

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1439 of 2018
In
Civil Writ Jurisdiction Case No.13734 of 2018

Primary-cum-Middle Sanskrit School, Kishunpur Yusuf, P.O. Kishanpur Yusuf, P.S. Sarairanjan, District Samastipur through its Incharge Headmaster, Rup Kant Roy, Son of Late Sukhdeo Roy, Resident of Village- Sarangpur, P.S.- Tajpur, District- Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. Special Director (Sanskrit) Secondary Education, Department of Education, Government of Bihar, Patna
4. District Education Officer, Samastipur, District- Samastipur.
5. Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna through its Chairman.
6. The Chairman, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.
7. The Secretary, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Durga Nand Jha, Adv.
For the Respondent/s : Mr. AAG 13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 28-03-2024

Heard the parties.

2. The challenge in the present Letters Patent Appeal

is made to an order of this Court dated 28.08.2018 passed by



the learned Single Judge in CWJC No. 13734 of 2018, whereby the claim of the writ petitioner-appellant for extending financial aid with effect from 01.01.1985 has been negated.

3. Mr. Durga Nand Jha, learned Advocate for the appellant while questioning the order of the learned Single Judge has submitted that the learned Single Judge has completely failed to appreciate that the appellant's school was granted recognition vide letter No. 947 dated 09.09.1992 under 1976 Rules. There was no justification to accord financial aid with effect from 11.05.2011, particularly when the Hon'ble Apex Court in Civil Appeal No. 2502 of 2005 had directed the Government to consider the question of financial grant to two recognized schools including the appellant's school within a period of eight weeks. Learned Counsel for the appellant further contended that the learned Single Judge has misconstrued the judgment of the Hon'ble Supreme Court of India as also the order dated 17.05.2011 passed in CWJC No. 5544 of 2006 duly upheld by the Division Bench of this Court and instead of granting financial aid with effect from 01.01.1985; when other similarly circumstanced 205 Sanskrit Schools were accorded recognition with financial aid, the appellant's school has been granted financial aid with effect from 17.05.2011; leading to a



valid ground of discrimination.

4. The learned Advocate for the respondents on the other hand vigorously argued in support of the judgment rendered by the learned Single Judge.

5. Before coming to the challenge put forth by the learned Counsel for the appellant it would be apposite to give the short facts as gleaned from the materials available on record. The writ petitioner-appellant herein is a Sanskrit School established in the year 1977. After the legislative enactment of the Bihar Sanskrit Education Board Act, 1981 (hereinafter referred to as 'Board'), the responsibility to grant recognition was accorded to the Board. Taking note of certain irregularity in granting *suo motu* recognition by the Sanskrit Shiksha Board to a large number of Sanskrit Schools, without approval of the State Government, a One-Man Committee known as Dr. Damodar Thakur Committee was duly constituted by the State Government vide its resolution dated 21.05.1983. The Committee was obligated to submit its report with respect to the recognition of different schools after inspection and deliberation. The afore-noted Committee submitted phase-wise report. In the first phase, the Committee submitted report in respect of 204 schools with a recommendation for their



recognition. Further, the Committee in the second phase, submitted report in respect of 22 more schools including the appellant school.

6. On 13.04.1985, the Government of Bihar issued resolution granting recognition to the first phase of 205 schools with financial aid. However, when no action was taken with respect to remaining 22 other schools of the second phase, writ petition was filed being CWJC No. 9692 of 1989. In the meantime, in the year 1994, the Government of Bihar in terms of Bihar Sanskrit Education Board Act, 1981 framed Bihar non-Government Sanskrit Schools (Recognition and Conditions) Rules, 1993 and it was provided that Sanskrit Schools would get only recognition, without any financial aid. This Court while considering the case of the petitioner and others held that the Rules, 1993 would have no retrospective operation and thus the writ petitioner's school was recommended for recognition and financial aid with reference to the second phase report of the Dr. Damodar Thakur Committee. The writ petition came to be disposed of vide order dated 12.01.2001 with a direction to the State to award similar treatment to the petitioner and others.

7. Aggrieved, the State preferred an appeal in SLA (Civil) No. 359 of 2002 which was finally disposed of on



08.04.2005 holding that even though 1993 Rules would not apply, the Government had a discretion in the matter as per 1982 Policy itself. There was no right to claim financial aid and that would depend upon the economic and other relevant consideration. The Apex Court directed the Finance Department of the State of Bihar to consider the question of grant in aid to the school of the petitioner and others and communicate it to them. Giving liberty to the petitioner that in case it would be adverse, the aggrieved persons would be at liberty to challenge the same.

