

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.641 of 2018

In
Civil Writ Jurisdiction Case No.6066 of 2015

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1. Sushant Kumar, S/o Sri Gaurinath Mishra Bhaskar, Resident of Mohalla - Sheopuri, P.S.- Sadar, District - Begusarai.
 2. Rita Kumari, W/o Vivekanand Mishra, Resident of Village - Phulwaria, P.S.- Phulwaria, District - Begusarai.
 3. Reena Kumari, W/o Sudhir Kumar Choudhary, Resident of Naya Nagar, Dularpur, P.S.- Teghra, District - Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Special Director (Secondary Education), Education Department, Bihar, Patna.
3. The District Education Officer, Begusarai.
4. The District Programme Officer, Begusarai.
5. The Bihar Sanskrit Shiksha Board through its Secretary, Bihar Sanskrit Siksha Board, Patna.
6. The Chairman, Bihar Sanskrit Siksha Board, Patna.
7. Madan Mohan Mishra, S/o Late Chandeshwar Mishra, Resident of Village - Phulwaria, P.S.- Phulwaria, District - Begusarai.
8. Managing Committee of Sarswati Bilash Sanskrit High School, Shokhara, District-Begusarai through its Secretary, Ravindra Mishra, S/o Madhusudan Mishra, Resident of Village-Phulwaria, P.S.- Phulwaria, District - Begusarai.
9. Ashok Kumar Choudhary, S/o Late Devendra Choudhary, Resident of Village - Parihara, P.S.- Bakhari, District - Begusarai.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Tej Bahadur Singh, Sr. Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15
For the Board	:	Mr. S.S. Sundaram, Advocate
		Mr. Shashank Shekhar Jha, Advocate
For Private Respondent	:	Mr. Siya Ram Shahi, Advocate
		Mrs. Shaili Kumari, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 10-05-2019



The present Letters Patent Appeal has been preferred against the judgment and order dated 23.04.2018 passed by the learned single Judge in C.W.J.C. No.6066 of 2015, by which the appointments of the appellants 1, 2 and 3, who were respondents 7, 8 and 9 in the writ application, have been held to be void *ab initio* and further the Court has directed that whatever money had been paid to them, be refunded within three months from the date of the aforementioned order.

2. The factual matrix which forms the substance of the writ application was that

(i) Petitioner No.1 is the Secretary of the Managing Committee of Sarswati Bilash Sanskrit High School with Petitioner No.2 as its Headmaster and is under the category of 429 schools taken over by the State Government with effect from 18.12.1989 by means of Ordinance No.32 of 1989 which lost its effect from 01.05.1992. In the said School, nine posts, including teaching and non-teaching, have been sanctioned by the State Government and one post of Science Teacher by the Central Government.

(ii) An ad hoc Managing Committee was constituted on 30.04.1997 by the Board in which one Gaurinath Mishra Bhaskar came to be the Secretary and Baidhnath Chaudhary as its



President. However, after six months since there was no extension letter by the Board, the said Committee lost its tenure, but during the said period, five meetings were held by the ad hoc Managing Committee, but no advertisement was issued nor were any steps taken by it for appointment of teaching and non-teaching posts.

(iii) A perusal of the proceedings of the meeting dated 05.07.1997 discloses that in the said meeting, the promotion of Petitioner No.2 to the post of Headmaster was under consideration and there was yet another proposal for the approval of teaching and non-teaching employees who had been working and appointed in pursuance of any advertisement.

(iv) Respondent No.7, namely, Sushant Kumar, (appellant no.1) was the son of Gaurinath Mishra Bhaskar (Secretary) and respondent No.8 Rita Kumari was a relative. The specific assertion of the petitioner is that during the term of Gaurinath Mishra, Secretary of the aforementioned School, no steps were taken for appointment of private respondents at any point of time nor had they worked in the School for even a single day.

(v) The appointment of private Respondent Nos.7, 8 and 9 was completely in derogation of the Rule, known as Bihar State Non-Government Sanskrit High School (Service Conditions)



Rules, 1976 and the proceeding dated 05.07.1997 does not speak even about the names of the appointees and for that matter, with regard to any procedure which may have been followed leading to their appointment.

