

**(1986) 10 PAT CK 0002**

**In the Patna High Court**

**Case No : Civil Writ Jurisdiction Case No. 743 of 1981**

Bajrang Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision : 01-10-1986**

**Acts Referred:**

Constitution of India, 1950 — Article 29, 30, 337

**Citation : (1987) PLJR 521**

**Hon'ble Judges : K.B. Sinha, J**

**Bench : Single Bench**

**Advocate :** Rajendra Prasad Singh and Tej Bahadur Singh, for the Appellant; Indu Prabha Singh, G.P. VI and Sri Harendra Narain Sinha, J.C. for the State, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

Krishna Ballabh Sinha, J.—This application is for issuance of a writ in the nature of mandamus, directing the respondents to approve and declare the petitioner the permanent Headmaster of Sant Tulsi High School, Pitamberpur (hereinafter called as "the Pitamberpur School"). Alternative prayer has been made to consider the case of the petitioner for promotion as the permanent Headmaster of the said school after quashing Annexure 6. Further prayer has been made for quashing Annexure 2, in which the petitioner has been designated as Acting Headmaster, as also Annexure 3 and 4, by which the Bihar Secondary Education Board (hereinafter called as "the Board") refused to treat the petitioner as the Headmaster of Pitamberpur School. The case of the petitioner is that he was originally appointed an Assistant Teacher in Pitamberpur School on 2.2.1962 and continued to work there till the 25th of April, 1964. Thereafter, he was appointed an Assistant Teacher in Ganesh Dutt Patliputra High School, Patna (hereinafter called as "the G.D. School") and had been working there from the 27th of April, 1964 to the 28th of October, 1968. Thereafter, he was appointed Headmaster on 3.12.1971 by the Managing Committee of Pitamberpur School. Partial recognition

was given to that School sometime in the year 1964. A Special Board was constituted to inspect the said School to find out whether it was fit to be given permanent recognition. After submission of the report by the Board, the school was given recognition by the order dated the 8th of December, 1976, a copy of which has been filed as Annexure 2. The petitioner has been described in it as Acting Headmaster and the matter regarding his approval as permanent Headmaster was kept pending. Ultimately, by the order dated 29.7.1978, the Board refused to treat the petitioner as permanent Headmaster primarily on the ground that he was not possessed of ten years teaching experience at the time of recognition of the school. A copy of the said order is Annexure 3 to this application. The petitioner filed a representation against the said order (Annexure 3) before the Chairman of the Secondary Education Board stating therein that there was no legal impediment preventing the Managing Committee of non-Government School from appointing a teacher as permanent Headmaster even without teaching experience of ten years. The representation was rejected by the order dated the 21st of May, 1979, as contained in Annexure 4 to this application. A Headmaster was posted in Pitamberpur School by the order dated the 11th of July, 1980, but the said order was cancelled by the Chairman of the Board on 17.7.1980.

2. The petitioner in this application has also referred to the memo dated 30.12.1980, as contained in Annexure 4, by which it was resolved in a meeting held under the presidentship of the Education Commissioner, Government of Bihar, that the newly appointed Headmaster would not be posted in the non-Government Secondary schools, where the acting Headmaster with the requisite teaching experience of ten years had been working. According to the petitioner, the respondents promoted about 100 acting Headmasters as permanent Headmasters in different High Schools of Bihar, but a discriminatory attitude was taken in his case.

3. Appearing on his behalf Mr. Rajendra Prasad Singh contended that the petitioner was possessed of all the requisite qualification for holding the post of the Headmaster and as such there was no justification for the respondents to refuse to approve and treat him as the permanent Headmaster of Pitamberpur School. For the purpose of calculating the prescribed teaching experience, he referred to the period during which the petitioner had been working, at the first stage, in Pitamberpur School from the 2nd of February, 1962 to the 25th of April, 1964 and also in G.D. School from the 27th of April, 1964 to the 28th of October, 1968, which roughly comes to 6 years and 10 months. To this he added the period of working of the petitioner as Headmaster of Pitamberpur School from the 3rd of December, 1971 to the 8th of December, 1976, when the said school was given recognition by the Chairman of the Board. It was submitted that the total period, during which the petitioner worked in the said schools, was more than twelve years and thus the order passed by the Board was based on miscalculation.

