

(2006) 12 PAT CK 0061
In the Patna High Court

Bindu Kumari and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Citation : (2006) 12 PAT CK 0061

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Rajendra Prasad Singh learned Senior counsel appearing for the petitioners and learned Additional Advocate General No. 3, for the State.

2. The petitioners have approached this Court for various reliefs which, in fact, go to the extent of recognition of Arajkiya Khwaja Shahid Hussain Primary Teachers Training College. Nista. Katihar, which however, would be beyond the purview of the reliefs that they can seek since they were students of the college who had passed out from the same.

3. However during the course of hearing learned counsel for the petitioners confined his submission with respect to the reliefs that the examination pertaining to the academic sessions 1985-87 and 1986-88 in which these four petitioners had appeared and the results of which were also published and the marksheets were also issued, should be treated as genuine and as having been published by the authorities empowered under the law and the respondent-authorities making recruitment on the post of Assistant Teachers in the various schools of the State should treat such marksheets, results etc. for those two academic sessions with respect to these petitioners as recognized one.

4. The petitioner No. 2 was admitted in the aforesaid College in 985-87 session which was the very first session The petitioner Nos. 1,3 and 4 had taken admission in the subsequent academic session 1986-88 After completing their respective training courses the petitioners approached the examining authority namely, the Bihar School Examination Board for permitting them to appear in the

examination which was refused. The petitioners thereafter moved this Court and after failure in the High Court ultimately, SLP(C) No. 12014 of 1987 was filed in which by order dated 25.11.1987 (Annexure-2) the Bihar School Examination Board was directed to consider permitting the students to appear in the examination for the sessions 1985-87 and for that purpose, necessary forms and fees etc., without charging late fee, he accepted from the students who fulfil the requisite qualification to appear in the examination. Subsequently in the same SLP an order was passed on 19.8. 988 (Annexure-3) in the same terms in respect of prayer made by the petitioners for the session 1986-88. Pursuant to the said orders the petitioners were permitted to appear in the examination and having successfully completed the same their results were published and marksheets were also issued to them.

5. In the meantime, the issue of grant of permanent recognition to the college was under consideration and finally in view of the order passed by this Court in CWJC No. 5391/1994, the Government took a decision by letter No. 465 dated 28.9.1994 granting permanent recognition to the Institution treating it as a minority Institution. The said fact was reiterated in letter dated 6.2.1997 issued by the Director (Research and Training) Bihar to the Secretary, Bihar School Examination Board. Patna in which a list of 14 Institutions which were recognised by the State Government was sent. The name of the petitioners' college appears at Sl. No. 10 and it is the only Institution with respect to which it is stated that it has been granted permanent recognition whereas with respect to other Institutions, the recognitions were granted until further orders or for the particular sessions only.

6. However, it appears that by memo No. 366 dated 16.12.1999, Annexure-A to the counter affidavit filed on behalf of respondent Nos. 1 to 3, the permanent recognition granted to the petitioners' Institution by letter No. 465 dated 28.9.1994 was cancelled by the State Government with immediate effect and on the basis of the same, Annexure-1 has been issued by the State Government containing a list of different Institutions providing Teachers' training in the State, Group "C" of the said list contains the names of such Institutions whose permission/recognition has been cancelled by the State. Government on the basis of an enquiry made by the Vigilance Department and with respect to which by letter No. 334 dated 24.11.2000 of the Director (Research and Training) all the Directorates had been informed. The name of the petitioners' Institution appear at Sl. No. 10 of the said list and the permission granted to it by the. State Government by letter, No. 465 dated 28,9,1994 has been cancelled.

7. The grievance of the petitioners is that despite their having been permitted to appear at the examination on the basis of the orders of the Supreme Court and further their results also having been published the authorities which are conducting recruitment on the post of Assistant Teachers are treating the Institution of the petitioners as a unrecognized one in view of the list circulated by the State Government vide Annexure-1 to the writ application.

8. Learned counsel for the petitioners submits that the approach of the recruitment authorities is not in consonance with the requirement of law. It is submitted that the recognition of the petitioners' Institution has been cancelled with immediate effect and thus the same does not affect any transaction that stood final and closed before the cancellation order. Hence, the results of the petitioners and the marksheets issued to them cannot be treated as invalid by the recruitment authorities on account of subsequent cancellation of the recognition of the petitioners' Institution by the State Government in the year 1999. It is further submitted by learned counsel that there is not even a single word in the cancellation letter dated 16.12.1999 that the marksheets certificates, etc. previously issued shall stand cancelled. Learned counsel submits that the same having, in fact, been reiterated in Group-"C" of Annexure-1 list circulated by the State Government, which only speaks of the recognition having been cancelled but does not state that the examinations, results certificates and marksheets also stand canceled. In this regard learned counsel refers to the remarks made with respect to other 11 Institutions which also form part of the list in Group-C with respect to many of them. It is specifically provided that all examinations results certificates and marksheets have been cancelled: with respect to some the cancellation of the same only pertains to certain specific sessions. In view of the said clear term mentioned in the said list contained in Group-C with respect to each Institution, learned counsel submits that it is not open to the recruitment authorities to go beyond what the State Government has done and to say that the examinations, results, marksheets etc. of the petitioners have also been cancelled when the same has not been done by the State Government and cancellation has only been made with immediate effect which itself means that the same would apply only to transactions which had not been completed till that date.