(vi) A regular Managing Committee was constituted by the Board vide Memo No.1719 dated 25.04.2007 in which one Baidhnath Chaudhary was the Chairman whereas Ravindra Kumar Mishra was the Secretary with the Petitioner No.2, the then Headmaster, as a Member of the Committee.

(vii) The said Committee constituted on 25.04.2007 lost its force after the completion of a tenure of three years and during the said period, Petitioner No.2 had communicated to the Board the name (First Phase Namika), which was duly approved by the Board.

(viii) In the meanwhile, the Board constituted a new ad hoc Committee, vide Memo No. 4714 dated 30.05.2013 (Annexure 3 to the writ petition), which was against the Bihar Non-Government Sanskrit High School Managing Committee Rules, 1976, in which one Madan Mohan Mishra was appointed as the Secretary. The respondent No.9 herein in the writ, happens to be the daughter-in-law of Madan Mohan Mishra.



3. The dispute arose with petitioner No.2 challenging the validity of the said Committee before the Special Director Madhyamik Shiksha, Department of Education, Government of Bihar, who, vide Memo No.106 dated 26.07.2013, set aside the Memo dated 30.05.2013 and further directed the Board to constitute the Managing Committee (Annexure 4 to the writ petition).

4. In the meanwhile, Respondents 7, 8 and 9 (appellants herein) filed CWJC No.2463 of 2010 for grant of approval of their services on the basis of the name sent by the Managing Committee in the year 1997, which was heard by this Court and vide order dated 15.03.2013, a direction was given to the Chairman of the Board that a decision be taken thereon so as to determine the status of the writ petitioners within a period of three months from the date of production of the copy of the order.

5. When the Respondents 7, 8 and 9/appellants herein, did not meet success, they filed another writ petition, bearing CWJC No.10800 of 2014. The said writ application was disposed of on 25.08.2014 with the direction to the Secretary of the Board to take a final decision in the matter in accordance with law, preferably within a period of three months. Based on the aforementioned directions, the Chairman of the Bihar Sanskrit



Shiksh Board, vide Memo No.4530 dated 26.11.2014, without considering the case in the light of the background of the respondents and on the basis of the written arguments filed by one Madan Mohan Mishra, the then Secretary, passed the order of approval of the services of the private Respondents 7, 8 and 9, who are appellants herein.

6. A few facts need to be recapitulated here:

(a) Madan Mohan Mishra, Secretary of the ad hoc Committee was the father-in-law of respondent No.9 and the constitution of the said ad hoc Committee, of which Mr. Mishra was the Secretary, was set aside on 26.07.2013.

(b) The Respondents 7 and 8, who were the appellants herein, are the relation of the then Secretary of the ad hoc Committee, i.e Mr. Bhaskar.

(c) The respondent-Board without considering the fact as to under what advertisement the appointments of the appellants were made or under which Committee the applications were received and who were the Members of the Board of Interview, who had issued the appointment letters and also without ascertaining whether Respondents 7, 8 and 9 had marked the attendance register, granted approval of their services in a wholly irregular manner.



(d) The appeal preferred by the Writ Petitioner No.2 before the Special Director against the order of the Board, which was numbered as Appeal Case No.25 of 2014, was rejected vide Memo dated 20.02.2015 without appreciating as to how the Secretary of the Committee can appoint his own relation and also without following the rules and none of the authorities considered the protests filed by the petitioners.

(e) The Secretary, Bihar Sanskrit Shiksha Board went a step further and directed the D.E.O., Begusarai, vide Letter No.2405 dated 14.03.2015, that if the Headmaster (petitioner No.2) did not submit the bill, then on the basis of personal affidavit of private respondent and on the signature of Madan Mohan Mishra, the then Secretary, the process of payments may be made and accordingly, within a period of two days, a sum of almost Rs.22 ½ lacs was paid to the Respondent Nos.7, 8 and 9, who are the appellants herein. It was this action which finally compelled the writ petitioner, particularly petitioner No.2, to seek appropriate remedy before this Court under Article 226 of the Constitution of India and praying for cancellation of their appointments and also recovery of the amounts illegally paid to them.



