

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1676 of 2019

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Md. Taki Imam, Son of Md. Murtaza Hussain, Resident of Village- Kasba,
P.S.- Shambhuganj, District- Banka.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources, Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Banka.
4. The District Education Officer (Establishment), Banka
5. The District Programme Officer (Establishment), Banka
6. The Block Development Officer, (BDO), Shambhuganj, Banka
7. The Block Education Officer (BEO), Shambhuganj, Banka
8. The Block Withdrawal and Disbursing Officer, Shambhuganj, Banka
9. The Treasury Officer, Banka.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Kumar Sharma, Advocate
		Mr. Md. Najmul Hodda, Advocate
For the Respondents	:	Mr. Kameshwar Kumar, GP-17
		Mr. Amit Bhushan, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 26-09-2023

This writ application has been filed seeking setting aside of the order dated 29.12.2018 contained in Memo No. 3302 passed by the District Education Officer (Establishment), Banka (Annexure '3' to the writ application) by which the respondent authority has directed for recovery of the difference of amount of pay scale benefit earlier given to the petitioner in the category of Matric and Graduate Trained Pay Scale. The petitioner also prays for other reliefs.



Stand of the Petitioner

2. The petitioner was appointed as Assistant Trained Teacher in the category of Matric Trained Pay Scale vide Memo No. 1277 dated 15.06.1995 in the Middle School, Assimakaitha, Block- Dharaiya, District- Banka. He was promoted in Graduate Trained Pay Scale vide Memo No. 549 dated 18.02.2011 as contained in Annexure '2' to the writ application. In order to get promoted in the Graduate Trained Scale, the petitioner submitted a certificate of B.Ed. Degree issued from Non-Government Sogra College of Education, Biharsharif, Nalanda (hereinafter referred to as the 'College in question' or 'College'). He claims to have done B.Ed. Course during the Session 1984-85 from the College in question under Magadh University, Bodh Gaya (hereinafter referred to as the 'University') and passed the examination held in the year 1990.

3. At this stage, the bone of contention is that Respondent No. 4 has held by the impugned order that the degree of B.Ed. issued by the College in question is not a valid degree fit for selection and appointment of Teacher. Direction has been issued to recover the difference of the amount of pay scale earlier given to the petitioner in the category of Matric and Graduate



Trained Pay Scale, therefore, the petitioner submits that he has been demoted from the post of Headmaster in Graduate Trained Pay Scale and has been directed to join in Matric Trained Pay Scale in Upgraded Middle School, Karhariya, Shambhuganj, Banka.

4. In the writ application, the petitioner has taken a specific stand that the impugned order has been passed in violation of principle of natural justice without affording him any opportunity of hearing. It is his submission that he had not made any misrepresentation or fraud for the purpose of availing the benefit of promotion in Matric and Graduate Trained Pay Scale.

5. Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.** reported in **PLJR 215 (1) SC 261**, learned counsel submits that the ratio of the said judgment would apply in the facts of the present case because B.Ed. degree of the petitioner has been declared not fit after about 23 years of his satisfactory service and Graduate Trained Pay Scale had been given in the year 2011. He has also relied upon some of the judgments of this Court in the case of **State of Bihar Vs. Ram Sharan Prasad** reported in **2007 (Supplementary) PLJR 223** and **State of Bihar Vs. Rajendra Prasad Srivastava** reported in **2016**



(3) **PLJR 509** to submit that without any laches or misrepresentation on the part of the petitioner, monetary benefits have accrued and paid to him, the same will not be recovered.

Stand of the State Respondents

6. The State respondents have filed a counter affidavit through the District Programme Officer (Establishment), Banka. The impugned order has been defended on the ground that there is no dispute that the petitioner was appointed on the basis of degree/certificate of Teacher's Training obtained from the College in question which is an invalid or unrecognized institution. The said institution was never treated to be a recognized institution and when a writ application being **CWJC No. 4560 of 2007 (Md. Adil Rashid and Ors. Vs. The State of Bihar and Ors.)** was filed before this Court seeking direction to the State respondents to include this College in the list of the recognized Non-Government Colleges imparting B.Ed. education, the said writ application was allowed by the learned Writ Court vide order dated 24.10.2011 with a direction to the State respondents to include the College in the list for the Session 1985-86 and other sessions for which its students were allowed to appear in the B.Ed. examination conducted by the University. The said order of the learned Writ Court was assailed in LPA No. 1241 of 2014. LPA No. 1241 of



2014 was allowed vide order dated 19.05.2015 and the direction issued by the learned Writ Court was set aside.

