

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6208 of 2021

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Bihar Rajkiyakrit Sanskrit Prathmik- Sah- Madhyamik Shikshak Sangh Bihar Patna through its General Secretary, Ram Naresh Prasad, Male, Aged about 74 years, Son of Late Yadunandan Prasad, Resident of Village- Hansepur, P.O.- Ope, P.S.- Aungari, District- Nalanda. .. Petitioner

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
 2. Principal Secretary Department of Education, Government of Bihar, Patna.
 3. The Deputy Secretary to Government Department of Education, Government of Bihar, Patna.
 4. The Special Director Sanskrit (Secondary School) Department of Education, Government of Bihar, Patna.
 5. Under Secretary Bihar Vidhan Parishad, Government of Bihar, Patna.
- ... Respondents

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.
For the Respondent/s : Mr. Lalit Kishore (AG)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 12-09-2022 Heard the parties.

The petitioner by of this writ petition has prayed as
under :

“(i) Issuance of a writ in the nature of Mandamus directing and commanding the Respondents to place ordinance no. 32 of 1989 before the State Legislation for enacting Act for taking over the management and control of 429 Sanskrit schools as were taken over by the Government w.e.f. 18.12.89 and thereby to treat the staffs of those schools as Government employees, in compliance of the Judgment dated 2.1.2017 passed by the Hon’ble Supreme Court of India in Civil Appeal No. 3533-3595 of 1995 and Civil Appeal no. 5875-5890 of 1994.



(ii) Issuance of an appropriate declaration and holding that it was mandatory on Government to place ordinance before the legislature in the next session and failure to place ordinance dated 18.12.1989 taking over the management and control of 429 Sanskrit schools had constituted a serious infraction of a constitutional obligation and it amounted an abuse of the constitutional process and serious dereliction of the constitutional obligation which ordinance now is required to be placed the legislation in next session pursuant to judgment of Hon'ble Apex court dated 2.01.2017.

(iii) Issuance of further holding that since ordinance dated 18.12.89 was not placed before the legislation and ordinance was allowed to lapse, it has been declared by the Hon'ble Apex Court as fraud on constitutional Power vide Judgment dated 2.1.2017 and it has been left open for the Government to place the ordinance before the legislature and there-fore, pursuant to aforesaid Judgment, the Government is obliged to place the ordinance before legislature event at this stage particularly when the matter of takeover is pending before the legislative council since 2018.

(iv) Issuance of an appropriate direction to Respondents to hold a high level meeting along with five delegates of petitioner Sangh and to prepared bill and to place the ordinance before the legislature in next Session for enacting Act with regard to take over the management and control over 429 Sanskrit schools w.e.f. 18.12.1989 and thereby to pay the salary etc to teachers and non



teaching staffs who had been working on 18.12.1989 like Government servants with all other benefits.

(v) Any other relief or reliefs be granted to petitioner, who has filed the present writ application in representative capacity, to which the petitioner is found to be entitled to.”

2. From the bare perusal of the aforesaid prayers it is apparent that the petitioner is seeking a direction to the legislature to frame a particular provision and pass an enactment. The three limbs of the Constitution have separate roles to play. State Legislature in its own wisdom can decide for enactment of any provisions based on recommendations of committee or at the behest of the executive requesting for any enactment to be passed. However, so far as the judiciary is concerned the Constitution does not make any provisions where the judiciary would direct a particular legislation to be enacted for a particular purpose. Even if there have been recommendations by a duly formed committee consisting of Government authorities, such recommendations are not enforceable in law.

3. In present case, learned counsel submits that the committee formed by the State Government has recommended for enactment of an Act for taking over management and control of 429 Sanskrit schools but the said enactment has not been passed by the Legislature.

4. In the opinion of this Court, firstly the writ petition is not maintainable having been filed by an unrecognized, unregistered



body. Secondly the prayers go beyond the limits of jurisdiction of this Court under Articles 226 and 227 of the Constitution and thirdly it is in the exclusive domain of the State Legislature to accept or reject the recommendations of any committee for enactment of any laws.

5. Keeping in view thereto writ petition is found to be wholly frivolous deserves to be dismissed and is accordingly dismissed with cost of Rs.10,000/- to be deposited with the Bihar State Legal Services Authority.

(Sanjeev Prakash Sharma, J)

shaswat/
sachin
Item No. 59

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