7. Learned counsel for the petitioners contended that the entire procedure of selection of the private respondents was based on fraud inasmuch as neither the rules or procedure for appointment was followed in accordance with the Bihar State Non-Government Sanskrit High School (Service Conditions) Rules, 1976, especially Clauses 1 to 8 of Chapter 3, which deals with the procedure for making appointment. The submissions of the writ petitioners before the learned single Judge thus came to be founded on the premise that though appointment should be made through advertisement and paper publication in a prominent Hindi Daily and/or on the basis of local advertisements, the appointments, which were under challenge, were without any advertisement. Further, there was nothing on record to show that even a draft of such advertisement had been placed before the Board for its approval as required under the Rules.

8. Learned counsel for the writ petitioners had also urged that there is nothing on record to show that the Selection Committee was ever constituted or any applications were called for and/or number of applications received before the alleged appointments were made by the so-called Secretary of the then Managing Committee.



9. It was further pointed out that the then Secretary of the Managing Committee of the School, vide his letter dated 26.05.1997, spoke about an expert to be appointed for conducting the interview in accordance with the rules and that further one Shashidahar Pathak had been indicated as a Member of such Selection Committee in the capacity of Incharge Headmaster whereas just two days prior to such letter, the said Shashidhar Pathak had been removed from his post by the then Managing Committee on 24.05.1997. Such surreptitious action by the then Managing Committee in itself indicated fraud, as when another person had already been recommended instead of Shashidhar Pathak, his name as a Member of the Selection Committee, after his removal was but wholly irregular.

10. Learned counsel for the writ petitioners before the learned single Judge has averred that the hurried manner in which the money was released bypassing all norms itself reveals and the order by the concerned authority directing payment to be made on the basis of the bill submitted by Respondent No.10 in the capacity of the Secretary who had been earlier removed, itself indicate that the illegal actions of the respondents which warranted interference by the Court.



11. Having heard counsel for the parties, the learned single Judge, after taking into consideration all facts and circumstances of the case, came to the considered conclusion that the appointments of respondents 7, 8 and 9/appellants herein, have been held void *ab initio* as there was nothing on the record to indicate that even if the statutory rules were not in force, still the regular procedure to have been adopted by the Managing Committee for making such appointments would have been after taking necessary approval of the Board. The learned single Judge has also held that the payments released in such a manner were also illegal and the communication made by the Secretary of the Board dated 14.03.2015 to the District Education Officer, Begusarai to make payments to the Respondents 7, 8 and 9 were passed in undue haste. Accordingly, the learned single Judge after taking due note of the decisions of a co-ordinate Bench in the case of ***Ravindra Mishra vs. The Chairman, Bihar Sanskrit Shiksha Board and Ors.*** (CWJC No. 1997 of 2015, decided on 03.02.2015) and in the case of ***Vijay Shankar Ray vs. The State of Bihar and Ors.*** (CWJC No.13063 of 2010, decided on 06.04.2011) has come to the considered decision that Respondents 7, 8 and 9 to the writ petition could not be allowed to stand and their appointments were void *ab initio* and thus directed that all orders passed subsequent to



their appointments were void and were accordingly set aside. The learned single Judge further directed that the payments made in their favour be also refunded and deposited in the Government account. In the event, they are not refunding the amount, the Government is entitled to recover the same in accordance with law.

12. It is against this order passed by the learned single Judge that the Respondents 7, 8 and 9 have preferred the present intra-Court appeal on the grounds as stated here under.

13. In support of the Appeal, learned counsel for the appellants contended that the learned single Judge has proceeded on the assumption that the appointments of these appellants (Respondents 7, 8 and 9) have been made in contravention of law and such assumption without consideration of their cause renders the impugned judgment bad in the eyes of law.

14. Learned counsel for the appellants further urged that the learned single Judge has clearly erred in holding that the appointment could alone be made by a Selection Committee under the Rules but failed to appreciate that under the Rules, the term “Committee” referred in it denotes the Managing Committee of the School and not the Selection Committee.



15. Learned counsel for the appellants further urged that if the Proposal No.3 of the proceeding of the said Committee dated 15.07.1997 with regard to the promotion of the Headmaster could be accepted, then adopting the similar parameters, the appointment of the appellants should also be endorsed. Moreover, the contention of the appellant is that Petitioner No.2 (Respondent No.9 herein) could not question the appointments after a lapse of 18 years. It was further contended that the Managing Committee cannot question the decision of an earlier Managing Committee after a lapse of 18 years. Learned counsel for the appellants further contended that before issuing local advertisement dated 16.05.1997 for appointment, the then Secretary, vide Letter No.3 dated 9.5.1997 has apprised the Board regarding the same and for conducting interview, expert hand had been requested, vide letter dated 26.5.1997. It was further contended by the appellants that the Incharge Headmaster Shashidhar Pathak being the seniormost Teacher had continued to discharge his duties and had participated in the selection process because the writ petitioner no.2 had taken charge as Headmaster on 05.09.1997. It was thus contended that there was no irregularity, leave alone illegality in the appointment of the appellants.