7. Learned counsel for the State, therefore, submits that in view of setting aside of the judgment of the learned Single Judge passed in the writ application, the degree/certificate issued by the College in question remained unrecognized and the same cannot be treated to be a valid document. It is also submitted that any decision with regard to validity or invalidity of a degree/certificate primarily remained in the domain of the State Government. The State Government has never granted any recognition to this institution.

8. Referring to an order appearing in Memo No. 71 dated 25.04.2014 (Annexure 'R/5-B' to the counter affidavit), learned counsel for the State submits that the Department of Education, Government of Bihar examined the matter relating to grant of recognition to the College in question and this was done pursuant to the order of this Court in **CWJC No. 12879 of 2005 (Umesh Kumar Nirmal and Ors. Vs. State of Bihar and Ors.)**. The matter was examined by the Research and Training Directorate and the College was invited for hearing in the said matter but no one appeared on behalf of the College on the date fixed with the required documents. Some representations were,



however, made by some of the candidates who had also appeared but they could not produce satisfactory documents. This order specifically states that this institution had never been granted promotion for any academic session to conduct Teachers Training Course. It is stated that the College comes within the University but without permission from the State Government, if any examination has been conducted and the students have been given marksheets/certificates then the same cannot be considered for the purpose of appointment of Teacher. Annexure 'R/5-B' was issued on 25.04.2014 and it is submitted that the same has remained undisturbed.

9. Learned counsel for the State, therefore, submits that no interference is required with the impugned order. Learned counsel further submits that prior to passing of the impugned order, the petitioner was given an opportunity to submit his stand, therefore, it is not correct to say that the petitioner was not given any opportunity of hearing.

10. Attention of this Court has been drawn towards the direction of this Court in CWJC No. 14138 of 2014 (Md. Alauddin Azmi and Others Vs. The State of Bihar and Others) in which similarly situated Teachers appointed on the recommendation of the Bihar Public Service Commission and who were continuing on



the basis of the B.Ed. degree issued by this College had intervened in the writ application claiming that they may be removed by the authorities. In the counter affidavit, the relevant part of the order of the Hon'ble Writ Court has been quoted and attention has been drawn towards the observations of this Court saying that "so far as grant of trained scale on the strength of Teachers Training Degree of Sogra College of Education, Biharsharif, Nalanda is concerned, if their degrees are invalid then the Education Department may withdraw the benefit of Trained Scale and that cannot be a ground for removal of intervener. ..."

11. It is stated that the petitioner stands on similar footing and as per the order of this Court, the impugned order has been passed wherein the trained scale of the petitioner has been withdrawn and recovery has been ordered.

12. Learned counsel for the State has submitted that the petitioner was given an opportunity of hearing before passing of the impugned order. In this regard, attention of this Court was drawn towards the Letter No. 2784 dated 03.11.2018 and Letter No. 3104 dated 06.12.2018 which are Anenxures 'R/5-D' and 'R/5-E' respectively. In paragraph '13' of the counter affidavit, it is stated that the petitioner had filed his reply wherein he has



admitted that he was appointed and continuing on the basis of B.Ed. degree obtained from the College in question.

Consideration

13. Having heard learned counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that the petitioner claims to have pursued his B.Ed. Course from the College in question during Session 1984-85 for which the examination was held by University in the year 1990. This certificate has been the bone of contention between the parties. From the developments which are evident from the various office orders issued by the Department of Education, Government of Bihar, it is evident that the matter relating to grant of recognition to the Academic Session of this College in B.Ed. course was pending consideration before the Department. Annexure 'R/5-B' is the order dated 25.04.2014 passed by the Joint Secretary, Education Department, Government of Bihar which has been issued in compliance with the direction of this Court in CWJC NO. 12879 of 2006 issued on 06.02.2014. This Annexure 'R/5-B' states that because of the pendency of CWJC No. 12879 of 2006, the Department had some difficulty in taking a decision but after order of the Court, it has become clear. This office order further states about the hearing fixed by the Research



and Training Directorate on 09.10.2012 in which the Principal of the College and some of the students who have obtained B.Ed. Degree were present. From Annexure 'R/5-B', it also appears that the Hon'ble Supreme Court had in Contempt Petition (C) No. 297 of 2007 in SLP (C) No. 22882 of 2009 taken note of the statements of some of the aggrieved candidates who had obtained B.Ed. Degree from this College and after taking note of their grievance that the institution has been kept in fake/unrecognized category, and informed that some of the candidates from the same institution have been considered eligible whereas some of them are not being considered, the Hon'ble Supreme Court granted liberty to the candidates to apply to the Bihar Staff Selection Commission for recognition of their status and the status of their institution in respect of which objections have not been considered by the Special Officer. The office order states that in the light of the aforesaid order of the Hon'ble Supreme Court, the Bihar Staff Selection Commission is taking appropriate action. Having said so, the office order (Annexure 'R/5-B') considered the matter relating to the grant of recognition of the College in question and finally concluded that its degree is not recognized for purpose of appointment as Teacher. Nothing has been brought before this Court that Annexure 'R/5-B' has been interfered with by a



competent court of law or this office order has been diluted otherwise. If it is so, then it has to be concluded that the B.Ed. Degree of the college in question has not been recognized by the Government for the purpose of appointment as Teacher.

