the case of **Ramashankar Patel and Ors Vs. The State of Bihar and Ors** [Civil Writ Jurisdiction Case No.11255 of 2016] which has been reserved.

The argument of Shri Giri is that the aforesaid view taken by the Standing Committee would not apply on the facts of the present case, inasmuch as, the decision was taken in 2013, whereas the appointment of the appellant was made on 21.12.2012 and, therefore, it will not have any retrospective effect. It is also submitted that the Division Bench judgment in the case of **Sanjay Kumar** (supra) explains the law clearly and, therefore, the appellant's appointment could not have been undone on the aforesaid ground.

Shri Piyush Lall, learned counsel for the High Court, however, submits that the decision of the Standing Committee having been taken on the administrative side by the High Court is an exercise of authority in terms of Article



235 of the Constitution of India and further the stand taken in the counter affidavit before the learned Single Judge remained unquestioned on the legal issue so raised. He, therefore, submits that the observation of the Standing Committee in respect of Rule 10 of the 2009 Rules would be binding and accordingly the conclusion drawn by the learned Single Judge cannot be faulted with. He has also further referred to the judgments referred to by the learned Single Judge to canvass that the said judgments also hold that the said degree of Sahityalankar being not from a recognized University cannot be pressed into service on the facts of the present case.

Prima facie, what we find from the arguments raised, one of the issues that deserves to be determined is as to whether the decision of the Standing Committee referred to as dated 25th June, 2013, if not challenged, would it have an impact on the claim of the appellant or not.

Shri Giri prays for a week's time to take appropriate steps in the matter.

Put up on 19th August, 2019.”

11. After the aforesaid observations were made by this Court, the petitioner filed I. A. No. 02 of 2019 for amending the main writ petition by adding the prayer in the following terms:

“(IV) The Hon’ble Court may be pleased to issue writ of certiorari for quashing the memo no. 9215 -47 dated 02.07.2013 issued under the signature of Registrar Administration High Court of Judicature at Patna where-under the standing committee of the Hon’ble High Court with reference to the query made by District Judge, West



Champaran, Bettiah as observed and decided that Rule 10 of the Bihar Civil Court Staff (Class III & IV) Rules 2009 recognized universities alone. The certificate of “Sahitya Alankar” awarded by Hindi Vidyapith, Deoghar is not a recognized qualification in respect of appointment of Class-III post in the Civil Courts.”

12. A copy of the Memo No. 9215-47 dated 02.07.2013 has been brought on record as Annexure ‘13’ which is reproduced hereunder:

“Prakash Chandra Jaiswal
Registrar (Administration)
High Court of Judicature at Bettiah.

Dated Patna the 02 July, 2013

Sub:- Regarding Degree of “Sahityalankar” awarded by the Hindi Vidyapeeth, Deoghar in respect of appointment to Class III Posts in the Civil Courts.

Sir,

With reference to your letter no. 1730 dated 08.04.2013 on the subject noted above, I am directed to say that after due consideration of the matter the Court have been pleased to decide the Rule 10 of the Bihar Civil Court Staff (Class III & Class IV) Rules, 2009 recognizes the degree conferred by the recognized universities alone. The certificate of “Shityalankar” awarded by the Hind Vidyapeeth, Deoghar is not a recognized qualification in respect of appointment to Class III Post in the Civil Courts.

This is for information and needful.

Yours faithfully
Sd/- P.C. Jaiswal
Registrar (Admin.)

Memo No. 9215-47 dated, Patna the 02 July, 2013

Copy forwarded to all the District & Sessions Judge of Bihar/Secretary to the Govt. Of Bihar Law (Judicial) Department, Patna/S.O., I/C Rules Section, Patna High Court, Patna for information and needful.

Registrar (Admin.)”

13. Mr. Y. V. Giri, learned Senior Counsel representing the petitioner has relied upon the judgment of the Hon’ble Apex Court in the case of High Court of Delhi & Anr. Vs. A. K. Mahajan



& Ors. reported in (2009) 12 SCC 62 wherein an amendment to the original Rule 7 of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 with retrospective effect came to be challenged.