4. It was also argued that no qualification was prescribed for appointment to the post of Headmaster at the time when Pitamberpur school was recognised by the Board in 1976 and as such it was obligatory on the part of the respondents to approve and treat the petitioner as the Headmaster of the said school.

5. No counter-affidavit has been filed on behalf of the respondents inspite of service of notice. Mrs. Indu Prabha Singh, the learned Government Pleader appearing on behalf of the State contended that the period during which the petitioner was working as teacher Pitamberpur school prior to the 8th of December, 1975 could not be taken into consideration for computing the period of teaching experience of ten years, as the said school was not recognised. It was also urged that at the time of appointment by the Managing Committee as Headmaster, the petitioner was not qualified to hold that post.

6. As mentioned above, lack of requisite teaching experience of ten years was the sole ground on which the Board refused to approve the petitioner as Headmaster of Pitamberpur school. So, the primary question, which falls for determination, is whether the petitioner had the requisite teaching experience for appointment as Headmaster of the said school either at the time of his appointment or at the time when the said school was recognised by the Board.

7. In order to appreciate the arguments put forward on behalf of the petitioner that no qualification was fixed for appointment to the post of Headmaster when Pitamberpur school was recognised by the Board, it may be useful to survey cursorily the history of the provision prescribing teaching experience as qualification for appointment to the post of Headmaster of non-Government High school. Prior to coming into force of the Bihar High School (Control and Regulation) Act, 1960 (hereinafter referred to as 1960 Act) there was no statute to control and regulate the administration of non-Government Higher Secondary Schools in this State. The State Government, under the provision of section 8 of the 1960 Act, was vested with the power to make rules not inconsistent with the Act for carrying out its purpose, subject to the provisions of Articles 29, 30 and 337 of the Constitution of India. Provision was made undersub-section (2) of section 8 that until the State Government framed rules, the provisions contained in the Bihar Education Code VIIth Edition, as amended from time to time, and all resolutions and orders of the State Government or of Director of Public Instruction, Bihar, which were then enforced, in so far as they were not inconsistent with the provisions of the Act and the provisions of the Constitution of India would be deemed to be the rules made under the Act. The collection of said orders was published in the Extra ordinary issue of the Bihar Gazette. It remained in force till the State Government, in exercise of power u/s 8 of the Act, framed the Bihar Secondary Service Condition Rules, 1972, which came into force on 25.10.1972. The Act of 1960 was repealed by an Ordinance promulgated on 21.5.1974, which introduced substantial changes in power and function of the Board. Under the provisions of this Ordinance, a service commission was created for appointment of teachers and also suggested the

mode and procedure for recruitment. Thereafter, several Ordinances, one after the other were promulgated and ultimately, Bihar Education Board Act, 1976, came into force on the 31st of December, 1976. The said Act was also repealed by the Non-Government High School (Taking over the Management and Control) Ordinance, 1980 which was succeeded by the Bihar Secondary Education (Taking Over the Management and Control) Act, 1981. It is not necessary to refer to all the provisions of the said Acts or Ordinances but only to those by which minimum qualification was prescribed for appointment to the post of Headmaster in non-Government High School and alterations made therein from time to time. The State Government, by notification No. 5172 dated the 7th of September, 1955, of the Education Department published in Bihar Gazette, Extra-Ordinary dated 23.3.1959 the rules regarding appointment and service condition of teachers of Non-Government High School. According to the said notification, all appointments of the teaching staff of a High School were to be made after the advertisement in the newspaper except in the case of short term appointment of three months. It further provided that only graduates, who were trained and possessed teaching experience of five years or untrained graduates of approved merit with ten years teaching experience were eligible for consideration for appointment as Headmaster. The candidates, eligible for appointment, were to be interviewed by the Managing Committee and the Committee was directed to give due weight to the qualification, teaching experience and efficiency of the candidates. In case of Headmaster, all the appointments made by the Managing Committee were subject to the approval of the District Education officer. As stated above, the Bihar Higher Secondary Service Condition Rules, 19/2 (hereinafter referred to as "the 1972 Rules"; was framed u/s 8 of the Act. According to Rule 11, the qualification prescribed for appointment to the post of Headmaster, was trained Graduate of a recognised University with at least ten years teaching experience. The said notification dated the 7th of September, 1955 had statutory force in terms of sub-section (2) of section 8 of the 1960 Act. No other legal provision was brought to my notice on behalf of the petitioner to show that the qualification prescribed by the said notification was cancelled before coming into force of 1972 Rules.