14. The judgment of the Hon'ble Division Bench of this Court in LPA No. 1241 of 2014 which has been relied upon by learned counsel for the State further shows that the judgment of the learned Writ Court passed in CWJC No. 4560 of 2007 was set aside.

15. The counter affidavit of the State, in paragraph '14' quotes the relevant part of the judgment of the learned Writ Court passed on 20.11.2018 in CWJC No. 14138 of 2014 which reads as under:-

"5. ... It goes without saying that those who were appointed as Assistant Teachers on the recommendation of the Bihar Public Service Commission in terms of 1991 Recruitment Rules cannot be removed, if granted trained scale on the basis of B.Ed. degree of Sogra College.

6. It is well settled legal position that in terms of 1991 Recruitment Rules, selection process was undertaken by the Bihar Public Service Commission and on the recommendation of the B.P.S.C., trained as well as untrained teachers were appointed and simply because defects were noticed in grant of trained scale cannot be a ground to find fault in the initial appointment.

7. So far as appointment of teacher as untrained on the recommendation of B.P.S.C. is concerned, the Court is



of the considered view that no defect can be taken in the appointment of intervener applicants, if made on the recommendation of the B.P.S.C.

8. So far as grant of trained scale on the strength of teachers training degree of Sogra College of Education, Bihar Sharif, Nalanda is concerned, if their degrees are invalid then the Education Department may withdraw the benefit of trained scale and that cannot be a ground for removal of intervener.

9. It is made clear that this Court has never intended that a teacher appointed on the recommendation of the B.P.S.C. as untrained can be terminated, if such teachers on the strength of teachers training degree from Sogra College of Education, Bihar Sharif, Nalanda have been granted the benefit of trained scale, the respondents may take appropriate steps with regard to withdrawal of trained scale after opportunity of hearing to the applicants of I.A. Nos. 8662 of 2018 and 8663 of 2018.”

16. The case of the petitioner stands on similar footing with the intervenors of CWJC No. 14138 of 2014.

17. On the basis of the aforesaid materials, this Court would conclude that so far as the validity of the B.Ed. Degree issued by the College in question is concerned, this Court cannot confer any validity to the same on the face of the decision of the Government as contained in Annexure ‘R/5-B’. The withdrawal of trained scale of pay is also in tune with the observations of this Court in CWJC No. 14138 of 2014. The petitioner has been given opportunity of hearing and the plea of the petitioner that the impugned order was passed in



violation of the principles of natural justice has been negated by the State with specific statements and materials with the counter affidavit.

18. This Court is, therefore, of the considered opinion that the impugned office order (Annexure '3' to the writ application) insofar as it states that the benefit of the trained pay scale is being withdrawn cannot found fault with. The office order is sustained to that extent.

19. As a result of this Teachers Training Certificate, if the petitioner got promotion and obtained benefit of the promoted post and the same is being withdrawn, this Court would not interfere with the same but the office order insofar as it directs recovery of the difference of amount paid to the petitioner on account of the grant of Trained Pay Scale cannot be sustained. This Court finds that the matter relating to grant of recognition to the B.Ed. degree of the College in question was pending consideration for a long time and the certificate had been issued after the University conducted the examination in which the petitioner passed. The controversy regarding validity of the certificate was pending consideration and it could be resolved only vide Annexure 'R/5-B' to the counter affidavit in the year 2014. Thereafter also, this issue was raised before this Court in various writ applications and the matter went to the Hon'ble



Division Bench in LPA No. 1241 of 2014 which was heard and disposed of on 19.05.2015. The respondent authorities proceeded to take steps towards passing of the impugned order only after the Director, Primary Education wrote Letter No. 1382 dated 26.10.2018 to all the District Education Officers/District Programme Officers (Establishment) directing them to make available a report with regard to action taken in the matter of those Teachers who had been appointed on the basis of invalid Teachers Training Certificate. It is evident from Annexure ‘R/5-C1’ dated 26.10.2018 written by the Director, Primary Education that there had been a delay and inaction on the part of the respondent State authorities itself. For all these reasons, this Court is of the considered opinion that no recovery may be done from the petitioner at this stage. To that extent, the impugned order as contained in Annexure ‘3’ would be deemed to have been set aside.

20. This writ application is partly allowed.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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