

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.58 of 2020

In

Civil Writ Jurisdiction Case No.7964 of 2010

Nand Kishore Paswan, S/o Late Biro Paswan, Resident of Village- Bela
Simri, Via Khagria, P.S. and District- Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary Human Resources Development Department, Bihar, Patna.
3. Secretary Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
4. The Director Madhyamik Siksha, Govt. of Bihar, Patna.
5. The Deputy Director Madhyamik Siksh, Govt. of Bihar, Patna.
6. The District Magistrate Khagaria.
7. The District Education Officer Khagaria.
8. The Member of District Teacher Employment Appellate Tribunal Khagaria.
9. The Chief Executive Officer Zila Parishad, Khagaria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Hafiz Shahab Arif, Advocate Mr. A. Abdul Puadir Jamal Faridi, Advocate Mr. Md. Najmul Hodda, Advocate
For the State	:	Mr. S. S. Tiwary, AC to AAG-15

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 20-11-2024

The present Letters Patent Appeal has been filed under Clause 10 of the Letters Patent of the Patna High Court against the order dated 21.12.2019 passed by the learned single Judge in C.W.J.C. No. 7964 of 2010, whereby the learned single Judge has partly allowed the petition filed by the present



appellant/original petitioner.

2. Heard Mr. Abdul Mannan Khan, learned Advocate for the appellant and Mr. S. S. Tiwary, learned A.C. to A.A.G.-15 for the respondent Nos. 1 to 7.

3. At this stage, learned counsel for the appellant has submitted that in the present proceeding respondent No. 8 is the concerned Appellate Tribunal whereas respondent No.9 is the Chief Executive Officer of concerned Zila Parishad. In fact, the appellant/petitioner challenged the order passed by respondent No. 9 by filing an appeal before respondent No.8 (Appellate Tribunal). It is also submitted that the learned single Judge has partly allowed the petition wherein it has been observed that the order passed by the Appellate Tribunal (respondent No.8) is set aside and consequences of setting aside the order of the Tribunal shall follow. It is contended that respondent No.9 has not challenged the order passed by the learned single Judge by filing a separate appeal and thereby respondent No.9 has accepted the order passed by the learned single Judge. Hence, in the present proceeding, presence of respondent Nos. 8 and 9 is not required.

4. Now, learned counsel for the appellant/original petitioner has submitted the case of the appellant on merit. It is contended that the appellant/original petitioner challenged the



order dated 08.08.2009 passed by the District Teachers Employment Appellate Tribunal, Khagaria, in Appeal Case No. 323 of 2009. While filing the captioned writ petition before this Court, the grievance in the petition was that the appointment of the petitioner as an Assistant Teacher was held to be invalid on the ground that the qualification of 'Sahitya Alankar' acquired by the petitioner from Hindi Vidyapeet, Deoghar, was not an equivalent qualification to the requisite qualification for the said post. It is further contended that the learned single Judge placed reliance upon the order dated 10.07.2019 (the correct date of the order is 18.07.2019) passed by the Division Bench of this Court in the case of *Sanjay Kumar Vs. the State of Bihar and Others (in CWJC No. 5129 of 2009)* and analogous cases and, thereafter, quashed and set aside the order dated 08.08.2009 passed in Appeal Case No. 323 of 2009 rendered by the concerned Appellate Tribunal. It is further submitted that, though the learned single Judge has observed that the consequences of the setting aside of the said order shall follow, without assigning any reason, the learned single Judge denied the back-wages to the petitioner and, therefore, to the extent of denial of back-wages to the petitioner, the present appeal has been filed.



5. Learned counsel for the appellant, at this stage, has referred the order dated 18.07.2019 passed by a Division Bench of this Court in the case of *Sanjay Kumar (supra) (in CWJC No. 5129 of 2009)* and, thereafter, submitted that in the said cases, the Division Bench has specifically directed the concerned authority to give all consequential benefits. Thus, learned counsel urges that the impugned order passed by the learned single Judge, by which back-wages has been denied to the appellant/original petitioner, be set aside and thereby direction be issued to the respondent authorities to grant consequential benefits.

6. On the other hand, learned A.C. to A.A.G. 15, appearing for respondent Nos. 1 to 7, would submit that the learned single Judge has quashed and set aside the order of the Appellate Tribunal. However, as the appellant/petitioner is not entitled for the back-wages, the same has not been granted to him. Thereby, the learned single Judge has not committed any error while denying the back-wages to the appellant/petitioner. Learned counsel for the State, therefore, submits that the present appeal be dismissed.

