

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.234 of 2022

In
Civil Writ Jurisdiction Case No.8402 of 2017

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1. Pratima Chakravarty, Wife of Sri Subhankar Kumar Chatterjee, Resident of Mohalla-Bengalitola, P.S. Laheria Sarai, District-Darbhanga.
 2. Kajal Chatterjee Wife of Nemai Chand Banerjee, Resident of Mohalla-Begali Tola, P.S. Laheria Sarai, District-Darbhanga.
 3. Anusri Mandal Wife of Sanjay Kumar Biswas Resident of Mohalla-Kathal Bari Vhandar Chowk, P.S. L.N.M. University, District-Darbhanga.
 4. Dipti Pal Wife of Sumit Kumar Kolay, Resident of Mohalla-Kathal Bari Decwana Takiya P.S. L.N.M. University, District-Darbhanga.
 5. Minali Mukherjee Wife of Abhar Kumar Banerjee, Resident of Village-Kamtaul, P.S.-jalley, District-Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
3. The District Education Officer, Darbhanga.
4. The District Programme Officer (Establishment) Darbhanga, District-Darbhanga.
5. The Secretary, Pitambari Bengali Middle School, Darbhanga, District-Darbhanga.
6. The Managing Committee, Pitambari Bengali Middle School, Darbhanga, through its Secretary.
7. The Headmaster, Pitambari Bengali Middle School, Darbhanga,

... .. Opposite Parties

Appearance :

For the Petitioner/s :	Mr.Durga Nand Jha, Advocate
For the Opposite Party/s :	Smt. Shilpa Singh, GA-12
	Mr.Abhanjalli, AC to GA-12



CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 08-08-2023 This application has been filed seeking review/recall of the order dated 05.09.2022 passed in CWJC No. 8402/2017.

2. The order under review is being reproduced hereunder for a ready reference:-

“Heard the parties.

The petitioners have not been able to show that they are innocent employees in the school. The Managing Committee has not approached this Court for claiming the aid from the Government. The present writ petition on behalf of the present petitioners for release of the aid and for quashing of the order, dated 01.03.2017, passed by the District Programme Officer (Establishment), Darbhanga, staying the financial assistance given to the School, do not have any locus to claim financial assistance for the School.

The writ petition is devoid of merit and is accordingly dismissed as not maintainable.”

3. Mr. Durga Nand Jha, learned counsel for the petitioners has argued that even though the reliefs prayed in the writ application are not happily worded but the fact is that the petitioners are not praying for grant-in-aid/financial assistance for the school. In fact, the petitioners are raising there own grievances against non-payment of their salary for the period in question.

4. Learned counsel submits that the school in



question namely, Pitambari Bengali Middle School, Lalbagh, Darbhanga is founded and managed by Bengali Minority Community of the Town and it has it's own Bylaws/guidelines for the constitution of the Managing Committee. The said school is a middle school and has status of minority institution.

5. It is submitted that these petitioners were appointed through the recruitment process adopted by the Management Committee of the school after advertisement of the post when the vacancy occurred. Such advertisement was issued in the recruitment year 2010 and in the year 2014.

6. It is further submitted that the Managing Committee of the school sought approval from the competent authority being District Programme Officer (Establishment), Darbhanga vide letter No. 330 dated 21.01.2015 provided two conditions, first condition required proposal for fixation of salary of the teachers in prescribed format which would be accepted only after District Account Officer grants and, secondly, it was stipulated that any order on the contrary, if so issued by the competent authority in such event, the order so issued in this regard by the District Establishment Officer, would automatically get cancelled.

7. It is submitted that after fixation of their pay scale,



the petitioner nos. 1 and 2 received their salary after joining until February, 2016 as per the funds being released by the State Government. The petitioners have enclosed the Utilization Certificate submitted before the Government showing receipt of fund in format and payment of school as Annexure '5' to the writ application. As regards petitioner nos. 3 & 5, it is stated that they having been appointed in the year 2014, till date they have not been paid their salary. They claimed that they are discharging their duties regularly.

