

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4113 of 2023

S.S.P.S. College, Shambhuganj through its Principal Dr. Yogesh Kumar Singh aged about 62 Years, (Male), Son of Late Jiwan Prasad Singh, Resident of Village - Kushaha, Post Office - Gulni, Police Station - Shambhuganj, District- Banka.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Baily Road, Patna - 800001.
2. The Director Secondary Education, Government of Bihar, New Secretariat, Baily Road, Patna - 800001.
3. The Regional Deputy Director of Education, Bhagalpur, District - Bhagalpur.
4. The District Education Officer, Banka Police Station and District - Banka.
5. Bihar School Examination Board (Senior Secondary) BSEB, in short, through its Chairman, Buddha Marg, Police Station - Kotwali, Patna.
6. The Secretary, Bihar School Examination Board, (Senior Secondary, Buddha Marg, Police Station - Kotwali, Patna.
7. The Director (Education), Bihar School Examination Board, Buddha Marg, Police Station - Kotwali, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 2107 of 2023

S.S.P.S. College, Shambhuganj through its Principal Dr. Yogesh Kumar Singh aged about 62 years, (Male), Son of Late Jiwan Prasad Singh, Resident of Village- Kushaha, Post Office- Gulni, Police Station- Shmbhuganj, District- Banka.

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Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Baily Road, Patna- 800001.
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3. The Regional Deputy Director of Education, Bhagalpur, District- Bhagalpur.
4. The District Education Officer, Banka Police Station and District- Banka.
5. Bihar School Examination Board, (Senior Secondary) through its Chairman, Buddha Marg, Police Station- Kotwali, Patna.
6. The Secretary, Bihar School Examination Board, (Senior Secondary) Buddha Marg, Police Station- Kotwali, Patna.
7. The Director (Education), Bihar School Examination Board, (Senior Secondary) Buddha Marg, Police Station- Kotwali, Patna.



... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 4113 of 2023)

For the Petitioner/s : Mr.Madhav Roy, Advocate
Mr.Rabindra Nath Tiwari, Advocate
Mr.Rakesh Kumar Jha, Advocate
For the BSEB : Mr.Manish Kumar, Advocate
Mr.Manjit (GP-20)
Mr.Subhash Chandra Mishra (SC-16)

(In Civil Writ Jurisdiction Case No. 2107 of 2023)

For the Petitioner/s : Mr.Madhav Roy, Advocate
Mr.Rabindra Nath Tiwari, Advocate
Mr.Rakesh Kumar Jha, Advocate
For the BSEB : Mr.Manish Kumar, Advocate
Mr.Manjit (GP-20)
Mr.Subhash Chandra Mishra (SC-16)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 08-08-2023

I.A No. 1/2023 in CWJC No. 4113 of 2023

This application has been filed seeking leave of the Court to allow the petitioner to correct certain mistakes which have cropped up while drafting the writ petition.

2. Application is allowed.

3. Learned counsel for the petitioner is permitted to carry on the correction.

I.A. No. 1/2023 in CWJC No. 2107 of 2023

4. This application has been filed under Rule 13, Chapter III-A, Part 41 of the Rules of Patna High Court. The petitioner is praying for inclusion of a prayer to quash and cancel the order dated 13.12.2022 (Annexure '15') whereby and whereunder the students of the petitioner- College who were admitted and registered and were sent up from the petitioner-



College for the Session 2021-23 and the students admitted in the petitioner- College for the Session 2022-24 have been tagged in RMK Inter School, Banka under Code No. 72021.

5. Learned counsel for the Board submits that he will have no objection if the reliefs prayed in the interlocutory application be also considered with the reliefs prayed in the main writ application (CWJC No. 4113/2023). In the aforesaid view of the matter, this interlocutory application is allowed.

6. Let the reliefs prayed in this interlocutory application be treated as part and parcel of the main writ application (CWJC No. 4113/2023).

7. Heard learned counsel for the petitioner, learned counsel for the Bihar School Examination Board (hereinafter referred to as the 'Board') as well as Mr. Subhash Chandra Mishra, learned counsel SC-16 for the State.

