

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5665 of 2013

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1. Rakesh Chandra Jha Son Of Shri Dhirendra Jha Resident Of Village-Mohanpur, Police Station- Piprahi, District- Sheohar
 2. Ajit Kumar Pathak Son Of Shri Sarbkant Pathak Resident Of Village-Choraut, Police Station- Rupri, District- Sitamarhi

... .. Petitioner/s

Versus

1. The Bihar Sanskrit Siksha Board, Patna through its Secretary, Government Of Bihar, Patna
2. Shri Lakshmi Narayan Sanskrit Uchh Vidyalaya, P.O. and P.S.- Choraut, District- Sitamarhi Through Its Secretary
3. The Headmaster, Shri Lakshmi Narayan Sanskrit Uchh Vidyalaya, P.O. and P.S.- Choraut, District- Sitamarhi
4. Sri Sanjiv Kumar Mishra Assistant Teacher , Shri Lakshmi Narayan Sanskrit Uchh Vidyalaya, PO and P.S Choraut, District Sitamarhi.
5. Sri Sujit kumar Sumar Assistant Teacher , Shri Lakshmi Narayan Sanskrit Uchh Vidyalaya, PO and P.S Choraut, District Sitamarhi.
6. The Managing Committee of Sri Lakshmi Narayan Sanskrit Uchh Vidyalaya P.O. and P.S. - Choraut, District - Sitamarhi through its Secretary.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sharvan Kumar, Sr. Adv. Mr. Vishal Kumar, Advocate Mr. Dinesh Maharaj
For the Respondent/s	:	Mr. Satyam Shivam Sundaram Mr. Siya Ram Shahi, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 08-08-2024

1. The petitioners have filed the present writ application for a direction to the respondents to allow the petitioners to work against the post of Assistant Teacher after quashing the letter no. 21 (K) dated 09.01.2011 issued by the Secretary of Shri Lakshmi Narayan Sanskrit Uchh Vidyalaya (hereinafter referred to as the “School”) by which the services of the



petitioners have been terminated and for further direction to the respondent authorities to make payment of salary due to the petitioners and for quashing of Memo No. 3275 dated 10.05.2013 by which the private respondent nos. 4 & 5 were appointed against the post of Assistant Teacher.

2. Brief facts giving rise to the present writ application is that on 28.10.2006 an advertisement was published by the Secretary of the respondent / School inviting applications for two posts of Graduate Assistant Teacher and one post of Clerk for appointment. The Managing Committee in its meeting held on 14.11.2006 appointed the petitioners as Assistant Teacher in the School in question on temporary basis and subsequently the Principal of the said School communicated the decision taken in the meeting for appointment of the petitioners to the Secretary, Bihar Sanskrit Shiksha Board (hereinafter referred to as the "Sanskrit Board") vide letter no. 15 dated 14.11.2006 for approval and further for initiating the process of permanent appointment.

3. Subsequently, appointment letters were issued to the petitioners following which both of them submitted their joining on 17.11.2006. Thereafter, Sanskrit Board vide Memo No. 1580 dated 28.03.2007 communicated its approval for appointment of



the petitioners as Assistant Teacher on temporary basis.

4. Upon receiving the approval for initiating the process of permanent appointment in the School, advertisement was again published on 10.05.2007 in the daily newspaper “Aaj” inviting applications for appointment on two posts of Assistant Teacher and one post of Clerk in the respondent-School. The Managing Committee of the said School vide its letter no. 5 dated 22.05.2007 communicated to the Secretary of the Sanskrit Board about the applications received pursuant to the aforesaid advertisement and requested therein to appoint expert to overview the interview process schedule to be held on 05.06.2007, following which Secretary of the Sanskrit Board vide its letter no. 4739 dated 01.06.2007 appointed Sri Ramendra Sah, Principal, Kaushalya Sanskrit High School, Mahua, Vaishali as an Expert to overview the interview process.

