

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4899 of 2015

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Smt. Ranjana Kumari, W/o- Shashi Bhushan Kishore, Resident of Village-
Patahi, P.S.- Patahi, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar,
Patna.
3. The Director, Secondary Education, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mayank Rukhaiyar, Advocate
For the Respondent/s	:	Mr. Vivek Pd., GP-7
		Mrs. Manisha Singh, AC to GP-7
		Ms. Roona, AC to GP-7
		Mr. Sanjay Kumar, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 25-06-2024

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application
praying for quashing the order as contained in memo no.32P
dated 23.1.2015 (Annexure-14) issued under the signature of the
Director (Secondary Education), Bihar, Patna whereby and
whereunder the recognition of service granted to the petitioner
has been cancelled.

3. The case of the petitioner in brief is that she was
appointed as an Assistant Teacher in the subject of Biology at
the Jyoti Narayan Pandey Surya Pratap Narayan Singh Girls



High School, Patahi, East Champaran. The school was taken over by the State Government in the year 1985. Under the guidelines dated 4.2.1989 for recognition of service of teachers in Project Schools issued by the State Government, the Screening Committee considered the case of the petitioner and recommended for recognition of her service as an Assistant Teacher. As the case of the petitioner was not considered, the petitioner moved this Court in CWJC no.7478 of 1994 which was disposed of by order dated 16.9.1994 (Annexure-5) directing the petitioner to file a representation before the Director, Secondary Education who was to dispose of the same in accordance with law within two months of its filing. It is submitted by learned counsel that in the meantime, the petitioner completed her B.Sc. (Pass) from Bhimrao Ambedkar Bihar University, Muzaffarpur in the year 1982 and also obtained her B.Ed. from the Rashtriya Patrachar Sansthan, Kanpur in the year 1988. The Director, Secondary Education by his order contained in memo no.487 dated 15.7.1996 recognised the service of the petitioner as B.Sc. trained teacher having been appointed on 25.10.1984 and directed for payment of salary with effect from 1.1.1989.

4. It is further case of the petitioner that by order



dated 16.6.1997 (Annexure-4) the Director, Secondary Education, Bihar held that the petitioner had not worked continuously as Assistant Teacher since 1991-92 and there was break in her service. As such, the recognition granted to the service of the petitioner was cancelled and the service of one Nawal Kishore Singh was recognised. The order dated 15.7.1996 having been issued without hearing the petitioner, the petitioner moved this Court in CWJC no.7112 of 1997 which was disposed of by order dated 18.1.2000. This Court held that the Full Bench of this Court in the case of Project Uchcha Vidyalaya Shikshak Sangh & Ors. v. The State of Bihar & Ors. [2000 (1) PLJR 287] having held that 9 teaching posts to be sanctioned for each Project Schools, the order impugned dated 16.6.1997 so far as it related to the petitioner was set aside. The Court further held that the order will not affect Nawal Kishore Singh, the respondent therein and the petitioner will continue on adhoc basis pursuant to the earlier order. The case of the petitioner was remitted to the Director for approval/absorption who was to decided within three months in light of the Full Bench decision.

5. Learned counsel for the petitioner submits that in the meantime MJC no.1728 of 2000 was filed alleging non-



compliance of the order dated 18.1.2000 which was disposed of by order dated 7.7.2008. By order contained in memo no. 376P dated 23.7.2010 issued under the signature of the Director (Secondary Education) Bihar, Patna, order was passed giving recognition to the service of the petitioner treating her date of appointment as 25.10.1984, however, as B.Sc. untrained. Being aggrieved on having been given recognition as an untrained teacher, the petitioner filed CWJC no.4334 of 2012 in this Court which was disposed of by order dated 12.3.2012 (Annexure-10) with a direction to the Director, Secondary Education to complete the enquiry as contemplated in the said order and to determine the arrears payable to her on the basis of her entitlement as trained teacher from the due date in five installments. The petitioner filed a representation dated 25.4.2012 in this Court before the Director, Secondary Education. It was stated therein that as per the contents of the departmental letter no.142 dated 4.2.1989 and the letter contained in memo no.52P dated 25.1.2000 there were 4 sanctioned posts of Assistant Teachers. Further on enquiry of the seniority among the teachers it had transpired that as per the date of appointment, the petitioner was the junior most. Thus, the letter dated 26.2.2014 was written by the Director



