

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23721 of 2019

=====

Chandra Bhushan Prasad Singh S/o Late Sanat Kumar Maharshi Resident of Village- Simaria, P.s.- Barauni, District- Begusarai, At present 1/C- Headmaster, Sri hari Ganga Tantra Lata Sanskrit Uchha Vidyalaya, Simariya, P.s.- Barauni, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna
2. The Special Director (Secondary Education), Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna
3. The Bihar Sanskrit Shiksha Board through the Secretary, Bihar Sanskrit Shiksha Board, Boring Canal Road, Patna
4. The Secretary Bihar Sanskrit Shiksha Board, Boring Canal Road, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Santosh Kumar, Adv.
For the Respondent/s : Mr. S.S. Sundaram, Adv. &
Mr. Sanjay Kumar, Adv. AC to GP-17

=====

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

4 21-03-2022 Heard the parties.

The petitioner by way of this writ petition assails the order dated 22.02.2019, whereby the petitioner's appointment and promotion were canceled from the date of passing of the order and further salary paid to the petitioner was directed to be recovered.

Learned counsel for the petitioner submits that order dated 22.02.2019 has been passed in violation of principles of natural justice without



giving any opportunity of hearing to the petitioner.

Learned counsel submits that the order purportedly mentions to be in compliance of order dated 27.07.2009, passed by this Court in C.W.J.C. No. 15805 of 2001 (Kailash Thakur Vrs. The State of Bihar & Ors.).

Learned counsel submits that the order dated 27.07.2009, passed by this Court in no manner directed to take action against the petitioner, nor it directed the petitioner to be removed from the post. He further submits that the petitioner was further promoted after 2009 as Headmaster vide order dated 12th June, 2018. The petitioner was not even issued show cause notice. He could not explain the circumstances and the order has been passed illegally.

Learned counsel has taken this Court to the judgment passed by this Court in the Writ Petition (supra) to point out the observations made with regard to continuance of the petitioner.

Learned counsel has pointed out that the beneficiary of the judgment passed by this Court in the Writ Petition (supra) namely Kailash Thakur Vs.



The State of Bihar has expired soon after the judgment was delivered by this Court. The fruits of judgment therefore, could not be extended to the said writ petitioner. The post was not filled by the Kailash Thakur and the petitioner continued on the post till promotion and till the impugned order dated 22.02.2019 has been passed.

Learned counsel submits that the petitioner is on the verge of retirement and, therefore, he deserves to be reinstated and continued on the post.

Per contra, learned counsel appearing for the State has supported the order and submitted that the order is in compliance of the Court's order passed in Kailash Thakur Vrs. The State of Bihar. He submits that the petitioner was party to the said writ petition and as per the said judgment, the concerned writ petitioner namely Kailash Thakur was required to be reinstated on the post, which the petitioner was holding. The aspect regarding opportunity of hearing has not been disputed, but learned counsel submits that in the circumstances, where the order has been passed by this Court, the second opportunity of hearing be not be required as the orders are actually



in compliance of the Court's order, where opportunity of hearing was already granted to the petitioner.

I have considered the submission, the matter relates to selection to the post of Teacher by the Managing Committee. The writ petitioner in C.W.J.C. No. 15805 of 2001 (Kailash Thakur Vrs. State of Bihar) was filed assailing the order dated 01.08.2001, whereby it was intimated that he has been found to be working as surplus teacher and beyond the sanctioned strength and, therefore, he was removed from the service. It was also intimated that the respondent no. 6 (present petitioner) in the said writ petition had been found to be senior to him and was, therefore, continued, while the said writ petitioner was removed.

This Court after examining all the aspects found that the action was illegal and it was, therefore, directed as under:-

“16. In the result, the respondents are directed to reinstate the petitioner in service in the School forthwith with all consequential benefits of continuity of



service and pay his all arrears of salary with increments etc. as he may be entitled for, positively within a period of three months from the date of receipt/production of a copy of this order.

17. However, this Court is conscious of the fact that the State Government should not bear the burden of payment to the petitioner as respondent no. 6 must have drawn his salary during this period against the same post. Therefore, this Court gives liberty to the respondent-Special Director to take steps for recovery of salary etc. which will be paid to the petitioner of this period, from anyone responsible for this anomaly cropped up in the marks of the Interview Board including the Secretary of the school who was admittedly father of respondent no. 6, after complying with Principles of Natural Justice. This Court is also conscious of the fact that the allegation that the petitioner



is a nephew of a Member of the Managing Committee has not been denied by the petitioner. But from the interview chart it does not appear that undue favour was shown to him and, therefore, no fault can be found in allotment of the marks to him and his selection.

18. So far as validity of appointments of respondent no. 6 and 7 are concerned, petitioner has not made any prayer against them and, therefore, this Court refrains from making any observation with regard to their appointment and continuance. This aspect of the matter is left open for the respondents to go into, if necessary and take a final decision.”

From perusal of the aforesaid, it is apparent that while directions were issued to the writ petitioner namely Kailesh Thakur to be reinstated, there was neither any direction for removing nor any observations were made with regard to appointment



and continuance of the petitioner and another respondent. It was left open for the authorities to take action. The Court has also mentioned a word of caution of compliance with opportunity of hearing.

It appears that after the judgment dated 27.07.2009, the concerned petitioner Kailash Thakur could not be reinstated as he expired. There were two sanctioned posts as noticed above. The said writ petitioner Kailesh Thakur had come before the Court as he was declared as surplus as are excess teacher, he was removed but since he has not been reinstated, the question of removal of existing teachers does not arise and it appears that due to this reason the petitioner has continued to serve the school till the order dated 22.02.2019 was passed. He was also promoted as an officiating Headmaster on 12th June, 2018.

In the aforesaid backdrop or examining the impugned order, this Court finds that the order impugned does not take into consideration, the aspects as noticed above, it also does not take into consideration that Kailash Thakur was not reinstated and nor it has taken into consideration that the posts



were two in number and the petitioner has been further promoted. Thus the impugned order is found to be wholly laconic.

This Court also finds that the petitioner has been continued in service from 1981 up to 2019. A substantive right has been created in his favour as he was already confirmed teacher and regularly appointed. In view thereof, the minimum which was required by the State authorities were to provide opportunity of hearing to the petitioner against the proposed action. However, admittedly, no such opportunity was provided.

Provisions of audi altrem partem is an essential rule of law and equity which is required to be adhered to any action taken which takes away substantive right of an individual.

Keeping in view above, this Court finds that the action of the respondents is not sustainable in law on both counts.

Accordingly, this writ petition deserves to be allowed and is accordingly allowed. The order dated 22.02.2019 is quashed with all consequential benefits. The petitioner would be entitled to



reinstatement and continuing of service with all consequential benefits which flow from the same including pay and arrears. There is no order as to costs.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

U			
---	--	--	--

