

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5345 of 2021

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1. S.M. Mansoor Akhtar, Son of Late Syed Sayeed, Resident of Road No. 2 'A' house no. B/12 Alinagar colony, Anishabad, P.S. Gardanibagh, Patna.
 2. Md. Jamil Ahmed, Son of Late Ahmed Hussain, Resident of Mohalla Mahalpur, P.O. and P.S. Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Patna Division, Patna.
4. District Education Officer, Nalanda at Biharsharif.
5. The District Programme Officer (Establishment), Nalanda at Biharsharif.
6. The District Provident Fund Officer, Nalanda at Biharsharif.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Sagar Singh, Advocate
For the Respondent/s : Mr. Sanjay Kumar, AC to G.P.-23

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-11-2022

Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. Ram Sagar Singh, learned counsel for the petitioner and Mr. Sanjay Kumar, learned AC to GP-23 for the State.

3. Two petitioners are seeking directions upon the respondents to ensure payment of their due salary for the period



from 01.10.2018 to 30.09.2019 and from 01.01.2018 to 31.12.2019 respectively and also for payment of all other retiral/outstanding dues along with consequential benefits.

4. The short facts, which led to the filing of the present writ application is that in terms of the advertisement dated 17.01.1996, the petitioner no.1 was appointed as Assistant Teacher (English) vide letter dated 11.09.1999 (Annexure-1 to the writ application). Pursuant to the appointment letter, the petitioner no.1 submitted his joining in the said school on 13.09.1999.

5. The petitioner no.2 was appointed as Assistant Teacher (Math) by the Managing Committee of the High School, Mafi, Nalanda vide letter dated 19.10.1999 (Annexure-5 to the writ application) and he submitted his joining on 25.10.1999.

6. It would not be out of place to mention that both the schools were minority schools and the appointments of the petitioners were approved by the Vidyalaya Seva Board on 20.06.2001 and 17.05.2000 respectively, vide Annexures- 3 and 7 to this writ application. He further contended that after rendering a satisfactory service of about 20 years, the petitioner no.1 superannuated from service on 30.09.2019, whereas petitioner no.2 superannuated on 31.12.2019.



7. While the petitioners were in service, all of a sudden, the payment of salary of the petitioners have been stopped with effect from October, 2018 questioning the validity of B.Ed. Degree of the petitioners.

8. It is submitted that at no point of time neither any notice has been caused to be served nor any departmental proceeding was initiated against them before withholding of salary. It is also contended that similarly situated persons, namely, Bineet Prasad Singh and Surendra Prasad Sinha, whose salary were also withheld questioning the validity of their B.Ed. Degree had moved before this Court by filing C.W.J.C. No. 11116 of 2018 and C.W.J.C. No. 864 of 2020 respectively and the learned coordinate Benches of this Court have been pleased to dispose of the writ applications with a direction to pay the salary of the period, for which they have not been paid and in compliance of the order of this Court, they have been paid their salary.

9. He next submits that the appointment of the petitioners were duly approved by the Vidyalaya Seva Board and they have been allowed to discharge their duties uninterruptedly and at no point of time the validity of their degree called for, however, after having been superannuated, the impugned action of the respondents in withholding the salary and not paying the



retiral benefits is wholly without jurisdiction, apart from illegal and arbitrary.

10. The aforesaid submissions of the petitioners have been vehemently confronted by the learned counsel for the State and by referring to the averments made in the counter affidavit, it is submitted that Non-Government Sogra College of Education, Bihar Sharif, Nalanda was/is not a recognized institution and departmental decision to the said effect had also been issued vide letter no. 71 dated 25.04.2014 and in such circumstances, directions to weed out and terminate such teachers, who had got appointed on the basis of fake training certificate from Non-Government Sogra College of Education, Bihar Sharif, Nalanda had been issued by the Director, Secondary Education, Bihar, Patna vide letter no. 1604 dated 29.10.2018. He further contended that the aforesaid direction of the Director, Secondary Education, Bihar, Patna had also been communicated to the respective Headmasters of petitioners' school by the District Programme Officer (Establishment), Nalanda vide letter no. 4296 and 1537 both dated 03.11.2018.

