

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5425 of 2020

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Rajkishor Sharma Son of Sri Ram Padarth Sharma, Resident of Rampur Charui, P.O. Modanganj, P.S. Ghosi, District- Jehanabad.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. Director (Primary Education), , Human Resources Development Department, Government of Bihar, Patna.
3. District Education Officer, Nalanda District- Bihar Shariff.
4. Sri Kabir Keshav Middle School, Navadiha, through its Principal, P.O. Dhurgaon, P.S. Hilsa, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.M.Joseph, Adv.
For the Respondent/s : Mr. Priyadarshi Matri Sharan, AC to Aag15

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 29-11-2022 1. The petitioner by way of this writ petition prays for directions to set aside the order dated 20.09.2019 issued by the Director, Primary Education, whereby he has rejected the proposal to approve appointment granted to the petitioner dated 22.12.2011 as Assistant Teacher in the aided school.

2. Learned counsel for the petitioner submits that the school named as Sri Kabir Keshav Middle School, Navadiha is a private school managed by a minority institution namely the Kabir Panthis. The school has 9 sanctioned posts including one Headmaster and 6 teachers and the school was receiving aid from the government for the said post. Learned counsel submits



that the petitioner was appointed against the sanctioned post by falling due procedure, and therefore, the appointment was required to be approved by the Director. The order passed dated 20.09.2019 is erroneous and unjustified.

3. Learned counsel relies on a judgment passed by Coordinate Bench of this Court in Smt. Sangam Srivastava Vs. State of Bihar in C.W.J.C. No.10990 of 2013 dated 20.11.2018 to submit that in a minority managed aided school, the school has a right to fill the post. The issue of appointment of Assistant Teachers within the sanctioned strength in a minority institution

“the issue of ban on appointment of Assistant Teacher within the sanctioned strength in minority institution does not merit any consideration for the simple reason that once the State Government has approved the post it was the right and privilege of the Managing Committee of the educational institution to appoint on the post of Assistant Teacher.”

4. Learned counsel submits that in view of the said judgment, the order passed by the Director dated 20.09.2019 deserves to be quashed.

5. I have carefully considered the submissions and I find that the State Government vide its order dated 21.08.2007 passed a general order restraining the appointment of teachers in non-government primary school including minority institutions



which were aided by the State Government on the ground that the rules were being framed laying down the procedure for appointment of such teachers by the state Government. It was specified that on the sanctioned posts in such schools, appointment shall be allowed only after the procedures and rules are framed.

6. The order dated 21.08.2007 was inforce at the time when the appointment was offered to the petitioner by the said aided school i.e. on 22.12.2011. The aided school never challenged the order dated 21.08.2007 before any forum and in violation of the order passed by the State Government and ignoring, it proceeded to make appointment.

7. The Director vide his order dated 20.09.2019 has observed that the ban continued to remain inforce up to 14.04.2016 and therefore any appointment made in the intervening period from 21.08.2007 to 14.04.2016 would be in the violation of the orders of the Government and therefore they cannot be said to be allowed to continue against the aided post. Accordingly, it disapproved the appointment granted to the petitioner on 20.12.2011.

8. This Court finds that the order passed by the Director is in consonance and in conformity with the State



Government's order dated 21.08.2007. The appointment having been conducted during the period of ban and ignoring the same, cannot be approved by the State Government. Even though the minority management may have a right to give appointment, such appointment would be treated to be against unaided posts and the school cannot claim aid against the said appointment or approval from the government.

9. The independence of the minority institution as laid down in **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors reported in 2002 (8) SCC 481**. The Apex court held as under:-

“73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the state. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the state. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. in other words, the autonomy of a private aided institution



would be less than that of an unaided institution.

136. Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also -- for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of [Article 30\(1\)](#) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under [Article 30\(1\)](#) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under [Article 30\(1\)](#).

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under [Article 30](#).



142. The implication of [Article 30\(2\)](#) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the state cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature of character of the incipient educational institution.

143. This means that the right under [Article 30\(1\)](#) implies that any grant that is given by the state to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.”

10. This Court finds that the judgment passed by the Co-ordinate Bench can be said to be only in relation to the appointment made and the power of appointment available with



the institution.

11. In view thereof, while the petitioner may continue to perform his duties with the school the State would not be bound to release aid against the said post.

12. However, granting of aid against the said post would be only in cases, where the appointment is given in accordance with the directions of the State Government. Since the Co-ordinate Bench had no occasion to examine the order passed by the State Government dated 21.08.2007 and even before this Court, the order dated 21.08.2007 being not under challenge, the same cannot be ignored. Accordingly challenge to the consequent order passed by the Director fails.

13. The writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

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