Paragraph 44 and 45 of the said judgment on which reliance has been placed are quoted hereunder for ready reference.

“ *In Virender Singh Hooda v. State of Haryana*, i para 45, this Court recognised the power and competence of the legislature to make a valid law and make it retrospectively, so as to bind even past transactions. In paras 67 and 68, the Court explained the aspect of retrospectively and came to the conclusion that there was nothing wrong if the legislature had removed the basis of the decision of this Court by repealing the circulars. It further observed that : (SCC p. 620, para 67)

“67....The candidates have right to posts that are advertised and not the ones which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by the legislature cannot be declared ultra vires on the ground that it would nullify the benefit which otherwise would have been available as a result of applicability and interpretation placed by a superior court.”

The decision in *Railway Board* was specifically considered in para 70 of the judgment. The Court reiterated the observation made in *Railway Board case* that a rule, which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Article 14 and 16 of the Constitution to the extent it operates retrospectively. We have already pointed out that it is only to this extent the retrospectively can be challenged. However, for that there has to be a tangible benefit awarded like promotion or pay scale or a rate of pension. /such is not the state of affairs in the present case. The Court in *Virendra Singh Hooda* also made reference to the decision in *State of J & K v. Triloki Nath Khosa* wherein it was held that impugned rules did not recall a promotion already made or reduce a pay scale already granted.

45. In short, law regarding the retrospectively or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone



such rules would not be permissible to the extent of retrospectively.”

14. Mr. Giri, learned Senior Counsel has further relied upon the judgment of the Hon’ble Apex Court in the case of **J. S. Yadav Versus State of Uttar Pradesh and Anr.** reported in (2011) 6 SCC 570 and **State of Uttar Pradesh and Ors. Versus Mahesh Narain and Ors.** reported in (2013) 4 SCC 169 to submit that the petitioner having been appointed had acquired a right and that right could not have been taken away by virtue of a decision of the Standing Committee which was circulated to all the District Judges much after the appointment of the petitioner.

15. It is further submitted that no opportunity of hearing was given to the petitioner prior to his termination of service. It is also submitted that the Disciplinary Authority of the petitioner is the District and Sessions Judge, Darbhanga who has not acted on his own rather he has acted on the dictate of the Standing Committee which would be a case of abdication of power on the part of the District and Sessions Judge.

16. Mr. Piyush Lal, learned counsel representing the respondents no. 2 and 3 has opposed the submissions of Mr. Giri, learned Senior Counsel. It is submitted that the Hindi Vidyapeeth, Deoghar is not a university rather it is a voluntary organisation for propagation of Hindi and the said qualification has been held not to



be a qualification of graduation by the Hon'ble Court. In this regard a specific stand of the respondents has been referred to vide paragraph 9 and 11 of the counter affidavit. It is submitted that those statements of respondent no. 5 were not controverted before the learned Writ Court.

17. Learned Counsel has relied upon the judgment of this Court in the case of **Ganesh Prasad Srivastava** (supra), **Nand Kishore Prasad** (supra) and in the case of **Pramod Kumar vs. U. P. Secondary Education Services Commission & Ors.** reported in **(2008) 7 SCC 153**.

18. Mr. Piyush Lal submits that the decision of the Hon'ble Standing Committee by minutes dated 25.06.2013 is nothing but a reiteration of Rule 10 of the 2009 Rules. It is submitted that the argument of learned Senior Counsel for the petitioner that the decision of the Standing Committee would be perspective and not with retrospective effect has been specifically raised and consideration in the case of **Nand Kishore Prasad** (supra) has already been rejected. It is submitted that since the petitioner did not possess the basic minimum qualification under Rule 10 of the 2009 Rules, he did not have any right to hold the post of Clerk under the Darbhanga Judgeship much less any right has been vested in him to hold the said post. It is his submission that the principles of natural justice do not get attracted in the facts of the present case. He has



relied upon the judgments in the case of **State of M. P. & Ors. Vs. Shyam Pardhi & Ors.** reported in (1996) 7 SCC 118, **Mohd. Sartaj & Ors. Vs. State of U. P. & Ors.** reported in (2006) 2 SCC 315, **High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha** reported in (1997) 10 SCC 409 and the judgment of **Pramod Kumar** (supra).