7. We have considered the submissions canvassed by the learned Advocates, perused the materials placed on record as



well as the order dated 18.07.2019 passed by the Division Bench in the case of ***Sanjay Kumar (supra) (in C.W.J.C. No. 5129 of 2009)***. From the record, it would emerge that the appellant/petitioner was appointed as an Assistant Teacher with the concerned respondent. However, his appointment was held to be invalid on the ground that the qualification of 'Sahitya Alankar' acquired by him from Hindi Vidyapeeth, Deoghar, was not treated as an equivalent qualification to the requisite qualification for the said post. It is not in dispute that similar issue came up before Division Bench of this Court in the case of ***Sanjay Kumar (supra) (in C.W.J.C. No. 5129 of 2009)***. The Division Bench of this Court, after considering the submissions canvassed by the learned advocates for the concerned parties, quashed and set aside the termination orders passed by the concerned authority against the concerned petitioners and also observed that the writ petitioners shall be treated to have been validly appointed of being possessed of the qualification referred in the said order and also observed that they shall be entitled to all consequential benefits. The Division Bench has observed in paragraph 16 of the said judgement as under :-

"16. In the light of what has been concluded by us hereinabove, these writ petitions have to succeed on account of this



subsequent development and we accordingly hold that the petitioners in both the writ petitions are entitled to the benefit of the notifications dated 08.04.2016 and 24.08.2017 and consequently their appointments being prior to the issuance of the said notifications are saved thereunder. The petitioner Sanjay Kumar shall, therefore, be reinstated in service forthwith and his termination order dated 13.02.2016 that has been brought on record through I.A. No. 219 of 2017 is hereby quashed. Both the writ petitioners shall be treated to have been validly appointed of being possessed of the qualification referred to above and shall be entitled to all consequential benefits."

8. Now, keeping in view the aforesaid observation made by the Division Bench, if the impugned order passed by the learned single Judge in the present case is examined, it is revealed that, though the learned single Judge has referred paragraphs 14 and 15 of the judgement dated 18.07.2019 passed in the case of **Sanjay Kumar (supra)**, the direction given in paragraph 16 has not been properly considered by the learned single Judge. The learned single Judge, in the present case, has quashed and set aside the order passed by the Appellate Tribunal and thereby direction has been issued to reinstate the present



appellant/original petitioner, however, ignoring the direction given by Division Bench in the case of *Sanjay Kumar (supra)* in paragraph 16 and without assigning any reason held that the petitioner is not entitled for the back-wages.

9. We may observe at this stage that the learned counsel for the appellant is right in submitting that the petitioner challenged the order passed by respondent No.9 by filing an appeal before respondent No.8 (Appellate Tribunal). The said appeal came to be dismissed and, therefore, the petitioner challenged the order passed by respondent No.8 (Appellate Tribunal) by filing Writ Petition before this Court. It is not in dispute that the Writ Petition was partly allowed by the learned single Judge and thereby the order passed by respondent No. 8 (Appellate Tribunal) stands quashed and set aside. Thus, the learned single Judge also quashed and set aside the order passed by respondent No.9 (Authority). Learned single Judge specifically observed that consequences of setting aside the order of respondent No.8 (Appellate Tribunal) shall follow. Thus, at one end, the learned single Judge granted all consequential benefits, including reinstatement, at the other, did not grant back-wages. The said order has not been challenged by respondent No.9 (Authority) by filing separate L.P.A., and



therefore, respondent No.9 has accepted the order passed by the learned single Judge. Thus, we are of the view that looking to the facts and circumstances of the present case, in absence of respondent Nos. 8 and 9, the present appeal can be decided.

10. It has been pointed out by learned counsel for the parties that pursuant to the order passed by the learned single Judge, respondent No.9 (Authority) has reinstated the petitioner and, therefore, in the present appeal, the only question which is required to be considered is with regard to back-wages, which is a consequential benefit. It is also not in dispute that the order dated 18.07.2019 passed by the Division Bench of this Court in the case of ***Sanjay Kumar (supra) (in CWJC No. 5129 of 2009)*** was challenged by the concerned respondent authority by filing proceeding before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court did not interfere with the order dated 18.07.2019 passed by the Division Bench of this Court in the case of ***Sanjay Kumar (supra)***. At this stage, it is required to be recalled that in the case of ***Sanjay Kumar (supra)***, the Division Bench has specifically ordered for grant of all the consequential benefits.

11. We are of the view that to the aforesaid extent, the learned single Judge has committed an error while not granting



the back-wages to the petitioner. The Division Bench, in the case of *Sanjay Kumar (supra)*, specifically directed the respondent authorities to grant all consequential benefits, which includes the back-wages.

12. Accordingly, we set aside the impugned order passed by the learned single Judge to the extent of not granting back-wages to the present appellant/original petitioner. We, therefore, direct respondents herein to grant all consequential benefits to the appellant herein.

13. Accordingly, the present Letters Patent Appeal stands allowed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	NAFR
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