16. Learned counsel for the appellants further averred that in fact, it was the appointment of Petitioner No.2 (respondent No.9 herein), who was itself under a cloud, and as such many cases were instituted. Learned counsel for the appellants further contended that the approval of the appointment of these appellants had been recommended on several occasions by the then Secretary, but since the Board was not passing orders and the issue continue to drift, the appellants moved this Court in CWJC No.2463 of 2010 for grant of approval of their services, vide order passed by this Court on 15.03.2013, wherein a direction was issued to the Chairman of the Board to consider their cases on merits. However, on the request to Respondent No.9 by the Board, vide letter No.5025 dated 15.07.2013, the respondent-Headmaster was asked to send the reports for approval of the services of the appellants which was deliberately withheld and instead, the services of the wife and daughter of Petitioner No.2 was approved ignoring the age declaration.

17. Learned counsel for the appellants further contended that their services were approved vide order dated 22.02.2015 by the Special Director (Secondary), Bihar, Patna, which was wholly correct and legal and accordingly the payments were made. It was thus submitted that there was no illegality



involved in making payments after the services had been affirmed. It was thus contended that the learned single Judge has clearly overlooked the factual aspect of the matter and has passed the impugned judgment in a mechanical manner, ignoring the settled proposition of law that a Headmaster would not be permitted to challenge the appointments.

18. The appellants have also averred that since the Petitioner No.1 had earlier approached this Court in CWJC No.1997 of 2015 and had failed to get any relief, they were precluded from re-agitating the cause and the present writ application was barred by the principle of *res judicata*.

19. We have heard the parties at length and considered the rival submissions. Learned counsel for the Board and also learned counsel for Respondent No.7 have appeared to resist the present appeal. After having considered deeply the submissions advanced, we have found that evidently, the entire activities of the Institution have been functioning in a wholly irregular manner. The fraudulent act of appointing the appellants is writ large from the records of the case, particularly from the fact that the said advertisements were never issued. We have observed that the involvement of the Secretary in making the illegal appointments at the very outset of his own kith and kin, namely, appellant Nos.1



and 2, is wholly irregular and cannot be approved by this Court. The action of the respondent-Madan Mohan Mishra, Secretary of the ad hoc Committee in appointing his daughter-in-law (respondent no.9)-Appellant No.3 herein, was wholly irregular in view of the fact that the constitution of the said ad hoc Committee of which Madan Mohan Mishra was the Secretary was set aside on 26.07.2013. We are also constrained to observe that the approval accorded by the Sanskrit Shiksha Board to the alleged illegal appointment is itself reflective of the clandestine manner in which the Board has been functioning, which itself is questionable and fit to be deprecated. Thus, having observed the same, we conclusively arrive at the finding that the appointments of appellant Nos.1, 2 and 3 were rightly set aside, as not only were their appointments void *ab initio* but their appointments were sought to be perpetuated by other collusive elements within the successive ad hoc Committees which have been camouflaged by the Sanskrit Shiksha Board and thus their appointments cannot be sustained and are fit to be set aside.

20. So far as the issue of *res judicata*, which has been raised by the appellant is concerned, CWJC No.1997 of 2015 was filed for direction to respondent No.4 for making payment of salary for teaching and non-teaching staff of the School, but the



same was dismissed on the ground of *locus standi* as in the light of the earlier decision, the petitioner No.1, who is the Secretary, was not entitled to contest the same as such pleas were individual right for which respective teachers could have come before the Court. The present issue is, however, with regard to the continuance of illegal appointments of the appellants which had not been adjudicated upon by this Court in the earlier writ.