8. It was contended on behalf of the petitioner that 1960 Act was repealed by the Bihar Secondary Education Board Ordinance, 1974 and 1972 Rules, framed under the said Act, also came to an end. No qualification was prescribed for the appointment to the post of Headmaster of the High School under the said Ordinance and, therefore, there was no valid reason for Board not to approve and treat the petitioner as Headmaster of the Pitamberpur School when the said school was given recognition on the 8th of December, 1976. In reply, the Learned Counsel for the State, referred to Omprakash Choubey vrs. Director (Secondary Education-cum-Additional Secretary, Government of Bihar (1986 P.L.J.R. page 1110) in which it has been held that 1972 Rules survived the repeal of 1960 Act. On behalf of the petitioner; reliance was placed on a Bench decision of this Court in the case of Nand Kishore Prasad Mandal Vs. President, Bihar Secondary

Education Board and Others, in which it has been held that 1972 Rules was repealed with the Act of 1960. The learned Government Pleader then stated that Omprakash's case (supra) was approved by a Full Bench decision in the case of Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others, Even if there is any controversy that need not detail us.

9. Even assuming the argument of the Learned Counsel for the petitioner to be correct, that the 1972 Rules became non-existent with repeal of 1960 Act, it is difficult to accept that no qualification for appointment to the post of Headmaster was prescribed, thereafter, under any provision. It would mean that the Managing Committee, after repeal of 1960 Act, became empowered to appoint any person as Headmaster irrespective of the fact whether the intending candidate possessed any degree of a recognised University or not. To me, it appears that this could not have been idea behind raming the law after repeal of 1960 Act.

10. It may be relevant to refer to certain notifications issued by the State Government as the same throw some light on the subject. It appears that the Government was conscious of the fact that no qualification was prescribed for appointment/promotion of the Headmaster in Non-Government High School in the 1974 Ordinance. The Government of Bihar in Education Department issued letter No. H/Ba-9/0706/75 Shi-2007 dated the 21st of may, 1976 and under clause (1) of the said latter, the minimum qualification prescribed for appointment to the post of a Headmaster of such schools was a trained graduate of a recognised University with ten years teaching experience. Again the Government issued letter H/Ba-9-0706/75 Shi-4691 dated 10.11.1976, prescribing the minimum qualification for appointment to the said post in such school and sub-clauses (2) and (3) specifically stated that a candidate for appointment to the post of Headmaster must be a trained graduate of recognised University with at least ten years teaching experience. Even thereafter, in the letter H/Ba 9-0706/75 Shi-0-2305 dated 25.7.1977 of the Bihar Government, in the Department of Education, the minimum teaching experience often years was retained as qualification for the post of Headmaster. It, therefore, follows that right from the year 1955, besides being a trained graduate of a recognised University, the teaching experience has also been one of the requisite qualification for appointment to the post of Headmaster.

In view of the provisions mentioned above, it is not possible to accept the argument that no qualification was prescribed under any provision of law for the appointment to the post of Headmaster at the time when the petitioner was appointed on the said post in Pitamberpur High School on the 3rd of December, 1971.

11. This leads to consideration of the second contention of the petitioner that he had devoted (sic)ore than twelve years as teacher in two different schools and was fully qualified to be approved as Headmaster of Pitamberpur School. The argument, though attractive, is devoid of substance. I have already referred to

the notification dated the 7th of September, 1955, under which only trained graduates, who possessed five years teaching experience, were eligible for appointment to the post of Headmaster of a Secondary High school. It is not mentioned in the said notification that a candidate was required to have teaching experience of a recognised school. But this does not mean that a trained graduate coaching a group of students privately at his residence for five years was to be considered as qualified candidate for appointment as Headmaster.

In my view "teaching experience" means teaching experience of a recognised school. According to the case of the petitioner, only partial recognition was accorded to the Pitamberpur School some time in the year 1964. The petitioner, therefore, was working from 2.2.1962 to 20.4.1964 in a purely private school, which was not even partially recognised and as such the time spent by him as teacher in the said school cannot be taken into consideration for the purpose of calculating the requisite teaching experience. There is no dispute that G.D. School Patna was a full fledged recognised school, where he worked from 27.4.1964 to 28.10.1968. The petitioner, thus, had acquired the teaching experience of four years six months and one day when he was appointed as Headmaster by the Managing Committee in the Pitamberpur High School. Recognition was accorded to Pitamberpur School on the 8th of December, 1976. It is manifest from the two letters, viz.:- letter No. 643-741 dated the 10th of January, 1963 and letter No. 19690 dated the 29th of August, 1963, issued by the Board in the year 1963 that the teaching experience of a recognised non-Government High/Higher Secondary School was to be taken into consideration for eligibility of a candidate for appointment to the post of the Headmaster. Even for partial recognition, the Board insisted on appointment of qualified teacher on the staff of the school.

