

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3201 of 2022

Shivam Kumar Mishra, S/o Late Santosh Mishra through his Guardian
Kalawati Devi, Female Aged - 53 Years, W/O Jitendra Panday, R/O - Village -
Niyzipur, Milki, Ward No. - 05, Nadwa, P.O. - Dinara, Dinara, District-
Rohtas. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
 2. The District Education Officer, Rohtas.
 3. The Bihar Sanskrit Shiksha Board, Patna through its Secretary.
 4. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
 5. The Secretary, Bihar Sanskrit Shiksha Board, Patna.
 6. The Headmaster, Baldeo Sanskrit High School, Dinara, Rohtas.
- Respondents

Appearance :

For the Petitioner	:	Mr. Gyan Shankar, Advocate
For the State	:	Mr. Narendra Kumar, AC to GP-20
For the Board	:	Mr. Satyam Shivam Sundaram, Advocate
		Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 24-08-2023 Heard learned counsel for the petitioner and learned
counsel for the Bihar Sanskrit Shiksha Board (hereinafter referred
to as the 'Board') as also learned counsel for the State.

2. The petitioner in the present writ application is
seeking the following reliefs:-

“(i) Issuance of a writ, writ(s), order/orders for
quashing the letter bearing memo no. 3638
dated 29.11.2021 issued under the signatures of
the Secretary, Bihar Sanskrit Shiksha Board,
Patna whereby direction has been issued to all
District Education Officers of the concerned
districts to start payment of salary to the
teaching and non-teaching staffs of the



recognized Sanskrit Schools from the date of grant of approval of their services by the Board and to hold that the said order is not applicable in the present case of Late Sweta Devi, Assistant Teacher, Baldeo Sanskrit High School, Dinara.

(ii) Issuance of a writ, writ(s), order, orders commanding the respondent authorities to pay the arrears of salary of late Sweta Devi, who was posted as Assistant Teacher in Baldeo Sanskrit High School, Dinara for the period of 01.10.2009 to 30.09.2021 which was illegally withheld/ not paid to her on account of inaction/arbitrariness on the part of the Bihar Sanskrit Shiksha Board, Patna.

(iii) For issuance of any other writ(s), order(s) or direction(s) as may be deemed fit and proper by this Hon'ble Court.”

Case of the Petitioner

3. It is the case of the petitioner that his mother Sweta Devi (since deceased) was appointed as an Assistant Teacher in Baldeo Sanskrit High School, Dinara, Rohtas vide Appointment Letter issued on 21.09.2009 (Annexure '2' to the writ application). According to Annexure '2', she was appointed in the pay scale approved by the Education Department and she would have been entitled for her payments after approval of her appointment by the Department.

4. The mother of the petitioner joined the school vide Annexure '3' to the writ application. A proposal for approval of



her appointment by the Board was sent vide Annexure '4' dated 05.10.2009 by the Secretary of the School along with all the relevant documents as required under the Bihar State Non-Government Sanskrit High School (Service Condition) Rules, 1976 (hereinafter referred to as the 'Rules of 1976').

5. It is the further case of the petitioner that a service book of his mother was also opened by the Headmaster of the School. She continued to discharge her duties to the satisfaction of all concerned, however, she died in harness on 30.09.2021.

Submissions of the Petitioner

6. Learned counsel for the petitioner submits that the proposal for approval of the service of the mother of the petitioner was sent to the Board on 05.10.2009 which ought to have been approved by the Board within a stipulated period of one month from the date of receipt of the proposal but in this case, no communication was received from the Board despite sending the reminders. In this regard, letter bearing Memo No. 12 dated 30.08.2010 and Letter No. 01 dated 10.02.2014 have been brought on record as Annexure '5 Series' to the writ application. The submission is that the Board was sitting over the matter of approval of appointment of the mother of the petitioner.

7. Learned counsel submits that ultimately the service of the mother of the petitioner was approved by the Board vide



Memo No. 3038 dated 20.09.2021 (Annexure '8' to the writ application), however, because of the communication as contained in Letter No. 3638 dated 29.11.2021 by the Board to all the District Education Officers and the District Programme Officers (Establishment), the salary etc. of the teaching and non-teaching staffs are to be allowed from the date of issuance of the letter. This letter as contained in Annexure '1' to the writ application is under challenge.

8. Learned counsel for the petitioner submits that the mother of the petitioner is entitled for salary for the period she has worked in the School i.e. from 01.10.2009 to 30.09.2021. He has further drawn the attention of this Court towards the relevant Rules of 1976 to submit that if the proposal sent for approval of the appointment of the petitioner's mother was not considered and no decision was communicated within a period of 15 days then it is to be assumed that the proposal has been accepted by the Board.

Submission of the Board

9. The writ application has been opposed by learned counsel for the Board. A counter affidavit has been filed. Learned counsel for the Board submits that on perusal of the Appointment Letter (Annexure '2'), it would appear that the appointment of the mother of the petitioner was in the nature of a temporary appointment. Referring to the Rules of 1976, learned counsel



submits that under Rule 1 of the said Rule, all regular appointments of the teachers and non-teaching staffs are to be made only after publication of the vacancies in the newspaper which should be published in main Hindi newspaper at the State level, however, a temporary/short term appointment may be made for a maximum period of three months by giving a local advertisement.

10. Learned counsel submits that in this case, although the petitioner has made statement that an advertisement was issued after seeking permission from the Board, no copy of advertisement has been brought on the record, further the appointment letter is for temporary appointment, therefore, the petitioner cannot contend that his mother was appointed as a regular teacher in the school.

11. It is his submission that in any case, as per the Rules of 1976, the temporary appointment shall come to an end on expiry of the period of three months. Learned counsel submits that so far as the submission of learned counsel for the petitioner that on non-receipt of a communication with regard to the proposal for approval of appointment within a period of 15 days, the same will be deemed to have been approved is concerned, the same is not a correct submission inasmuch as there is no such provision and a careful reading of Rule 8 of the Rules of 1976 would show that it



talks of the action to be taken on the part of the Secretary/Chairman on receipt of the recommendation of the Sanskrit Shiksha Parishad Samiti. Learned counsel submits that in the present case, the Memo No. 3038 dated 20.09.2021 (Annexure '8') is simply an approval of the temporary appointment of the mother of the petitioner done by the Managing Committee of the School in its meeting held on 29.09.2009. In his submission, Annexure '8' cannot be construed to take a view that the mother of the petitioner was a regular teacher and that the Board accepts that she was continuously teaching in the school since the year 2009.

Consideration

12. Having heard learned counsel for the petitioner and the respondent Board as also on perusal of the records, this Court finds that the petitioner is unable to establish from the records that her mother was appointed as a regular teacher after advertisement etc. in accordance with the Rules of 1976. So far as Annexure '8' to the writ application is concerned, it only gives an impression that the temporary appointment of the mother of the petitioner was approved. The Rules of 1976 are very clear inasmuch as they provide that the temporary appointments may be done for a maximum period of three months.

13. This Court further finds that as per the claim of the petitioner, his mother kept on working from the year 2009 till her



death without receipt of any salary but there is nothing on the record to show that during this period, she ever approached any competent court of law in accordance with law.

14. In the given circumstance, this Court finds no reason to accept the case of the petitioner. This writ application has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

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