11. In response to the aforesaid contention made in the counter affidavit filed on behalf of the State respondents, a reply has been filed on behalf of the petitioners and it is submitted that



petitioner no.1 was admitted in B.Ed. Course in Sogra College of Education, Bihar Sharif, Nalanda in the Sessions 1982-83, whereas petitioner no.2 was admitted in the Sessions 1985-86. So far the Sogra College of Education, Bihar Sharif, Nalanda is concerned, the same is a Minority Institution and vide letter no. 1265 dated 15.10.1985, the State Government granted Minority status to the College and, later on, the College, in question, was affiliated under the Magadh University, Bodh Gaya, the students of Sogra College were allowed to appear in B.Ed. Examination and their results were also published by the order of the then Hon'ble the Chief Minister. He further submits that the order, as contained in Memo No.71 dated 25.04.2014, declaring the Sogra College as unrecognized institution cannot be implemented with its retrospective effect, as the petitioners passed their B.Ed. examination way back in the year 1991 and appointed as Assistant Teachers in the year 1999.

12. Having heard the learned counsel for the respective parties at length and after going through the materials, prima facie, from the order issued by the Department of Education, Government of Bihar, as contained in Memo No. 71 dated 25.04.2014 (Annexure-19 to the reply to the counter affidavit), it appears that the name of the institution, in question, has been kept



in the list of fake/unrecognized institution by the Bihar Staff Selection Commission and the Government of Bihar came to the conclusion that at no point of time the recommendation has been granted for any of the Session by the State Government, hence any appointment made on the basis of the Certificates/ marksheets issued by non-government Sogra College of Education is found not acceptable. It further says that the institution, in question, comes within the jurisdiction of Magadh University, but the said University without getting the recommendation from the State Government has allowed to conduct examination and issued certificates.

13. From the said letter one thing, which is evident, is that the institution, in question, was running under the jurisdiction of Magadh University, as duly affiliated, and examination was conducted by the order of the University and thereafter the certificates have been issued to the successful candidates by the order of the said University. There are ample materials in support of the aforesaid facts, available on record. Further this fact has also not been confronted by the respondents that the appointment of the petitioners have been duly approved by the Vidyalaya Seva Board, which was the competent authority to grant approval of the appointments to the Teaching and Non-teaching employee of



the Minority institution in terms of Bihar Non Government Secondary School (Taking over of Management and Control) Act, 1981 and the Rules 1983 thereof.

14. It is also the fact that the respective schools of the petitioners were a minority schools duly recognized by the State Government and their employment being continuous time of service and they have been allowed their salaries almost till the date of their superannuation. It is also admitted fact that at no point of time any objection has been made with regard to appointment of the services of the petitioner being illegal or based on the basis of certificates having not recognized by the State Government till the date of their superannuation.

15. In an identical matter the Division Bench of this Court in L.P.A. No. 280 of 2021, wherein this Court was also party to the judgment, while considering the issue with regard to non-payment of retiral dues or salary for the working period on account of his appointment being based on a degree provided by Sogra College of Education, Bihar Sharif, Nalanda have held that in the interest of justice, the writ petitioner's services be recognized and the money he has earned be paid to him and if at this point the appellants' argument is acceded to, a lifetime



dedication to a noble profession of teaching will be unfairly maligned.

16. For proper appreciation of the issue, it is apt to quote paragraph nos. 15, 16, and 19 to 25 of the said judgment rendered by the learned Division Bench

“15. The remuneration earned for services rendered is a right that cannot be denied. In the present case, the delay in disbursement of dues takes on the character of undisputed/admitted dues and, therefore, the employee is entitled to timely disbursement. A five-Judge Bench of the Hon’ble Supreme Court in State of **Madhya Pradesh v. Ranjojirao Shinde & another**, AIR 1968 SC 1053 has observed that “It is obvious that a right to a sum of money is property.

16. The State’s action of not paying the retiral dues of a teacher has deprived of a person of his hard earned money but also put into question the good service of imparting education to the next generation. After all, a man may use his income for purposes other than the three basic needs which have been mentioned in **Shantistar Builders v. Narayan Khimalal Totame & Others (1990) 1 SCC 520**, particularly in their retirement when the pension and other associated benefits are the sole source of sustenance. Thereby the State prevented the welfare of its own citizens which goes against the core objectives of a welfare state like India.