12. As defined in section 2 (d) of the Bihar School Secondary Examination Board Act, 1952, "High School" means a recognised school or department of a recognised school imparting instructions in secondary education and recognised as such. The expression "School" was also defined in sub-clause (xxi) of clause (ii) of 1972 Rules, which meant such recognised school imparting education in secondary education. Section 2 (d) of the 1960 Act define the expression "recognised", which meant recognised by the Board u/s 4. The Ordinance of 1974 in Section 2 (Jha) defined recognised school which meant a secondary school recognised by the Bihar Secondary Education Board. The relevant provisions of the statute as mentioned above, clearly show that nowhere the term partial or full-fledged recognition has been used. These expressions, appear to have been used by the Board in the aforesaid letters of 1963 only to facilitate the establishment of a school in phases and not for the purpose of counting teaching experience. The period during which the petitioner worked in Pitamberpur School, prior to its recognition by the Board on the 8th of December, 1976, therefore, cannot be taken into consideration for calculating his requisite teaching experience for appointment to the post of Headmaster. Thus, I am constrained to hold that the petitioner was not qualified to be appointed as

Headmaster of the Pitamberpur High School by the Managing Committee at the time of his appointment. Likewise, at the time when the school was recognised by the Board on 8.12.1976, he did not possess the minimum qualification of ten years teaching experience.

13. As mentioned earlier, appeal of discrimination was also raised on behalf of the petitioner. It was said that the erstwhile Chairman of the Board approved appointment of several Acting Headmasters while granting recognition to the school, although a number of them did not possess the requisite teaching experience and some had no teaching experience at all. The names of some such Headmasters are mentioned in the petition. It was submitted that the petitioner should also get the same benefit. But none of the Headmasters, named in the petition, has been made party in this case and as such all the materials required to ascertain the correctness or otherwise of the assertion of the petitioner are not available before the Court. If some unqualified Headmasters have been ordered to be retained on that post that may be ground for their removal. No benefit or advantage can be given to unqualified acting headmaster on account of such illegality committed by the authority concerned.

14. Apart from this, a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the authority concerned and there is failure on the part of such authority to discharge that statutory obligation. Before issuance of a writ of mandamus, it must be shown by the petitioner that he has a legal right to the performance of a legal duty by the party against whom mandamus is sought to be issued. The Court, under certain circumstance, may look to the larger interest of the community before granting writ of mandamus and it may be refused if in the exercise of sound judicial discretion it is not found to be conducive to such interest. After the independence of our country, there has been frequent changes in the Education policy, particularly, at the school level. The changes introduced in the policy and the faulty execution have created numerous problems and have also given rise to large number of cases. Some cases have come up before this Court from which it appears that few favourites without satisfying the requisite condition, were appointed as teachers or headmasters in some non-Government schools. Even at the time of granting recognition to these schools, some of them were approved as teacher or Headmaster and that furnished readymade ground to other similarly situated unqualified Headmasters and teachers and they came to this Court, making grievance of discrimination. In absence of proper assistance from the authorities concerned, the Court had to allow the prayer of unqualified teachers on the plea of discrimination. The result is that many qualified teachers have been running from pillar to post and no attention has been paid by the concerned authority to redress their grievances. This sad condition has been prevailing since long and the same has been noticed by this Court in several cases. I would like to refer to the Full Bench decision in the case of Ram Ballabh Prasad Singh (*supra*) in which a vivid picture of the existing condition has been clearly depicted.

15. It has already been held that the petitioner was not qualified to be appointed as Headmaster of Pitamberpur School by the Managing Committee. He was also not possessing the requisite teaching experience at the time when the Board accorded recognition to the said school. Thus no right accrued to the petitioner for approval of his appointment as permanent Headmaster. In the result, I do not find any merit in this writ application and, accordingly, it is dismissed. But, in the circumstances of the case, there will be no order as to costs.