5. Thereafter, the process for selection of the said applicants were taken on 05.06.2007 in presence of the Expert and after interview of the petitioners and others, the Selection Committee recommended the name of the petitioners for appointment against two vacant posts of Assistant Teacher. The recommendation of the Selection Committee was unanimously accepted by the Managing Committee and it was resolved to



seek approval from the Sanskrit Board for their permanent appointment. The Secretary of the respondent-School sent the proposal for approval of appointment of the petitioners vide letter no. 8 dated 07.06.2007. The Secretary of the Sanskrit Board vide its Office Order No. 5049 dated 02.07.2007 granted approval for appointment of the petitioners on permanent basis in the pay scale of Rs. 1400-2500/-. It is the case of the petitioners that the local politicians whose wards were not appointed, forced the petitioners not to work, following which petitioners filed several representations.

6. Learned senior counsel for the petitioners argued that the procedure regarding appointment of the petitioners was duly followed by the validly constituted Managing Committee after following due process of law. During the process of selection Sri Sarvkant Pathak (Principal) and Sri Kamal Kishore Pathak were asked by the Expert Committee to leave the selection process and accordingly they did not participate. Appointment of the petitioners was approved by the Sanskrit Board and till the date of filing of the writ application the appointment of the petitioners was not annulled, nor any appointment was made in place of the petitioners. Local politicians, whose wards were not appointed, forced the petitioners not to work and the petitioners



effort to meet the Officials and their assurance did not translate into any positive action. In these circumstances the writ petition was filed with a prayer to direct the respondents to pay the salary of the petitioners and also for a direction that the petitioners be allowed to work against their posts as Assistant Teachers. After filing of the writ application on 07.03.2013, the petitioners came to know that the respondent nos. 4 & 5 namely, Sri Sanjiv Kumar Mishra and Sri Sujit Kumar Suman were appointed as Assistant Teachers without following the procedures and without any vacancy.

7. The petitioners filed I.A. No. 6977 of 2013 challenging their appointment and on 20.06.2014 notices were issued to the respondent nos. 2 & 3 and this Court recorded that during the pendency of this writ application, any action taken by the respondent nos. 2 & 3 pursuant to Annexure- 20 shall be subject to the result of this case.

8. He further argued that on a complaint made by some teaching and non- teaching employees of the school dated 23.10.2007 regarding irregularity conducted in the appointment process of the petitioners, an enquiry was conducted by the District Education Officer, Sitamarhi, who submitted his report vide letter no. 882 dated 07.06.2008 stating therein that



allegation made in the complaint with respect to constitution of the Managing Committee and decisions taken regarding appointment of the petitioners appears to be correct. The petitioners were never given / served the copy of the enquiry report which was conducted by D.E.O., Sitamarhi behind the back of the petitioners. The enquiry conducted was an ex-parte enquiry and report was submitted without giving opportunity of hearing to the petitioners which is gross violation of the principle of natural justice and is *non est* in the eye of law.

9. Termination of the appointment of the petitioners by the newly formed Managing Committee is in violation of Rule 13 of the Bihar State Non- Government Recognized Sanskrit School (Upto Madhyama Standard) Teachers Service Conditions Rules, 2015 which is *pari materia* to the 1976 Rules. There is no proof of the Sanskrit Board cancelling the appointment of the petitioners on the basis of the recommendation made by the newly constituted Managing Committee dated 08.01.2011 for cancellation of petitioners' appointment.

10. Learned counsel further submits that on perusal of resolution of the Managing Committee dated 08.01.2011 it would be evident that there was no agenda for termination /



cancellation of the appointment of the petitioners. The Managing Committee in violation of the rules and in order to favour the private respondents cancelled the appointment of the petitioners which has not been approved by the Sanskrit Board.

11. On the other hand, learned counsel for the private respondents and official respondents submit that the present writ application challenging the decision of the Managing Committee is not maintainable inasmuch as it is settled law that no writ will lie against the decision of the Managing Committee of the School. He relies upon the decision of this Court reported in 1999 (1) PLJR 529 Chandra Nath Thakur & Ors. *versus* The Bihar Sanskrit Shiksha Board and Ors. and the Hon'ble Supreme Court reported in (2019) 7 SCC 513 Trigun Chand Thakur *versus* State of Bihar and Others. They further argued that appointment of the petitioners is a case of favouritism as the petitioner no. 1 is the brother of an Assistant in the Office of Sanskrit Board and the petitioner no. 2 / Ajit Kumar Pathak is the son of the then Headmaster namely Sarvkant Pathak. The appointment has been made contrary to the provisions of Bihar State Non-Government Sanskrit High School (Service Condition) Rules, 1976. It is on the basis of the enquiry report submitted by D.E.O., Sitamarhi the decision of cancellation of



appointment of the petitioners has been taken. Insofar as 2015 Rule is concerned, the same has nothing to do with this case. In 2007 i.e. in the year of appointment 1976 Rule was holding the field and actions taken under 1976 Rules have only been saved by 2015 Rule. At the time of appointment of the petitioners the 1976 Rule was prevailing having no statutory force. The writ application is devoid of merit and is fit to be dismissed.