21. Shorn of unnecessary details, this Court finds that in view of the dispute which was raised inter parte, a detailed enquiry was conducted and a report dated 19.09.2015, contained in Memo No.811, was submitted to the Special Director (Secondary Education) by the District Programme Officer, Begusarai in which certain serious discrepancies came to the fore, the same are enumerated hereunder, which would justify passing of the impugned order by the learned single Judge :

(a) In pursuance of Letter No.3170 dated 22.06.2015, issued by the Secretary, Bihar Sanskrit Shiksha Board, Patna, attendance register from the year 2001 to 2005 had been examined. In the said report it came to light that the names of the appellants Sushant Kumar, Rita Kumari and Reena Kumari were not entered in the attendance register of the Institution since 2001 to 2015 nor in the payment register maintained at the School. The



Headmaster had informed that these three teachers had not been appointed in accordance with law and had never joined the Institution. Furthermore, they were not present at the time of inspection.

(b) So far as the submission of the appellants with regard to the proceeding dated 15.07.1997 of the then ad hoc Committee is concerned, the case of the Headmaster was fit to be accepted on account of the fact that his appointment was never under challenge and the Proposal No.3 of the said Committee was with regard to his promotion whereas the very existence of appellant Nos.1, 2 and 3 were under a cloud. The so-called issuance of local advertisement was found to be merely in the shape of a draft, which has never been approved by the Board nor published in any newspaper and thus the appointments by the then Secretary of the ad hoc Committee without there being any permission from the Board was wholly illegal and could not be allowed to be perpetuated. Thus, the contention of the appellants with regard to Proceeding No.3 appears to be unfounded as the appointment of the Headmaster (Petitioner No.2) was never under a cloud.

(c) The Enquiry Officer also found that later one Rita Kumari appeared along with her husband at the time of inspection,



but indicated that her appointment was made in the year 1997 by the Secretary and the then Headmaster, namely, Shashidhar Pathak, who had taken her joining. So far as entry of her name in the attendance register was concerned, she submitted that the attendance register was available with one Madan Mohan Mishra at his residence which she would produce later. She also indicated that since her attendance was not being marked in the School, she had approached this Court in 2008. The Enquiry Officer found that these three Teachers had never attended Schools nor had given their joining in the School which came to light from the statement of one Pradeep Giri, Assistant Teacher appointed since 1999 and also an Orderly, namely, Shirish Kapar, appointed since 1980 in the School.

(d) Strangely enough, the Enquiry Officer has also noted that subsequently one so-called Secretary Madan Mohan Mishra, who is said to have been retaining the attendance register of the appellants, enabled them to produce it and it was found by the Enquiry Officer that the entire register had been prepared in a day. It was this Secretary Madan Mohan Mishra at whose residence the registers were maintained and it was the said Headmaster who had sanctioned earned leave and also made payment to them in one lumpsum. It is indeed strange that the



Enquiry Officer in his report has categorically noted that there are two Secretaries functional in the School in which one Secretary Shri Ravinda Mishra is said to be handling the finance and making payments to all the employees of the School which includes the Headmaster as well as other teaching and non-teaching employees, but money in favour of these appellants has been disbursed in a lumpsum for a period of 18 years under the signature of one Madan Mohan Mishra, who has signed as the Secretary, though he had been earlier removed by the then Managing Committee. Thus the collusive act of the departmental authorities in making payments to illegal appointees/the appellants, cannot be ruled out. This in itself is indicative of the findings by the officials that the authorities had illegally authorised the Secretary and the report contained in Memo No.811 dated 19.09.2015 forms part of the reply filed by the respondent-writ petitioner 7, 8 and 9 and is a conclusive indicator of the fraud which has been perpetuated by the authorities in league with the functionaries, in the name of the School.

22. Having gone through the entire facts and circumstances, we are unable to find any discrepancies in the reasoning given by the learned single Judge and the judgment rendered by him cannot be faulted on any count. It is well settled



principle that fraud goes to the root of the matter and any action rendered thereafter in pursuance of the said fraud is but a nullity and we also hold as such.

23. In the result, we find no merit in the appeal. It is, accordingly, dismissed with a further direction to the respondents to ensure and take effective action towards recovery of the money paid illegally to the appellants, as has been directed by the learned single Judge.

(Anjana Mishra, J)

**Amreshwar
Pratap Sahi, CJ** I agree.

(Amreshwar Pratap Sahi, CJ)

PNM

AFR/NAFR	
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