19. Learned counsel has also submitted that in judgments of Full Bench of this Hon'ble Court in the case of **Ramashankar Patel & Ors. Vs. State of Bihar & Ors.** reported in 2019 (4) BLJ 789 the context to the decision of the State Government is on the issue of equivalence and not by the Court and thus, this judgment does not apply to the present case.

20. Further contesting the submissions of Mr. Giri, learned Senior Counsel, that the termination of the service of the petitioner has been done on the dictate of the higher authority without there being any independent application of mind by the District and Sessions Judge, Darbhanga, it is submitted that the said decision has been taken in exercise of powers under Article 235 of the Constitution of India and it has to be seen keeping in view Rule 9 (6) of the 2009 Rules which specifically provides that all appointments to be subjected to the directions issued by the High Court from time to time and those are binding on all judgeships. It is further submitted that the contention of learned Senior Counsel that the petitioner-



appellant is an Government Employee and thus, the two notifications of the State Government dated 08.04.2016 and 24.08.2017 would be applicable to him is merely a statement as nothing has been brought on the record to show that; (a) he has been appointed by the State Government, (b) he is in administrative or disciplinary control of the State Government and (c) he works under the direction and supervision of the State Government for which salary is paid to him by the State Government.

21. Having considered the rival submissions at the Bar, we are of the considered opinion that at this stage, the plea of Mr. Giri, learned Senior Counsel that prior to passing of the order of termination of service of the petitioner, the principle of natural justice was required to be complied with, is fit to be accepted. It is well settled in law that principle of natural justice is like a brooding omnipresence which prevails everywhere. The principle of natural justice is engrained under Article 14 of the Constitution of India. We are of the view that a person who was going to lose his service, which had a civil consequence on his life, was required to be given an opportunity of hearing and for that reason if that opportunity would have been given to him, he could have raised all such pleas which were available to him including the pleas with regard to the view of the Standing Committee. Had that opportunity of hearing been given to him, the District and Sessions Judge, Darbhanga would



have brought the entire matter to the notice of the Standing Committee for consideration and taking an appropriate decision thereon considering all aspects of the matter.

22. Having arrived at a conclusion that an opportunity of hearing was required to be given to the petitioner prior to passing of the order of termination of his service, this Court restrains itself from considering the various other contentions which have been raised on behalf of the petitioner and contested by the respondents.

23. In the facts and circumstances of the case, we are of the view that the judgment dated 20.09.2018 passed in C.W.J.C. No. 2417 of 2016 by the learned Single Judge be set-aside and the writ application may be allowed on the solitary ground of violation of principles of natural justice leaving it open for the respondents to proceed afresh, if so advised, giving an opportunity to the petitioner to show cause and upon consideration of the same in accordance with law.

24. We, therefore, set-aside the impugned judgment dated 20.09.2018, passed in C.W.J.C. No. 2417 of 2016, by the learned Single Judge, set-aside the Memo No. 2406, Dated 29.07.2013, issued by the District & Sessions Judge, Darbhanga, terminating the services of the petitioner-appellant and remit the matter to the District & Sessions Judge, Darbhanga for proceeding afresh giving an



opportunity to the petitioner to submit his show cause, thereafter, the District & Sessions Judge, Darbhanga shall pass an appropriate order.

25. Let the whole exercise be completed within a period of three months from the date of receipt/production of a copy of this order. By virtue of setting-aside of the Memo No. 2406 dated 29.07.2013, the petitioner shall be reinstated in service, however, the consequential benefits shall depend on the final outcome and decision by the District & Sessions Judge.

26. The Letters Patent Appeal stands allowed to the extent indicated above.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	19.08.2019
Uploading Date	05.09.2019
Transmission Date	