12. I have heard rival submissions advanced by learned counsel appearing for the parties.

13. The petitioners were appointed after following the due process of appointment viz. advertisement, appointment of expert by the Sanskrit Board for interview and recommendation of the name of the petitioners by the Selection Committee. Appointment of the petitioners have been approved by the Sanskrit Board vide order dated 2nd July 2007. The newly formed Managing Committee of the School recommended for cancellation of the petitioners' appointment on the basis of the report of the D.E.O., Sitamarhi and it is the case of the petitioners that all these have been done at the behest of the donor with the help of local politicians to appoint their favourites after ousting the petitioners. The private respondent nos. 4 & 5 were appointed.



14. The main issue which requires consideration is whether the present writ application is maintainable in its form and the procedure as prescribed in the rules for termination of the services of the petitioners have been followed or not.

15. Insofar as maintainability of the present writ application is concerned, the respondents have relied upon Division Bench judgment of this Court passed in 1999 (1) PLJR 529 and the judgment of the Hon'ble Supreme Court reported rendered in (2019) 7 SCC 513.

16. The Division Bench of this Court in Chandra Nath Thakur Case (Supra) taking note of the Bihar Sanskrit Shiksha Board Act, 1981 (hereinafter referred to as the "Act") has held that in absence of any statutory Rule framed by the State Government, as required under Section 22(2) of the Act, the Board or the Chairman can not exercise any disciplinary power to accord approval of the order of dismissal passed by the Managing Committee against a teacher of the school. Therefore, for all practical purposes, it has to be held that the Board will have the administrative control over the affairs of the schools, except the power of dismissal and termination of the teaching and non- teaching employees of such schools until a Rule is framed as required under Section 22(2) of the Act.



17. The Division Bench considered the Bihar State Non-Government Sanskrit High School (Condition of Service) Rules, 1976 which was not having any statutory force and was not framed under Section 22 of the Act, held that a teacher of a privately managed school, even though financially aided by the State Government or the Board, can not maintain a writ petition against an order of termination from service passed by the Managing Committee.

18. The Hon'ble Supreme Court in the case of Trigun Chand Thakur Case (Supra) relying upon Chandra Nath Thakur Case has held that the Managing Committee of a school is not "State" within the meaning of Article 12 of the Constitution of India and the writ is not maintainable.

19. In the present case two rules have been placed before this Court namely, Bihar State Recognized Non-Government Sanskrit Schools (Up to Madhyama Standard) Managing Committee Constitution Rules, 2015 framed under Section 22 of the Act (hereinafter referred to as the "Managing Committee Rules, 2015"). The another rule which has been brought to the notice of this Court is Bihar State Non Government Recognized Sanskrit School (Up To Madhyama Standard) Teacher Service Condition Rules, 2015 framed in exercise of the powers



conferred under Section 22 of the Act (hereinafter referred to as the “Service Conditions Rules, 2015”).

20. Both these Rules are piece of subordinate legislation having statutory force. In the Managing Committee Rules, 2015 certain functions and powers have been given to the School Managing Committee under Rule 7.

21. Rule 7(x) confers power on the Managing Committee to make appointment of the school headmaster, teachers and non- teaching staff, to grant leave, to give promotion to the teachers etc. in the light of Service Conditions Rules, 2015.

22. The Service Conditions Rules, 2015 gives power to the Managing Committee to take disciplinary action and award major or minor punishment including dismissal. Rule 13 of the Service Conditions Rules, 2015 prescribes procedure for imposing punishment in consonance with the principle of natural justice.

23. The power to appoint under the Service Conditions Rules, 2015 and to deal with the service of the employees of the Sanskrit School by the Managing Committee includes the power to terminate / dismiss the employees.