9. Learned counsel for the State, on the other hand, submits that the moment the recognition of an Institution is cancelled, pursuant to the report of the Vigilance enquiry the students who have Passed out during the period when the Institution had recognition cannot lay any claim on the basis of such recognition since the recognition itself has become outdated. In support of the said contention learned counsel relies upon a Division Bench judgment of this Court in which the said Training College of the petitioners was itself the appellant (having been petitioner in the writ petition) reported in *Arajkiya Khwaja Shahid Hussain Primary Teacher Training College Vs. State of Bihar and Others* Learned counsel relies upon the observations made by the Court in para 21 of the judgment which is in the following terms.

Once the recognition or affiliation is cancelled by the competent authority upon inquiry and inspection and expert reports, no body can be allowed to say that the period prior to that should be considered legal and valid and examination should be directed to be conducted by the respondent Board since it is not, also case that that period was not considered by the Board.

10. It is further submitted by the learned counsel for the State that the cases of the petitioners and those, of 1987-89 batch involved in the said writ petition and the LPA stand at par and thus the petitioners are not entitled to any relief in view of what has been laid down in the said judgment of the LPA Bench.

11. Learned counsel for the State also relies upon a decision of the Supreme Court in the case of L. Muthukumar and Another Vs. The State of Tamil Nadu and Others, Learned counsel sought to rely upon the observations made in the said judgment where it was held that training in a properly organised and equipped training institute is essential before a candidate becomes qualified to receive teachers' training certificate and simply passing the examination is not enough. It was further held therein that even the candidates who had written the examination at the time when their Institutes had recognition, were not entitled to diplomas/certificates consequent upon derecognition of their institutions subsequently and that candidates were only entitled to publication of the results of the examination taken and nothing more.

12. So far as the reliance of the learned State counsel on the decision of the Division Bench reported in Arajkiya Khwaja Shahid Hussain Primary Teacher Training College Vs. State of Bihar and Others is concerned, relief prayed for in the said case was for the direction for declaration of results of the examination of the students of the college for the session 1987-89 and giving an opportunity for appearing in the examination by the Board to the students of 1988-90 to 1992-94 sessions.

13. Learned single Judge had dismissed the writ petition on five grounds which included that of delay laches, negligence and acquiescence without any explanation for the period 1988 till 1997 further the cancellation of temporary affiliation the suppression of fact of such cancellation by the petitioner college thereby misleading the Court and further that the Institution had not applied for recognition in terms of the National Council of Teachers Education Act. 1993 which came in operation on 1.7.1995. After examining the entire facts and circumstances the LPA Bench has affirmed the said decision of the learned Single Judge and held that direction cannot be issued to the authorities to either declare or publish the results of the examination for the session 1987-89 or permit the students of the later batches to appear in the examination of the Board.

14. From a consideration of the aforesaid judgement, it is clear that the Court had taken note of the fact that the students of 1985-87 and 1986-88 sessions were allowed to appear in the examinations on the basis of the orders of the Supreme Court and their results were also published by the Board and thus what was under consideration before the Court was the matter relating to students of 1987-89 to 1992-94 sessions whose result was not being published or who had not been allowed to appear in the examination at all. On a consideration of the entire facts including the fact that no effort was made by the Institution to get recognition from the National Council of Teachers Education which had become mandatory in terms of the provisions of the Act of 1993, after 1.7,1995 the

aforesaid directions were issued by the Court refusing to grant any relief to the Institution. In the case of L. Muthu Kumar (*supra*) before the Supreme Court also relief proved for by the petitioners was for the publication of the results and for issue of diploma and teachers training certificate.

15. On a consideration of the aforesaid two cases it is evident that both the matters related to the cases of the students who had either appeared in the examination but: the result was not published or who had sought a direction to be permitted to appear in the examination after completing the course of teachers training in the training college. Those were not the cases where the candidates had already appeared in the examination and the results had also been published by the competent authority and no action had been taken at the subsequent stage of withdrawing the permanent recognition granted earlier to also cancel the examination or the results for such sessions in which those candidates had appeared. Thus what has been held in those two cases, cannot have any application to the facts of the present case in which the petitioners have not only appeared in the examination but the results have also been published and subsequent to the publication of their results permanent recognition was also granted to the Institution by the State Government. It must be remembered in this context that the earliest direction issued by this Court to the State Government to consider the issue of grant or otherwise of recognition within three months was by order dated 22.9.1987 in a writ petition filed by the Training College in question. Ultimately the earlier order dated 28.9.1994 granting permanent recognition had been passed pursuant to directions given by this Court in a subsequent writ petition which fact finds mention in the order itself.

