

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2589 of 2020

1. Prabha Kumari, Female, Aged about 23 years, D/o Chandra Shekhar Kumar R/o Dariyapur Chai Tola, Kadam Kuan, P.S.- Kadam Kuan, District- Patna.
2. Rina Kumari, Female, Aged about 28 years, W/o Rahul Kumar R/o Ward No.04 Adharpur, Adharpur Urf Chak Nizamat, Adharpur Tajpur, P.S.- Tajpur, District- Samastipur, Bihar- 848130.
3. Rimpu Devi, Female, Aged about 32 years, W/o Bhubneshwar Yadav R/o Kamalpur, Laukaha, P.S.- Laukaha, District- Madhubani, Bihar- 847421.
4. Guriya Kumari, Female, Aged about 23 years, W/o Sandeep Kumar Sahu R/o Bisifi, Noorchak Prasaditola, P.S.- Noorchak, District- Madhubani, Bihar- 847122.
5. Kavita Kumari, Female, Aged about 23 years, D/o Bindeshwar Prasad Sahu R/o Ekdara, Bagha Kusmar, P.S.- Bagha Kusmar, District- Madhubani, Bihar- 847409.
6. Mukesh Kumar Yadav, Male, Aged about 23 years, S/o Mithilesh Yadav R/o Dhabahi, Narahiya, P.S.- Narahiya, District- Madhubani, Bihar- 847108.
7. Ramkrit Kamat, Male, Aged about 22 years, S/o Vishwanath Kamat R/o Near Durga Mandir, Dihlot/Kadamaha, Ward No.5, P.S.- Kadamaha, District- Supaul, Bihar- 847452.
8. Munni Devi, Female, Aged about 28 years, D/o Umesh Prasad Yadav R/o Ward No.01, P.O.- Mahthaur Khurd, Village- Tol Dhata Mahtaur Khurd, Phulparas, P.S.- Phulparas, District- Madhubani, Bihar- 847409.
9. Pappu Kumar Yadav, Male, Aged about 26 years, S/o Jai Krishn Yadav R/o Ward No.9, Sarojabela, Saraunjabela, P.S.- Sarojabela, District- Supaul, Bihar- 847452.
10. Kaushal Kumar, Male, Aged about 22 years, S/o Vishnudev Yadav R/o Phulparas, Ward No.10, P.S. Phulparas, District Madhubani, Bihar- 847409.
11. Santosh Kumar Yadav, Male, Aged about 21 years, S/o Birendra Kumar Suman R/o Village Harihara, P.O.- Makhanaha, P.S.- Andhramath, District- Madhubani, Bihar- 847108.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat (Vikash Bhawan), Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, New Secretariat (Vikash Bhawan), Patna.
4. The Director, Research and Training, Education Department, Government of Bihar, New Secretariat (Vikash Bhawan), Patna.
5. The Bihar School Examination Board, Sinha Library Road, Patna through its Secretary.
6. The Chairman, Bihar School Examination Board, Sinha Library Road,



Patna.

7. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
8. The Director (Academic), Bihar School Examination Board, Patna-17.
9. The Eastern Regional Committee- National Council for Teachers Education, 15 Neelkantha Nagar, Nayapalli, Bhubaneswar- 751012, Odisha through Regional Director.
10. National B.Ed College for Higher Education, Village- Murgichak, Street/Road- Mohammadpur, Taluka/Mandal- Janipur, Town/City, District- Patna, Bihar- 801505 through its Secretary Madhuri Kumari, D/o Late Ram Chandra Jha, Administrative Office- Apurva Radha Complex, 3rd Floor, Office No. 303, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mrs. Nivedita Nirvikar, Advocate
For the State	:	Mr. Subhash Chandra Mishra, S.C.16
		Mr. Samir Kumar, A.C. to S.C.16
For B.S.E.B.	:	Mrs. Binita Singh, Advocate
For N.C.T.E.	:	Mr. Sunil Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 25-02-2020 Heard learned counsel for the petitioners, learned

counsel for B.S.E.B., learned counsel for N.C.T.E. as well as

learned counsel appearing on behalf of the State.