24. Rule 17 of the Managing Committee Rules, 2015 and Rule 16 of the Service Conditions Rules, 2015 are quoted



herebelow for ready reference:-

17. Repeal and Savings.--

(1) From the date of commencement of these Rules, all previous Rules, Resolutions, Orders, and Instructions etc. relating to Managing Committee are hereby repealed.

(2) Notwithstanding such repeal, any action taken or any thing done under the previous Rules, Resolutions, Orders, Instructions prior to commencement of these rules will be deemed to be taken or done under these rules as at these Rules come into force on that day on which such action was taken or such thing was done.

16. Repeal & saving.--

(1) All the previous service condition Rules, Resolution, orders and instructions are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the previous Rules, Resolution, order, instructions, shall be done or take under these Rules as at these Rules were come into force on such date when such thing was done or such action was taken.

25. Upon reading of Rule 17 / Rule 16 of the aforesaid Rules it appears that these rules have been given retrospectivity by saying that notwithstanding any thing done or any action taken under the previous Rules, Resolutions, Orders, Instructions, shall be deemed to be done or taken under these Rules as these Rules come into force on such date when such thing was done or such action was taken. Meaning thereby, even if it is said that the action against the petitioners were taken under the the old rules (1976 Rules) by the Managing



Committee it will be deemed to have been taken under Service Conditions Rules, 2015.

26. Even if the termination of the petitioners service were done in the year 2011 by the Managing Committee the same shall be deemed to have been done under 2015 Rule by operation of Rule 16 of the Service Conditions Rules, 2015.

27. The Managing Committee Rules, 2015 confers powers and functions upon the Managing Committee including the function regarding the service condition of the teachers. If the provisions of the Rules are violated by the Managing Committee, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India can interfere in the light of the fact that 2015 Rules are statutory rules. The Managing Committee created under 2015 Rules with certain functions and powers, in my opinion, is amenable to writ jurisdiction if any violation of the Rules is alleged against the Managing Committee.

28. In the judgments of the Division Bench of this Court and the Hon'ble Supreme Court the 1976 Rule was under consideration having no statutory force but in the present case the Rules under consideration are the statutory Rules framed under Section 22 of the Act.



29. Accordingly, in my opinion, the writ application is maintainable.

30. The issue regarding validity of the termination of the petitioners primarily on the ground that as to whether the procedures prescribed in the Rules in this regard has been followed or not is being examined now as a second issue.

31. The petitioners services were terminated in 2011. The 1976 Rules prescribe certain procedures to be followed before removal of the teachers in conformity with the principle of natural justice. The relevant provisions are mentioned in Rule 22 to 28 of the 1976 Rules.

32. The petitioners' services were terminated on the basis of enquiry conducted by the District Education Officer, Sitamarhi, who submitted his report vide letter no. 882 dated 07.06.2008. Copy of the enquiry report along with the show-cause was not made available to the petitioners. The enquiry was an *ex-parte* enquiry conducted behind the back of the petitioners.

33. The Rules framed under Section 22 of the Act are statutory rules which casts certain obligations upon the Managing Committee while dealing with the service conditions of the teachers.



34. Rule 13 of the Service Conditions Rules, 2015 is *pari materia* to Rules 22 to 28 of the 1976 Rules and assigns duty upon the Managing Committee to follow certain procedures including the principle of natural justice.

35. It has been held above that 2015 Rules have been given retrospectivity having statutory force. Accordingly, non conformity of the principle of natural justice as enshrined in the 1976 Rules and 2015 Rules renders the order of termination invalid.

36. Considering the discussions held hereinabove, the order terminating the services of the petitioners is set aside. Consequently, the appointment of the private respondents is also set aside.

37. The respondents are directed to reinstate the petitioners forthwith on their respective posts of Assistant Teacher with 50% of back wages from the date of termination till the date of reinstatement. If the petitioners have actually worked prior to their termination, the salary for those periods shall be paid after verification / proof of their working.

38. With the aforesaid observation and direction, the application stands allowed to the extent as indicated hereinabove.



39. There shall be no order as to cost.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	15-07-2024
Uploading Date	08-08-2024
Transmission Date	NA

