

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19249 of 2021

Harish Chandra Roy, Son of Ram Swarath Roy, Resident of Village-Chaita, P.S.-Angarghat. District-Samastipur, Presently, reverted From the Post of Principal-Cum-Member Secretary, M.R. Janta College, Maheshpatti, Ujijarpur, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director (Secondary), Education Department, Government of Bihar, Patna.
2. The Director (Secondary), Education Department, Government of Bihar, Patna.
3. The Chairman Bihar School Examination Budh Marg, Patna.
4. The Secretary, Bihar School Examination Board, Budh Marg, Patna. (Bihar Intermediate Education Counsel now Vested in Bihar School Examination Board).
5. The Academic Director, Bihar School Examination Board, Budh Marg, Patna.
6. The District Education Officer, Samastipur, District-Samastipur.
7. Merazur Rahman the Secretary of Muslim Educational Social Welfare Society, Lakhnipur, Maheshpatti, District-Samastipur.
8. Shri Rahat Hussain, Presently Posted as Incharge Principal, M.R. Janta College, Maheshpatti, Ujijarpur, District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Singh, Advocate
For respondents no. 7&8:		Mr. Shivendra Kishore, Sr. Advocate
		Mr. Nafisuzzoha, Advocate
For the State	:	Mr. Prabhakar Jha (GP-27)
		Mr. Mukund Mohan Jha, AC to GP-27
For the B.S.E.B.	:	Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-07-2025

Heard Mr. Shashi Bhushan Singh, learned counsel
appearing on behalf of the petitioner; Mr. Shivendra Kishore,
learned senior counsel along with Mr. Nafisuzzoha, learned
counsel for the respondents no. 7 and 8; Mr. Prabhakar Jha,
learned GP-27 along with Mr. Mukund Mohan Jha, learned AC



to GP-27 for the State and Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"(I) For issuance of a writ in the nature of Certiorari for quashing the Memo no. BSEB(S.S.)/Coll-Estb/-1424 / D-2021 dated 11.10.2021 whereby the petitioner has been removed from the post of Principal of the M.R. Janta College, Maheshpatti, Ujiyarpur, District-Samastipur without any rhyme and reason and even without following the procedure and extreme junior to the petitioner has been posted as Incharge Principal of the College which is in teeth of law laid down by the Hon'ble High Court in CWJC No. 11220/1999, order dated 5.05.2005 (2005, Vol-3, PLJR, P-133) whereby it has been decided that senior most teacher will hold the post of In-charge Principal and permit him to smoothly function as Incharge Principal of said college.

(II) For issuance of a writ in the nature of Mandamus commanding and directing the respondent authorities to appoint senior most teacher as Principal of the College in view of law laid down by the Hon'ble High Court and induct as Member Secretary of the governing Body, as manipulating and concealing several facts the college in question is being shown as governed under Muslim Educational and Social Welfare Society, Lakhnipur, Maheshpatti.

(III) For a declaration that M.R. Janta College Maheshpatti, Ujiyarpur, District- Samastipur is not governed under Muslim Educational and Social Welfare Society, Lakhnipur, Maheshpatti rather from the date of inception it has independent identity and being governed/managed by the Governing Body and Managing Committee of the College.

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions, for which the writ petition shall be found entitled under the facts and circumstances, of the case."

3. Learned counsel appearing on behalf of the petitioner submitted that petitioner is aggrieved by the



termination order dated 11.10.2021, which he has not brought on record as according to the petitioner, no chit of paper was provided to the petitioner though he was restrained to work by the Managing Committee of the Institution.

4. Learned senior counsel appearing on behalf of the private respondents no. 7 and 8, at the outset, questioned the maintainability of the writ petition as the grievance of the petitioner is against the action of the Managing Committee of the Institution, and in this regard, he has relied on a Division Bench Judgment passed by this Court in the case of ***Santosh Kumar vs. The State of Bihar & Ors.*** reported in ***(2013) 1 PLJR 269***, wherein, it has been held that the contract of service of the petitioner is the private contract and the relief as sought in the present writ petition can only be raised in the suit.

5. Mr. Prabhakar Jha, learned GP-27 appearing on behalf of the State submitted that the government is only responsible in respect of providing funds in terms of aid for payment of salary to the teaching and non-teaching staffs of the institution based on the number of posts subject-wise affiliated by the Bihar School Examination Board.

6. Mr. Gyan Shankar, learned counsel appearing on behalf of the Bihar School Examination Board (B.S.E.B.)



informs that Bihar School Examination Board Senior Secondary Affiliation Regulation, 2011 (hereinafter referred to as the "Regulation, 2011") provides for affiliation of private institution managed and governed by the Managing Committee and Governing Body. Regulation 3 of the Regulation, 2011 provides for conditions of affiliation, Regulation 15 of the Regulation, 2011 provides for withdrawal of affiliation and Regulation 18 of the Regulation, 2011 provides for power and functions of the school managing committee, with which, B.S.E.B. has no concern.