8. In the light of the afore-noted observation, the claim of the petitioner was duly considered. However, it came to be rejected on 13.02.2006 which decision was impugned in CWJC No. 5544 of 2006. In the second round of litigation, the learned Single Judge after having found the reasons assigned by the State Government unsustainable and fallacious, set aside the impugned decision of the State refusing to grant aid and further directed the State Government to pass appropriate order within a period of two months.

9. In the aforesaid premise, the claim of the appellant's school had further been considered and it has been granted recognition through Memo no. 1329 dated 01.04.2016 with



immediate effect, subsequently through Memo No. 2824 dated 17.05.2016, approval of the teachers of the school was also accorded. Further, the Board has granted retrospective recognition in favour of the school with effect from 17.05.2011 from the date of the order passed in CWJC No. 5544 of 2006, with financial aid.

10. The order granting recognition with effect from alleged subsequent date i.e. 17.05.2011 was put to challenge in CJWC No. 13734 of 2018 which came to be rejected vide order dated 28.08.2018. Hence the present appeal.

11. Having heard the rival submissions of the parties and after giving anxious consideration to the materials available on record, this Court would observe that in the first round of litigation the matter in relation to recognition to the school in question went to the Hon'ble Supreme Court where the Court while setting aside the decision under appeal has held that even if the 1993 Rules do not apply, at least the particular policy of the Government would have to be given effect to. There is no absolute right to receive the grant-in-aid, which will depend upon the economic and other relevant considerations. The High Court should not have directed the grant in aid to the two schools in question, without the authority having looked into the



balancing considerations, was the finding. The Hon'ble Apex Court further directed the Finance Department of the State Government to consider the question of grant in aid within a period of eight weeks, reserving the liberty that in the event the financial aid is refused, it will be open to the respondents, if they are otherwise so entitled in law to challenge such refusal in appropriate proceedings.

12. Thus, from the observations made hereinabove there was no ambiguity insofar as the State Government being obliged to consider the entitlement of the petitioner's school in respect to financial aid, *de novo* on the facts and circumstances of the case. The question of grant of financial aid was negated by the order dated 13.02.2006 passed by the Additional Finance Commissioner (Expenditure), Government of Bihar, which was put to challenge in CWJC No. 5544 of 2006. The learned Single Judge set aside the impugned order dated 13.02.2006 with a direction to the State Government to grant financial aid to the petitioner's school on the premise that the discretion exercised by the State Government was not based on cogent or relevant reasons. The aforesaid order of the learned Single Judge has also been affirmed by the Division Bench of this Court in LPA No. 59 of 2014. In the background of the decision rendered by this



Court, the State Government considered the matter afresh and granted recognition with financial aid with effect from 17.05.2011, i.e., the date of decision of the learned Single Judge in the writ proceeding. However, this does not satisfy the petitioner's school and the said school again approached this Court, but having found no merit the same stands dismissed, which order is under challenge.

13. The learned Single Judge, while passing the order dated 28.08.2018 had rightly observed that the right to get financial aid to the school is not a fundamental or legal right which the writ petitioner can claim with effect from retrospective date. This Court also reiterates that in the absence of any statutory right, the petitioner cannot claim financial aid to the school with effect from any retrospective date only on the basis of parity. It would be worth noting that recommendation of the Committee does not bind the State Government as the final decision to grant recognition and financial aid is dependent upon many other factors, including the economic condition. This was the premise on which the Hon'ble Supreme Court set aside the earlier judgment, while directing *de novo* consideration.

14. At this juncture, it would be proper to observe that



after coming into force the Bihar non-Government Sanskrit School (Recognition and Conditions) Rules, 1993, the recognition of the school is to be done without aid/finance and the State Government shall not be burdened with financial liability as a result of such recognition. Despite the promulgation of the aforesaid Rules, the case of the petitioner's school was considered as the same was pending consideration since long and lastly it was granted with effect from 17.05.2011 based upon the economic and other relevant consideration in the light of the observation made by the Supreme Court in Civil Appeal No. 2502 of 2005. This Court is also not oblivious of the fact that even the order passed by the learned Single Judge in CWJC No. 5544 of 2006, there was no such direction to consider the case of the appellant's school for financial aid from retrospective date nor there was any such stipulation in Division Bench decision dated 04.04.2017 in LPA No. 59 of 2014, affirming the order of the learned Single Judge. The prayer for retrospective grant of recognition and financial aid was never urged in the earlier litigation and the same cannot now be urged to relate recognition and provision of grant-in-aid from a date later to the date from which, it has already been granted.

15. In view of the discussions made hereinabove and



the position obtaining in law, this Court does not find any infirmity in the order impugned. The appeal *sans* any merit stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

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