The petitioners seek following reliefs:

“(i) For issuance of an appropriate writ/writs, direction to quash the memo no. 02-04/2019-132 dated 13.09.2019 issued by the respondent Director (Education), Bihar School Examination Board as it has not followed the direction passed by the Hon’ble Court on 20.08.2019 in CWJC No. 16962 of 2019 in which the Hon’ble Court was pleased to make a direction to the board “ To consider the claim of the petitioners in terms of the judgment dated 28.03.2019 passed in CWJC No.19046 and if the case of the present petitioner is similar to the petitioner of CWJC No. 19046 of 2018, similar benefits should be extended to these petitioners at the earliest so



that the petitioners may not suffer adversely in the matter of examination in the current academic session”.

(ii) Issuance of and appropriate direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities to accept examination fee and examination form of the students of the college of D.El.Ed. course for the academic session 2017-19 and issue admit card, take examination and publish results, issue mark sheets and certificates accordingly and if needed for the said relief the respondent no. 10, The National B.Ed. College of Higher Education, Village – Murgachak, Street/Road – Mohammadpur, District – Patna, Bihar – 801505 may be given affiliation by the Board.

(iii) For any other relief/reliefs for which the petitioners are entitled to get.”

The facts in brief, which are relevant for appreciation of the submissions of the parties and are admitted, are as follows:

The petitioners are students who got admitted in National B.Ed. College in the session 2017-19 in the course of Diploma in Elementary Education. The Institution applied for recognition to the Eastern Regional Committee, National Council for Teachers Education (hereinafter referred to as ‘the N.C.T.E.’) and the N.C.T.E. granted recognition on 02.05.2017 for conducting Diploma in Elementary Education program of two years duration for academic session 2017-19. National B.Ed. College for Higher Education, respondent no.10, after



having got recognition from the N.C.T.E., took admission of the petitioners and others in session 2017-19 but filed petition on 31.07.2017 to the Secretary, Bihar School Examination Board (hereinafter referred to as 'the Board'), Respondent No.7, for grant of affiliation. The Board rejected the petition of the petitioners for grant of affiliation to respondent no.10, the college, for session 2017-19 on the ground that the respondent no.10 applied for affiliation on 04.08.2017, which is beyond the cut off date, vide Memo No.02-04/2019-132, dated 13.09.2019 (Annexure-6). The petitioners earlier filed CWJC No.16962 of 2019 and a Bench of this Court by order dated 20.08.2019 disposed of the writ petition with a direction to the Board to consider the case of the petitioners in terms of the judgment dated 28.03.2019, passed in CWJC No.19046 of 2018 and if the case of the petitioners stands on the same footing, the similar benefits should be extended to these petitioners. It is also pertinent to mention here that respondent no.10, National B.Ed. College for Higher Education, the Institute of the petitioners, filed CWJC No.3936 of 2019 for grant of affiliation from academic session 2017-19. The writ petition was heard and the order was reserved vide order dated 16.05.2019 and the same is still pending. Again respondent no.10, the Institute of the



petitioners, filed CWJC No.21059 of 2019 for quashing Memo No.02-04/2019-132, dated 13.09.2019, which is sought to be quashed in the present writ petition, and the aforesaid writ petition was disposed of with liberty to the petitioner to file I.A. petition, if so advised, in CWJC No.3936 of 2019. The application for grant of affiliation to the College from session 2017-19 has already been rejected but inspite of the fact the petitioner being the students of the College, respondent no.10, filed this writ petition for the same and similar relief.

Mrs. Nivedita Nirvikar, the learned counsel appearing on behalf of the petitioners submits that the petitioners are students. They are suffering immensely without their fault. Recognition to the National B.Ed. College, respondent no.10, was duly granted to the College within time, but the Board, who had no option but to grant affiliation to the College for the session 2017-19, has withheld and rejected the petition for grant of affiliation to respondent no.10 on mere lame excuse that the petition for affiliation was filed belatedly. It is further submitted that of course the same and similar relief for grant of affiliation from 2017-19 is sought for in CWJC No.3936 of 2019 filed by the Institute in which the petitioners have been admitted in session 2017-19. The aforesaid case is