7. This Court enquired from learned counsel appearing on behalf of the petitioner, as to what, educational qualification the petitioner possessed on the date he was terminated and similar question was required to be answered by learned senior counsel appearing on behalf of the respondents no. 7 and 8. Both of them failed to give information relating to the educational qualification in respect of their respective clients. Learned counsel for the B.S.E.B. has also not been able to give information regarding the educational qualification of the petitioner on the date of termination, as well as, whether the respondent no. 8, who is working as the principle of the school, as on date, is having requisite qualification as mandated by the



technical body of the State or the Central Government.

8. This Court has limitation of exercise of power of judicial review with respect to the functioning of the Managing Committee of private institution and its arbitrary action, which was subject matter before the Apex Court in case in case of ***St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others*** reported in ***(2023) 4 SCC 498***. The Apex Court considering the action of the institutions, which are managed and governed by the governing body held that the action falls within the description of an authority under Article 226 of the Constitution of India. In paragraph no. 20 of the said judgment, the Apex Court has taken note of the fact that the High Court had placed considerable degree of reliance on the judgment of two judges Bench of the Apex Court in ***Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani]***, reported in ***(1989) 2 SCC 691*** which was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by the State legislation. The teachers of the University and all its affiliated colleges were governed, insofar as their pay scales were concerned, by the recommendations of the University Grants Commission. A



dispute over pay scales raised by the association representing the teachers of the University had been the subject-matter of an award of the Chancellor, which was accepted by the Government as well as by the University. The management of the college, in question, decided to close it down without prior approval. A writ petition was instituted before the High Court for the enforcement of the right of the teachers to receive their salaries and terminal benefits in accordance with the governing provisions. In that context, this Court dealt with the issue as to whether the management of the college was amenable to the writ jurisdiction. A number of circumstances weighed in the ultimate decision of Apex Court, including the following:

- 1. The trust was managing an affiliated college.*
- 2. The college was in receipt of government aid.*
- 3. The aid of the Government played a major role in the control, management and work of the educational institution.*
- 4. Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students.*
- 5. All aided institutions are governed by the rules and regulations of the affiliating University.*
- 6. Their activities are closely supervised by the University.*
- 7. Employment in such institutions is hence, not devoid of a public character and is governed by the decisions taken by the University which are binding on the management.*



9. The Apex Court in case of *St. Mary's Education Society (Supra)*, finally summed up its final conclusion in paragraph no. 75 in which, it has been held that an application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. In the present case, I find that the petitioner is aggrieved by the action of the Managing Committee, insofar as, he has claimed that he has been terminated from the service, which has been opposed by the respondents. I don't find any public law is involved in the action of the Managing Committee, which functions in terms of Article 30 (1) of the Constitution of India. However, considering the fact that whether the institution is running in accordance with the Regulation, 2011 with regard to the primary requirement for running an institution the teachers must be possessed with requisite qualification for their employment and those who are having the eligibility to teach in accordance with the requirement of law governing their service conditions.

10. In this regard, I find that the petitioner has not come with clean hand nor the requirement for eligibility for a teacher respondents have given any information given to this Court, as to whether, the teachers of the said institution



including the petitioner and private respondents no. 7 and 8 were/are possessed with the requisite qualifications as mandated according to the rule governing their service conditions. I find that in exercise of power under Article 226, I direct the State of Bihar to perform its public duty cast upon it in accordance with law and at the same time, the Bihar School Examination Board in particular, is required to give affiliation to the aided schools/institutions, whether it is minority or non-minority managed by a Managing Committee of a trust to ensure it fulfills the requirement for grant of affiliation, whose teachers, particularly possess the requisite eligibility criteria and those institutions who fail, their affiliation is required to be cancelled.

11. In view of the specific observation made by the Apex Court in case of *St. Mary's Education Society (Supra)*, in paragraphs no. 75.3, 75.4 and 75.5 and *Jaiveer Singh (Supra)* I direct the Additional Chief Secretary, Education Department, Government of Bihar and the Chairman of the Bihar School Examination Board to call for the records relating to the school/institution in question and see that whether, as on date, the school/institution fulfills the required curriculum, as well as, the teachers in the concerned school/institution possess the educational qualification as mandated under the law.



12. In case, it is found that the school/institution is running without fulfilling the terms and conditions as per the regulation and the Central Act, then in that case, the recognition/affiliation of the school/institution is required to be withdrawn forthwith.

13. With aforesaid observation(s)/direction(s), the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	24.07.2025
Transmission Date	N/A