8. Mr. Madhav Roy, learned counsel for the petitioner has requested this Court to consider CWJC No. 2107 of 2023 as the lead case. Accordingly, this Court would refer the fact and materials from the said writ application.

9. This writ application has been filed seeking a writ in the nature of Writ of Certiorari to quash and cancel the order contained in BSEB(SS)/Coll-Estab/3703/D-2022, Patna dated



28.10.2022 issued by the Director (Education) of the Board (Respondent No. 7) whereby and whereunder the recognition of the College in question has been terminated and the code granted for intermediate level i.e. Code no. 72012 has been cancelled with immediate effect.

10. Learned counsel for the petitioner submits that the impugned action has been taken on the basis of an inquiry report which contains untrue and incorrect facts. Learned counsel submits that Respondent Nos. 5, 6 and 7 are interfering with the smooth functioning of the petitioner-College which is imparting education in the area since the year 1979 without any complaint. It is prayed that till final adjudication of the writ application, the effect of the impugned letter as contained in Annexure '1' be kept in abeyance.

11. Mr. Manish Kumar, learned counsel for the Board has opposed these writ applications. It is submitted at the first instance that against the impugned action, the petitioner has got a remedy before the District Appellate Authority constituted under the Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020 (hereinafter referred to as the 'Rules 2020').

12. Learned counsel submits that under Rule 13 (A)



(iii), the Tribunal is competent to resolve the disputes and complaints pertaining to process of recruitment and distribution of Grants-in-Aid with respect to Aided/ Permission for Establishment/ Recognized Secondary and Senior Secondary Schools and Aided Colleges. It is submitted that in this case the college is an aided college and the petitioner- College is looking for its recognition as also the Grants-in-Aid. Therefore, the case of the petitioner may only be maintained before the District Appellate Authority.

13. Learned counsel further points out from Annexure '9' to the writ application that a Three Member Committee was constituted by the Board to conduct inspection of the College in question. The said Committee conducted an inspection and submitted a report vide letter no. 1516 dated 30.09.2021 under signature of the District Education Officer, Banka. The Three Members Committee reported several shortcomings and opined that on fulfilling criteria in terms of the affiliation rules and upon removal of the discrepancies/ shortcomings the College may once again submit its application with requisite inspection fee for instruction. It is submitted that copy of Three Members Committee report was made available to the petitioner- College.

14. Learned counsel has brought on record the



subsequent Two Members Committee report which is Annexure 'D' to the counter affidavit. Learned counsel submits that the Two Members Committee pointed at least seven points in its inspection report. It is, however, admitted that so far as Annexure 'D' to the counter affidavit is concerned, this has not been made available to the petitioner.

15. Having heard learned counsel for the petitioner, Board and the State, this Court finds that the petitioner has an alternative statutory remedy before the District Appellate Authority, however, in view of the admitted fact that the copy of the Two Member Committee inspection report (Annexure 'D' to the counter affidavit of the Board) was not made available to the petitioner and no opportunity of hearing was given to the petitioner prior to taking a decision as contained in Annexure '1' to the writ application which is based on this report, this Court is of the considered opinion that the petitioner has been able to make out a case of violation of principles of natural justice which in turn is in the nature of a jurisdictional error, hence, despite there being a statutory alternative remedy, this Court may entertain these writ applications.

16. It is well-settled that the principle of alternative remedy is a rule of convenience and the same is not a rule of



law. This Court is, therefore, of the considered opinion that the petitioner be given an opportunity to submit its response/objection if any to the Three Members and Two Members Committee report. Since the reports are already available on the record, there would be no need to serve a copy of the report afresh upon the petitioner, the petitioner shall submit its response to the reports within a period of four weeks from today before the Director (Education) of the Board.

17. The Director (Education) of the Board shall thereafter consider the response/ objection of the petitioner, give them a hearing and pass an appropriate order within a period of six weeks.

18. Till then, the request of the petitioner for grant of affiliation/ recognition shall be treated as pending.

19. These writ applications stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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