8. Petitioners claimed that they have been regularly pursuing with the Managing Committee to approach the District Authorities for release of funds and even on personal level the petitioners enquired from the office as to why the funds which are being released to the school for payment of salary to the teaching and non-teaching staffs of the school has yet not been released. The petitioners have disclosed in paragraph '15' of the writ application that they have been made aware of the letter issued by the office of District Education Officer under signature of the District Programme Officer issued as contained in letter no. 960 dated 01.03.2017 whereby the financial assistance being received by the school as a Minority Institution has been stayed because of the reason that the appointments



against the sanctioned post have been made despite stay of appointment process in the Non-governmental Aided Minority Institution vide Education Department's Memo No. 1532 dated 21.08.2017. Copy of the said letter has been brought on record as Annexure '7' to the writ application. The petitioners are contesting the reasons assigned for not making payments to the school and these petitioners.

9. A counter affidavit has been filed. In paragraph '5' of the counter affidavit, the respondents have defended their action and have stated that the Education Department had stopped all appointment in Government Aided School vide Memo No. 1532 dated 21.08.2017, but the petitioners were appointed by the Managing Committee in the year 2014, therefore, the appointments made by the Committee is not legal.

10. Learned counsel for the State has drawn the attention of this Court towards the communications made to the school vide Annexure '7' to submit that the direction of the Education Department was made for all the Non-Government Primary Schools (including Minority Schools), therefore, the appointment of the petitioners done during the period the school was stopped for making appointments cannot be accepted.

11. It is further pointed out in paragraph '6' of the



counter affidavit, a specific plea has been taken that the order /Notification No. 679 dated 10.04.2016 contains Clause '13' provides for a remedy of appeal before the District Appellate Authority. A copy of the Notification has been brought on record as Annexure (page '11') to the counter affidavit.

12. Mr. Jha, learned counsel for the petitioners has submitted that in similar circumstance a learned coordinate Bench of this Court has held in CWJC No. 10990 of 2013 that issue of ban on appointment of Assistant Teacher within sanctioned strength in Minority Institution does not merit any consideration for the reason that once the State Government has approved the post it was the right and privilege of the Managing Committee of the educational institutions to appoint on the post of Assistant Teacher. It is submitted that a similar view has been taken in CWJC No. 19881 of 2015.

13. Having heard learned counsel for the petitioners and learned counsel for the State, this Court finds that in fact learned counsel for the petitioners are looking for re-hearing of the whole writ application. The reliefs prayed in the writ application are quoted as under:-

“i. For issuance of an appropriate Writ/Writs, direction/directions in the nature of Certiorari for quashing the order as contained in Letter No. 960 dated 01.03.2017 issued by District Program Officer



whereby and whereunder, the financial assistance given to the School being minority institution, has been stayed contrary to their own conscious decision by which the appointment of these petitioner on the post of teachers against the vacant sanctioned post were duly allowed by approving the same and in consequent thereto, the payments of salary to the petitioners have been stopped.

ii. For direction upon the respondents to ensure payment of Salary by releasing the financial aid to the minority school in question from the date since when the funds are not being released on account of the impugned order having been issued under the signature of District Programme Officer referring certain orders of the Department of Education whereas the appointment of the petitioners has duly been approved by the authorities competent under the Statute.

iii. For any other relief/reliefs which may deem fit and proper for ensuring justice in the matter during the pendency of the present application before the Hon'ble Court."

14. It is evident from perusal of the letter no. 960 dated 01.03.2017 which is impugned in the writ application that the same is addressed to the Secretary/Incharge Principal, Pitambari Bangla Middle School, Lalbagh, Darbhanga

15. By the order under review, this Court has refused to entertain the writ application for the reason that the Managing Committee has not approached this Court for claiming the aid from the Government. This Court has also held that the



petitioners have no locus to claim the financial assistance for the school.

16. To this Court, it appears that the scope of a review application is limited to correction of an error apparent on the face of the record. One of the stands of the respondents is that the petitioners have got their remedy under Clause '13' of the Notification of the Education Department, Government of Bihar by filing an appropriate application before the District Appellate Authority.

17. This Court is of the considered opinion that no error apparent on the face of the record could be established in course of hearing, hence, this application has no merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

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