(Secondary Education) asking the petitioner to show-cause as to why the recognition granted to her be not cancelled. The petitioner submitted her reply to the show-cause notice on 22.3.2014. By the order impugned contained in memo no.32P dated 23.1.2015, the Director (Secondary Education), Bihar, Patna was pleased to cancel the recognition granted to her service by the letter/order dated 23.7.2010.

6. It is against this order dated 23.1.2015 that the instant application has been preferred for the reliefs prayed for as stated herein above.

7. Learned counsel for the petitioner in reference to letter no.142 dated 4.2.1989 (Annexure-3) of the Human Resources Development Department, Government of Bihar submitted that there was confusion with respect to the strength of teachers in a Project School. While clause (ii) thereof provided for 5 posts of teachers, clause (iii) provided that the staffing pattern will be the same as in the Government Circular no.705 dated 12.10.1982 which had a total of 9 teachers including the Headmaster/Headmistress. The matter was considered in paragraph nos.14 and 15 of the Full Bench Judgment of this Court in Project Uchcha Vidyalaya Shikshak Sangh vs. State of Bihar & Ors. [2000 (1) PLJR 287(FB)] and



on appeal having been preferred against the same in judgment dated 3.1.2006 by the Hon'ble Supreme Court in State of Bihar vs. Project Uchcha Vidya, Sikshak Sangh & Ors. [(2006) 2 SCC 545]. Learned counsel refers to paragraph no.59 of the judgment of the Hon'ble Supreme Court to contend that the State is bound to recognise at least nine teachers in each school. It was further contended that by order contained in memo no.497 dated 15.7.1996 of the Secondary, Primary and Adult Education Department the service of the petitioner was recognised with effect from 1.1.1989 and directions issued for payment of salary. However, soon thereafter, pursuant to an order passed in the case of Nawal Kishore Singh vs. The State of Bihar & Ors. (MJC no.545 of 1996), stating that there was break in service of the petitioner, the recognition granted to her service was set aside. The petitioner challenged the same in CWJC no.7112 of 1997. This Court by its order dated 18.1.2000 (Annexure-8) was pleased to set aside the order no.391 dated 16.6.1997 so far as it related to the petitioner. It was stated that the petitioner will continue in service on adhoc basis pursuant to the earlier order dated 15.6.1996 and her case was remitted back to the Director for approval/absorption directing him to take a decision within three months. The Court categorically observed that there being



no proceeding initiated, the period of absence mentioned therein should not be treated to be break in service. The directions contained in order not having been complied with, the petitioner filed a contempt application (MJC no.1728 of 2000). In the meantime, the respondents came out with an order contained in memo no.376P dated 23.7.2010 under the signature of the Director (Secondary Education) Bihar, Patna recognising the service of the petitioner treating her date of appointment to be 25.10.1984. However, the petitioner having been described as B.Sc. (Untrained), aggrieved by the same the petitioner moved this Court in CWJC no.4334 of 2012 which was disposed of by order dated 12.3.2012 (Annexure-10) with a direction to the Director, Secondary Education to complete the enquiry as contemplated in the said order and determine the arrears payable to the petitioner on the basis of her entitlement as trained teacher from the due date in five installments.

8. It is further contended by learned counsel for the petitioner that a show-cause notice dated 26.2.2014 (Annexure-12) was issued to the petitioner to show-cause within a period of five days that on enquiry when it has transpired that as per the date of appointment, when the petitioner is the junior most as to why treating her to be the junior most, recognition granted to



her service be not set aside. The petitioner submitted her reply to the show-cause notice whereafter the respondents came out with the order impugned dated 23.1.2015 setting aside recognition granted to the petitioner's service.