16. Learned counsel for the petitioners also points out that the division Bench judgment reported in *Arajkiya Khwaja Shahid Hussain Primary Teacher Training College Vs. State of Bihar and Others* has been challenged by the Training College by filing SLP No, 22726/2005 and by an interim order dated 18.11.2005. the Supreme Court had given opportunity to the students of the college to submit their applications for examination, and to appear in the ensuing examinations and it has been directed that the applications may be accepted provisionally by the Board, it is submitted by the learned counsel for the petitioners that the very issuance of such interim order shows that the appellant-College has a *prima facie* case before the Supreme Court and therefore, the same reduces the force of the findings and law laid down by the LPA Bench, However, in view of the fact that I have already held that the facts and is sued in the said case are not applicable to the present matter nothing will turn upon the decision of the said case .

17. The other very relevant aspect of the matter is that the list of Training Colleges contained in Group-C whose recognitions have been cancelled or withdrawn clearly mentions with respect to each college as to what specific action has been taken by the State Government with respect to each of those

Institutions. In the case of many of such institutions it has been specifically provided that all examinations, certificates and results were also cancelled by orders of the State Government, in some matters it is specifically provided that for certain sessions results, examinations, certificates and marksheets have been cancelled but with respect to the petitioners' Institution no such action has been taken by the State Government although cancellation has been made as late as on 16.12.1999 and it was open to the State Government at that time on consideration of the report of the Vigilance authority to have cancelled the examination and results of the students of 1985-87 and 1986-88 sessions also. But the State Government has simply cancelled the recognition granted to the Institution with immediate effect and did not cancel the examinations and results pertaining to such two sessions. It is thus evident that there was a conscious application of mind by the State Government on these issues and by implication it must be held that the examination and result of the students who, had appeared in these two sessions had not been cancelled by the State Government.

18. The aforesaid being the position it is not open to the appointing authorities to say that they will not take into consideration the certificate of those institutions, which had been derecognised as has been argued by the learned Additional Advocate General that such action by the appointing authority would be violative of Article 14 of the Constitution of India. In my opinion, it is not open to the appointing authority to say so or to take any such action. The advertisement itself shows that the candidates must be trained from duly recognized institution. Such recognition evidently pertains not generally to the present state of recognition or derecognition of the institution but the matter must be considered by the authorities with respect to the specific sessions in question as has been clarified by the State Government in various letters including its letter dated 18.9.2006 addressed to the various recruiting authorities. Thus, so far as the candidates who had appeared from the training college in question in the sessions 1985-87 and 1986-88 are concerned they cannot be treated by the appointing authority as coming from a derecognised Institution. Any such action by the appointing authority would definitely be violative of Articles 14 and 16 of the Constitution of India since similarly placed candidates whose institutions have been derecognised for subsequent sessions are entitled to consideration.

19. Another contention of learned counsel for the State is that since the permanent recognition had been granted by order dated 28.9.1994 thus the institution did not have recognition even for the sessions 1985-87 and 1986-88. The contention has only been noticed to be rejected. It is evident that what was under consideration of the State Government was the recognition which had been sought by this college, failing which it had approached this Court at the earliest and obtained an order on 22.9.1987 and subsequently, in another writ application again in the year 1994 whereupon the matter of recognition of all the sessions of the college were under consideration of the State government. Thus the permanent recognition granted on 28.9.1994 pertains to those very sessions and it was never contended by the State at any stage earlier in the earlier writ

petitions that the college did not have valid recognition of those sessions until the same was cancelled subsequently at that point of time. Had that been the stand of the State then there was no occasion for either the learned Single Judge or the LPA Bench to have entered into such deep consideration of various issues involved, since the entire matter could have been disposed of in a single line order regarding the sessions 1987-89 and 1992-94 that they were before the grant of permanent recognition on 28.9.1994 hence the previous writ petition itself was not maintainable and liable to fail on that account. It is thus evident that a: ail states the State was aware of the fact that permanent recognition had been granted with respect to the very inception of the college from 1935-87 session and onwards.

20. Thus, on a consideration of the aforesaid facts and propositions of law. it is held that the petitioner must be treated as having validly completed their teachers training course during the sessions 1985-87 and 1986-88 respectively and the authorities making the recruitment on the post of Assistant Teachers are bound to treat their mark sheets., etc. as valid and in accordance with law.

21. The writ application is accordingly allowed with the aforesaid observations and directions. However in the facts and circumstances of the case there shall be no order as to costs.