19. Pension, as is well established, is the deferred portion of the compensation for rendering long years of service. It is a hard-earned benefit, accruing to an employee in the nature of property. [State of Jharkhand



v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; Veena Pandey versus Union of India & Others, 2021 SCC Online SC 1078]

20. Emphasizingly, the Hon'ble Supreme has held that pensionary provisions must be given liberal construction more so as a social welfare measure. It is not a bounty to be dispersed contrary to the rules, but very basis for grant of such pension is to facilitate a retired government employee, live with dignity, in the winter of his life. This fundamental principle must be kept in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities. [V. Sukumaran v. State of Kerala, (2020) 8 SCC 106; State of W.B. v. Haresh C. Banerjee and others, (2006) 7 SCC 651]

21. It must also be noted that in the present case, the State does not have entirely clean hands for its action to be considered to be in entirely in good faith. It is borne out from the record that the 2008 office order impose conditions which each person has to satisfy in order for recognition of service, i.e. all educational certificates/degrees be verified from the issuing institution by the concerned officer- which was purported to have been done and by the 2012 office order contingent upon the conditions being satisfied, arrears being paid. In approaching this Court, the writ petitioner has asked for salary and other dues starting from February, 2018 and from July, 2018 till his retirement in January, 2019. This implies that all other arrears and dues were paid to him on time. Well, it is now after twice being deemed eligible and duly recognized that the petitioner's employment is being claimed as having been



done on unsound basis, and the only ground, i.e. his educational certification was from a un-recognized institution. Further, it is also noted that it was not post retirement when the factum of the petitioner's degree being from an un-recognized institution came to light. As noted in the facts above, one round of litigation has travelled all the way up to Hon'ble the Supreme Court for inclusion of that institution into the list of duly recognized one, which has been dismissed by the Court in 2015.

22. Therefore, from the date of the order dated 15.09.2015 passed by the Hon'ble Supreme Court in **Md. Bashar Faruque** (supra) till that of superannuation on 31.01.2019, the appellant, i.e. State, was in the know of the status of the institution and even then, the writ petitioner's services were continually utilized and proceedings under Rule 43(b) of the Rules were initiated well after retirement- nine months, i.e. vide memo dated 09.10.2019.

23. Therefore, the State's grounds taken in this LPA cannot be sustained. Writ petitioner's service of more than three decade as a teacher cannot be disregarded, especially after the State itself must be held accountable for lax attitude in enforcing standards of employees in educational institutions.

24. It is surprising that a person with improper qualifications passed scrutiny initiated upon an order of Hon'ble the Apex Court and was duly recognized and paid arrears in accordance thereof. Such an action of a State cannot be construed lightly and steps must be taken to ensure that such glaring errors do not become repeated occurrences.



25. It is in the interest of justice that the writ petitioner's services be recognized and the money he has earned be paid to him. If at this point, the appellants' argument is acceded to, a life time dedication to a noble profession of teaching will be unfairly maligned."

17. The facts as also gathered from the judgment rendered by the learned Division Bench of this Court in the case of **The State of Bihar & Ors Vs. Surendra Prasad Sinha** discussed herein above, it appears that the issue with regard to the validity of the B.Ed. Degree issued by the Sogra College of Education, Bihar Sharif, Nalanda had attained finality after the Special Leave to Appeal (C) No. 23619 of 2015 titled as **Md. Bashir Faruque and Ors. Vs. State of Bihar and Ors.** was dismissed by the Hon'ble Supreme Court vide order dated 15.09.2015. However, the dispute having been attained the finality, the petitioners' services being continued to be utilized and they retired from service in the year 2019 and hence laches on the part of the State respondent authorities cannot be denied in enforcing the standards of employees in educational institution.

18. From the aforesaid discussions, as also in the light of the judgment rendered by the Division Bench of this Court, which has taken note of every aspect of the factual and legal position, apart from the appointment/service being approved by the competent authority i.e. Vidyalaya Seva Board, this Court



finds substance in the writ application and accordingly, the present writ application stands allowed with a direction to the concerned respondent authorities to ensure payment of pending salary for the period, as mentioned in paragraph no.1 and also to pay all the retiral dues to the writ petitioners, as early as possible, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.11.2022
Transmission Date	NA