pending for judgment/order by order dated 16.05.2019. The petitioners, being the innocent students, cannot be allowed to suffer indefinitely due to non-delivery of the judgment. It is further submitted that a Division Bench of this Court in the case of Rajendra Kishore B.Ed. College, Sughari and Ors. (CWJC No.19046 and other analogous cases of 2018) directed the Board to grant affiliation for the respective sessions but the Institution of the petitioners has been singled out and the Board without any rhyme and reason rejected the petition for grant of affiliation to the Institution on account of delay in presenting the application for affiliation. It is also submitted that the petitioners are not intending to join hands with Institution of the petitioners in CWJC No.3936 of 2019 and Mrs. Nivedita Nirvikar, the learned counsel, relentlessly tried to persuade this Court to pass order in the case of the petitioners irrespective of the fact that for the same and similar relief, the writ petition, preferred by the Institution, is pending for delivery of judgment. Mrs. Nivedita Nirvikar, the learned counsel for the petitioners, relying on the judgment of Gadde Venkateswara Rao v. Govt. of A.P. & Ors., AIR 1966 SC 828, submits that the petitioner can also file independent petition under Article 226 of the Constitution of India as the petitioners have got right to seek relief irrespective



of the right of the Institution.

On the other hand, the learned counsel for the Bihar School Examination Board submits that for the same and similar relief, CWJC No.3936 of 2019, filed by the Institution, is pending for delivery of the judgment and in all fairness, this case should have been heard by the same Court. It is further submitted that in the case of Maa Vaishno Devi Mahila Mahavidyalaya vs. State of U.P., reported in (2013) 2 SCC 617, the Supreme Court has laid down the principles for grant of recognition and affiliation. A schedule has been given and the last date for recognition is 03/05 and the last date for grant of affiliation is 31/05 of the year for a session commencing in the year. The Institution of the petitioners admittedly filed petition for affiliation on 04.08.2017 and, therefore, the Board has rightly rejected the petition for grant of affiliation to respondent no.10, the Institution of the petitioners, for the session 2017-19 and the same order is impugned in CWJC No.3936 of 2019. It is further submitted that in Maa Vaishno Devi Mahila Mahavidyalaya (supra) case, the Hon'ble Supreme Court has held that before grant of recognition and affiliation, no institution is permitted to take admission of the students and such students cannot be allowed to appear at the examination



without grant of affiliation. At their instance, no order can be passed to allow them to appear in the examination. The Hon'ble Supreme Court in a very clear terms prohibited the institution to take admission in the institution in any session without getting the recognition and affiliation of the college/institution and thus, the petitioners have got no legitimate right to say that their examination forms and fee be accepted and they be allowed to appear at the examination until the order is passed in the writ petition filed by the Institution for grant of affiliation for the session 2017-19.

Having heard the submissions of both sides, I find that respondent no.10, National B.Ed. College for Higher Education, approached this Court in CWJC No.3936 of 2019 for grant of affiliation for the session 2017-19. Admittedly, respondent no.10 admitted the students in Elementary Education in session 2017-19 without grant of affiliation which is exclusively prohibited by the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra). Mrs. Nivedita Nirvikar, the learned counsel for the petitioners, relentlessly tried to persuade this Court to pass order on the petition of the petitioners and set aside Memo No.02-04/2019-132, dated 13.09.2019 (Annexure-6) refusing to grant affiliation and it is further submitted that at



least the petitioners should be allowed to take on examination after depositing required fee, but, in my view, the submissions of the learned counsel for the petitioners, is not acceptable on the simple ground that the petitioners got themselves admitted in unaffiliated college in session 2017-19. The Institution, respondent no.10, has already filed CWJC No.3936 of 2019 for the same and similar relief, i.e., for grant of affiliation for session 2017-19 in Diploma in Elementary Education Course. The same is pending for delivery of the judgment. The Institution during the pendency of CWJC No.3936 of 2019 again filed CWJC No.21059 of 2019 for quashing Memo No.02-04/2019-132, dated 13.09.2019 (Annexure-6 in this writ petition) and the writ petition was disposed of with liberty to respondent no.10, petitioner of that case, to file I.A. petition in CWJC No.3936 of 2019. The petitioners being the students of respondent no.10 again filed this writ petition and thus, in order to maintain the judicial propriety and discipline, I am of the view that this petition be disposed of without expressing any opinion on the merit of the case with liberty to the petitioner to file I.A. petition in the same writ petition being CWJC No.3936 of 2019, which has already been heard by a co-ordinate Bench of this Court and the case is reserved for order.



Accordingly, this writ petition is disposed of with
the aforesaid liberty.

(Prabhat Kumar Jha, J)

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