

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4843 of 2023

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Khushboo Kumari @ Khushbu Kumari Wife of Suman Kumar, Resident of
Village-Kakanpar, P.O.-Rukhai, P.S.-Chandi, District-Nalanda.

... .. Petitioner

Versus

1. The Bihar School Examination Board, Patna through its Secretary.
2. The Secretary, Bihar School Examination Board, Patna,
3. The Director (Educational), Bihar School Examination Board, Patna,
4. The Controller of Examination, Bihar School Examination Board, Patna,
5. The Mahabodhi College, Nalanda, through its Secretary.
6. The Principal, Mahabodhi College, Nalanda.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ram Sagar Singh, Advocate
For the Respondent/s : Ms.Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 02-08-2023 Heard learned counsel for the petitioner and learned
counsel for the Bihar School Examination Board (hereinafter
referred to as the 'Board').

2. This writ application has been filed seeking a writ
in the nature of Mandamus commanding the competent
authority of the State as well as the Board to conduct a
compartmental or regular examination at the earliest for the
petitioner and others who appeared in Diploma in Elementary
Education (Special) Examination, 2020, but failed in the said
examination.

3. Learned counsel for the petitioner submits that this
petitioner was admitted in a Diploma course in Elementary



Education in Mahabodhi College, Nalanda during academic session 2016-18.

4. It is submitted that matters relating to affiliation of several institutions including the petitioner's institution were subject matter of consideration by this Court in CWJC No. 19046 of 2018 (Rajendra Kishore B.Ed College, Siwan and Another vs. Bihar School Examination Board and Others). It would appear from a reading of the judgment of this Court that this Court read down Clause (XIII) which was sought to be added to Regulation 8 of 2016 Regulations of the Board by removing the bar of session, i.e., 2014-16 to cover all training sessions as until the date on which the notification was published, i.e., 07.07.2018. On the said principle, the Board resolved to grant affiliation to training colleges from the session the said colleges have obtained recognition from the Eastern Regional Committee, the National Council of Teachers Education, Bhubaneswar/ National Council of Teachers Education, New Delhi.

5. In view of the Mandamus issued by this Court in CWJC No. 19046 of 2018, the Board came out with a Memo No. 82 dated 29.07.2019 as contained in Annexure '3' to the writ application whereby and whereunder altogether ten



institutions including the petitioner's institution were granted affiliation from the session 2016-18.

6. Learned counsel submits that after issuance of Annexure '3' the Board came out with an Advertisement bearing No. PR-331/2019 whereunder two different sets of candidates were allowed to appear in a special examination. The first set was of those candidates whose institution were covered vide Annexure '3' in the light of the judgment of this Court in CWJC No. 19046 of 2018, they had the first opportunity to appear in the examination whereas the second category of candidates is of those who had failed in the examination held in the year 2019 for the academic session 2016-18 and in the academic session 2017-19.

7. Learned counsel submits that from the Advertisement being PR-331/2019 itself it is clear that those candidates who had failed in the regular examination earlier they were given an opportunity to make it a pass in the special examination whereas the candidates like the petitioner who fell in the first category and had not been allowed to appear earlier in the examination during pendency of the writ application have been given only one opportunity to appear in the special examination.



8. Learned counsel submits that in the Advertisement No. PR-331/2019, though it was inserted in Clause 8 that this would be the last examination of the old curriculum and no further claim for examination would be entertained but such stipulation cannot be taken as if the Board would not allow the petitioner who had only the first opportunity to appear in the examination to take a compartmental examination.

9. It is submitted that if the Board has created a precedence whereunder a student has been allowed to take annual examination and one compartmental examination, the same has to be followed and in the facts of this case where this petitioner was not allowed to appear in a regular examination during pendency of CWJC No. 19046 of 2018 because the matter relating to affiliation of the petitioner's institution was pending consideration in this Court, cannot be deprived of an opportunity to make it a pass in a compartmental examination. This would amount to a discrimination and two different yardsticks may not be allowed to be adopted by the Board in respect of the same and one class of candidates.

10. The writ application has been opposed by learned counsel for the Board. The sheet-anchor of the argument of the Board is that as per direction of the Education Department,



Government of Bihar the examination of the candidates of the given academic sessions were to be completed by 31.03.2019. It is stated that by the Advertisement the candidates were given an opportunity to sit in a special examination. It is an admitted position that the candidates of the affiliated institutions for the academic session 2016-18 had earlier taken one examination between the period 05.03.2019 and 09.03.2019 in terms of the examination scheduled published vide communication no. PR-98/2019 and the result of those candidates were published on 29.03.2019. Those who had failed in the said examination were also given an opportunity to take the special examination. It is submitted that as per Clause '8' of the communication contained in PR-331/2019 it was the last special examination of the old curriculum of Diploma in Elementary Education.

11. Having heard learned counsel for the petitioner and the Board as well as on going through the materials available on the record, this Court finds that the only issue which had arisen for consideration in this case is as to whether the petitioner who had no opportunity to sit in the regular/annual examination taken by the Board between the period 05.03.2019 and 09.03.2019 and whose results were published on 29.03.2019 is being subjected to discrimination in the matter of



grant of an opportunity to pass the course which she has undertaken during the session 2016-19, by not allowing her to take a compartmental examination.

12. This Court is conscious of the legal position that a candidate may not have a legal right to seek a compartmental examination and in such matters the decision lies in the domain of the Board to conduct the examination as per regulations framed by the Board but so far as the present case is concerned, this Court finds that in its own facts, the Board is obliged to follow the precedence.

13. This Court is of the considered opinion that by not following the precedence the Board would be depriving the petitioner in the matter of an opportunity even though her case stands on similar footing with those candidates who had taken the same course during the academic session 2016-18 and were allowed to sit in regular/ annual examination.

14. This seems to be a hard case but while balancing the fact situation in the present case, this Court would come to a conclusion that in absence of any legal restraint upon the Board as no such law restraining the Board from conducting a compartmental examination has been placed before this Court, the equity would favour the petitioner and this Court being a



constitutional Court would issue a Writ in the nature of Mandamus directing the Board to consider the case of the petitioner in consultation with the Competent Authority in the Department of Education, Government of Bihar keeping in view the principles of equity.

15. This Court, therefore, directs the Board to consider the case of the petitioner and the reliefs prayed in the present writ application for holding of a compartmental examination within a period of two months from the date of receipt/ production of a copy of this order, keeping in view the discussions and the observations made in the order hereinabove.

16. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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