9. Learned counsel for the petitioner submits that there is no gradation/seniority list of the teachers in the petitioner's college. Neither any gradation/seniority list was prepared at any point of time nor any objection invited with respect to the same. On perusal of the supplementary counter affidavit filed on behalf of the Director, Secondary Education, it would be evident from the letter dated 22.12.2023 of the Incharge Headmaster that the name of the petitioner figures at serial no.6. Further with respect to the so called gradation/seniority list enclosed with the letter dated 22.12.2023 (Annexure-A) it has been averred by the respondents in paragraph nos.6 and 7 of the counter affidavit that the seniority list of Headmaster and 8 teachers as on 15.1.2000 has been made available by the District Education Officer with his letter dated 22.12.2023 and by the Deputy Director, Secondary Education, Education Department, Government of Bihar along with his letter dated 22.12.2023. While the petitioner figures at serial no.6 in the letter of the In-charge Headmaster, the



petitioner figures at serial no.9 in the list submitted by the Deputy Director (Secondary Education) Education Department, Government of Bihar and the affidavit clearly stipulates that the seniority list is of the Headmaster and 8 teachers. Thus, it is submitted that the petitioner being in the list of 9 teachers in the school in question and the issue of strength already having been settled by the Hon'ble Supreme Court the case of State of Bihar vs. Project Uchcha Vidya, Sikshak Sangh (*supra*), the order impugned passed setting aside the recognition of the petitioner as a teacher is illegal, not sustainable and fit to be set aside.

10. Learned counsel for the State, opposing the prayer made in the writ application submitted that pursuant to the order of the Hon'ble Supreme Court, a three man committee was constituted which examined the claims on the teaching and non-teaching staffs and did not approve the service of the petitioner. The petitioner being aggrieved by the report filed his representation that his service was approved in the year 1993 itself. On considering her representation the Government approved the service of the petitioner vide order dated 23.7.2010 with the rider that after due verification of continuous working, the service will be approved either from 1.1.1989 or from 25.1.2000. It is further submitted by learned counsel for



the State that four teachers were working from 1993-1997 and approval of four teachers were accorded vide order dated 24.6.2008. As there were eight posts of teachers which were sanctioned, the service of the petitioner having been approved in the year 2010, she does not come under the preview of eight sanctioned post of teachers. Thus a show cause notice was issued to the petitioner and after considering the petitioner's reply to the show cause notice that the order impugned dated 23.1.2015 was passed, cancelling the approval granted to the petitioner's service vide order dated 23.7.2010. It was submitted that there is no merit in the writ application and the same be dismissed.

11. Heard Mr. Mayank Rukhaiyar, learned counsel for the petitioner and Mrs. Manisha Singh, learned Government counsel for the respondents.

12. Having perused the material on record, the relevant facts in brief for the purpose of instant application are that the petitioner was initially appointed as an Assistant Teacher in the subject of Biology at the Jyoti Narayan Pandey Surya Pratap Narayan Singh Girls High School on 20.10.1984. She successfully completed her B.Sc. (Pass) from Bihar University in the year 1982 and B.Ed. in the year 1988. The school in



question was taken over as a project school in the year 1985. The Screening Committee constituted considered the case of the petitioner and recommended for recognition of her service as an Assistant Teacher. The services of the petitioner not having been recognized, the petitioner moved this Court in CWJC no. 7478 of 1994 which was disposed of vide order dated 27.11.1995 (Annexure-5) directing the petitioner to file a representation which was to be decided by the Director, Secondary Education. Accordingly, the petitioner filed her representation on which the Director, Secondary Education passed an order dated 15.7.1996 (Annexure-7) recognizing the service of the petitioner with effect from 1.1.1989 and directing for payment of her arrears of salary. The said order contained the condition that the petitioner should have been continuously working from 1991-1992. Subsequently without giving any opportunity to the petitioner the respondents came out with an order dated 16.6.1997 cancelling the recognition of service granted to the petitioner vide order dated 15.7.1996. The petitioner moved this Court in CWJC no. 7112 of 1997 which was allowed vide order dated 18.1.2000 in the following terms and the order impugned dated 16.6.1997, so far as it related to the petitioner, was set aside. Relevant portion of the aforesaid order is reproduced herein



below for ready reference:-

“It appears that the impugned order issued on the ground that the total strength of teachers of the school is five in terms with letter no.142 dated 4th February, 1989 and there is a break in service of petitioner Ranjana Kumari during the year 1991-92. The services of respondent Nawal Kishore Singh has been approved by the same very order.

Admittedly, the petitioner was not noticed nor heard before issuance of the order dated 16th June, 1997. No separate enquiry made after notice to the petitioner relating to her break in service, nor any declaration given by any authority relating to such break in service. From the report dated 24th April, 1997 submitted by the District Inspectors of Schools, East Champaran, Motihari, it appears that the petitioner was absent from duty from November, 1991 to February, 1992. In the other report of the SDO Pakhri Dayal, as contained in letter no. 187 dated 8th July, 1997, the petitioner has been shown to be absent from 28th November, 1991 to 31st November, 1991 (three days) and December, 1991 to February, 1992 (about three months). However, no finding given by any authority that the aforesaid period being unauthorised absence from duty to be treated to be a break in service. In the aforesaid circumstances, in absence of finding, there was no occasion for respondents to cancel the earlier order of approval.

One of the question arises relating to



approval of services of the respondent Nawal Kishore Singh, his services having been approved by the impugned order dated 16th September, 1997. Such approval of the services can be saved in view of recent decision of Full Bench of this Court in the case of Project Uchcha Vidya Shikshak Sangh (Supra), the court having held that nine teaching posts to be sanctioned for each Project Schools.

For the reason aforesaid, while I set aside the order No.391 dated 16th June, 1997 so far as it relates to the petitioner Ranjana Kumari, I hold that this order will not affect the respondent Nawal Kishore Singh, so far approval of his service is concerned. In the result, the petitioner will continue on ad hoc basis and continuing in pursuance of earlier order no. 497 dated 15th June, 1996, her case is remitted to the Director for approval/absorption in respect of which decision to be taken and communicated to the petitioner within three months in the light of Full Bench decisions of this Court. There being no proceeding initiated the period of absence aforesaid, as referred above, should not be treated to be break in service.

However, this order will not stand in the way of respondent Nawal Kishore Singh, whose service has already been approved. He may approach, the Director, Secondary Education for release of his salary, including the arrears. The writ petition stands disposed of with the aforesaid observations and directions.”

13. It would be relevant to mention here itself that



this Court while allowing CWJC no. 7112 of 1997 vide order dated 18.1.2000, relevant portion of which quoted herein above took note of the fact that no notice had been issued to the petitioner nor any separate enquiry conducted with respect to her break in service nor was there any declaration to that effect with respect to the petitioner's break in service. It also took note that there was no occasion for the respondents to cancel the earlier order of approval. This Court in the said order also referred to the Full Bench decision of this Court in the case of Project Uchcha Vidya, Shikshak Sangh (*Supra*) in which the Court had held that nine teaching posts to be sanctioned for each project school.

14. It may be mentioned here that the said Full Bench decision of this Court with respect to nine teaching posts in each school was affirmed by the Hon'ble Supreme Court in the appeal preferred against the aforesaid Full Bench judgment ie in the case of State of Bihar & Others vs. Project Uchcha Vidya, Sikshak Sangh & Others [(2006) 2 SCC 545]. Relevant portion of which is quoted herein below:-

“59. The State is no doubt entitled to lay down qualification or sanction the requisite number of posts. It may also in certain situations provide for relaxation therefrom or lay down such terms and



conditions as they may deem fit and proper. It is also permissible for the State to appoint a Screening Committee for the purpose of finding out whether the teachers satisfy the requirements laid down therein. The State is also entitled to fix the age-limit of such teachers. How many teachers were required to be appointed and the strength of the teaching staff and the non-teaching staff again is a matter of policy decision of the State. Indisputably, if somebody has any say in this behalf it will be the Bihar Senior School Education Board, a statutory authority which is statutorily enjoined to lay down the criteria for the purpose of recognition of the said schools by it. But for all intent and purport this issue has become academic. In view of the fact that the State itself has realised the difficulty which the schools would face if only 5 posts are sanctioned in each school, the Cabinet itself realised that like any school run by the Government, it is necessary to have at least 9 teachers even in the Project Schools. The strength of the teachers for such schools has not only been sanctioned, sanction therefor was given with retrospective effect and retroactive operation. Necessary funds were allocated for the said purpose. Although, thus, it was the prerogative of the State to lay down the criteria, the same has been laid down. Therefore, correctness or otherwise of the finding of the High Court that the State was bound to recognise at least 9 teachers in each school, for all intent and purport is now academic.”

15. The respondents having examined the claim of



the petitioner came out with an order dated 23.7.2010 under the signature of the Director, Secondary Education, Bihar, Patna whereby the service of the petitioner was recognized from the date of her appointment i.e. 25.10.1984, however as B.Sc. (untrained). Being aggrieved on account of her service having recognized as an untrained teacher, the petitioner moved this Court in CWJC no. 4334 of 2012 which was disposed of by order dated 12.3.2012 directing the Director, Secondary Education to complete the enquiry as contemplated in the said order and to determine the arrears of the petitioner payable on the basis of her entitlement as trained teacher from the due date in five installments.

16. It is pursuant to the said liberty granted vide order dated 12.3.2012 to the respondents to complete the enquiry that a show cause notice was issued on 26.2.2014 to the petitioner which was replied to on 22.3.2014 and thereafter the order impugned dated 23.1.2015 has been passed.

17. It may be mentioned here that it was by order dated 15.7.1996 itself that recognition had been granted to the petitioner as a trained teacher, however subject to the condition that she was continuously working from 1991-1992. On the said recognition having been cancelled by the respondents by their



order dated 16.6.1997 and on the petitioner moving this Court in CWJC no. 7112 of 1997, this Court in its order dated 18.1.2000 had categorically observed that there being no proceeding initiated for the period that the petitioner was said to have remain absent, the same should not be treated to be break in service. Further this Court in the same order had taken note that the Full Bench of this Court held nine teaching posts to be sanctioned in project schools (which was later affirmed by the Hon'ble Supreme Court), had held that there was no occasion for the respondents to cancel the earlier order of approval granted to the petitioner's service vide order dated 15.7.1996. Admittedly no appeal was preferred by either side against the order dated 18.1.2000 passed in CWJC no. 7112 of 1997. Thus the said order attained finality. It is pursuant to the said order that the respondents came out with the office order dated 23.7.2010 approving the service of the petitioner with effect from 25.10.1984, however as B.Sc. untrained.

18. Though in the writ application ie CWJC no. 4334 of 2012 preferred by the petitioner against the approval having been given to her as a B.Sc. untrained teacher, this Court granted liberty to the respondents to complete the enquiry as contemplated therein, in the opinion of this Court, the said



enquiry could not go beyond the issue as to whether the petitioner was to be given recognition as an Assistant Teacher in the capacity of B.Sc. untrained or B.Sc. trained. The enquiry could not reopen the matters of recognition which was granted with respect to the services of the petitioner vide order dated 15.7.1996 and the cancellation of recognition vide order dated 16.6.1997 of which was set aside by this Court vide order dated 18.1.2000 passed in CWJC no. 7112 of 1997. The respondents could not have reopened the matter with respect to approval of service of the petitioner all over again.

19. In view of the facts and circumstances of this case as stated herein above, the order impugned dated 23.1.2015 passed by the Director, Secondary Education, Bihar, Patna being unsustainable is hereby set aside.

20. The writ application is allowed.

21. As directed vide order dated 12.3.2012 passed in CWJC no. 4334 of 2012 the Director, Secondary Education, Bihar, Patna shall conduct an enquiry with respect to the entitlement of the petitioner as a B.Sc. trained teacher, conclude the same within a period of three months from the date of receipt/communication of this order and pay the arrears due to the petitioner in five monthly installments. Further, as directed



in the order dated 12.3.2012, the Director, Secondary Education, Bihar, Patna shall also take into account the order dated 15.7.1996 which shows that the service of the petitioner had been approved as B.Sc. trained teacher.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	21.02.2024
Uploading Date	25.06.2024
Transmission Date	

