

(1999) 01 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 8979 of 1998

Gurudeo Gupta and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Bihar Sanskrit Shiksha Education Board Act, 1981 — Section 13, 14, 22, 24
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 PLJR 472

Hon'ble Judges : Shiva Kirti Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : Gajendra Kumar Jha, for the Appellant; Yugai Kishore, Dineshwar Tiwary, S.K. Ghose, Nirmal Kumar Sinha for Respondent No. 6 and Ram Subhas Singh, for Board, for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—In this petition under Articles 226 and 227 of the Constitution, the Petitioners have prayed for quashing the order of the Special Director, Secondary Education, Department of Education, Bihar, dated 22.11.1988, contained in Annexure 1 as also the order of the Chairman, Bihar Sanskrit Shiksha Board (hereinafter called "the Board") dated 8.2.1988 contained in Annexure 5 and that of the Board, dated 11.2.1988, contained in Annexure 8, whereby the claim of Respondent Nos. 6 and 2, except Respondent No. 9 to be the genuine teachers of the Sahu Sanskrit Prathmik-Sah-Madhya Vidyalaya, Karaihya, Sahar-sa, has been allowed.

2. The case of the Petitioners is that they were duly appointed as assistant teachers by the Managing Committee of the School on different dates in the year 1984 and duly recognised by the competent authority. The State of Bihar vide its resolution dated 23.3.1995 resolved to grant recognition to the various schools by the Board. Ultimately after proper verification and scrutiny of different materials, the school in question was recognised in the category of Prathma sah-

Madhyama. Thereafter, the Managing Committee resolved to send the names of assistant teachers and other employees of the school before the Board for grant of necessary fund for payment of salary. Accordingly, in compliance of the aforesaid resolution, the Secretary of the school, sent the names of the Petitioners for approval. But before the approval of the Board could be granted, Respondent Nos. 6 to 9 filed objection before Respondent No. 3 alleging that the Secretary of the School instead of sending the names of genuine teachers (Respondent Nos. 6 to 9), had sent the names of the Petitioners, who were not validly appointed in the school. Allegations of tampering of relevant records were also made. It was also alleged that the Secretary in order to defeat the claim of Respondent Nos. 6 to 9 had manufactured several documents.

3. it would appear from the order of the Chairman that on receipt of the objection of Respondent Nos. 6 to 9 he issued notices to the Principal and the Secretary of the school calling upon to show cause why the claim of Respondent Nos. 6 to 9 be not accepted. Ultimately, the Chairman after hearing the relevant parties, held that Respondent Nos. 6 to 9 were the genuine teachers of the school and the list submitted by the Secretary was not genuine. Though the Petitioners did not challenge the aforesaid order but an appeal was preferred by the Secretary of the school before the Special Director u/s 24 of the Bihar Sanskrit Shiksha Education Board Act, 1981 (hereinafter called the Act'), which was ultimately dismissed by the order contained in Annexure 1 affirming the order of the Chairman.

4. Learned Counsel contended that from a bare reference o the facts brought on record it would appear that the Petitioners were appointed in the school much before the appointment of Respondent Nos. 6 to 9 and their services were also recognised by the appropriate authority. The seniority list prepared by. the Managing Committee contained in Annexure 3, as well as the reports of the Inspector of Schools and that of the Sub-divisional Education Officer, contained in Annexures 6 and 7, respectively, would show that the Petitioners are genuine teachers of the schools and names of Respondent Nos. 6 to 9 were not found in the attendance register of the school. But the Respondent Chairman without extending any opportunity to these Petitioners allowed the objection filed by Respondent Nos. 6 to 9.

5. Learned Counsel for Respondent Nos. 6 to 9. on the other hand, contended that none of the reports either contained in Annexure-6 submitted by the Inspector of Schools or that contained in Annexure-7 sent by the Subdivisional Education Officer, discloses that the Petitioners were found present at the time of inspection. Therefore, in compliance to the direction of the Chairman, the District Education Officer and the Assistant Director, Sanskrit) Shiksha Board held inspection of the school on different dates and vide their reports contained in Annexures A and D, respectively, to the counter affidavit, disclosed that these Respondents were found present in the school. The report of the Assistant Director further shows that on inquiry from the villagers and the local Mukhiya,

he gathered that, in fact, Respondents 6 to 9 were the genuine teachers of the school, but the Secretary had wrongly sent the names of the Petitioners.

6. Undisputedly, it would appear from the order of the Chairman, contained in Annexure-5, and that of the Special Secretary, contained in Annexure-1, that these officers have accepted the report of the District Education Officer and that of the Assistant Director. Both the authorities have consistently held that relevant records of the school were interpolated and tampered in order to defeat the claim of Respondent Nos. 6 to 9 to be the genuine teachers of the school. True it is, the Inspector of Schools and the Sub-Divisional Education Officer have mentioned in the report that names of writ Petitioners were available in the attendance register. But they have not mentioned in the report that at the time of inspection, these Petitioners were present. Or the other hand, the District Education Officer and the Assistant Director in their reports, have mentioned about the presence of the Respondents in the school at the time of inspection and had also enquired from the villagers and local Mukhiya about the genuineness of the claim of the writ Petitioners vis-a-vis Respondent Nos. 6 to 9. Therefore, having regard to the findings of facts about the allegation of interpolation and genuineness of the claim of Respondent Nos. 6 to 9> it would not be possible in a writ jurisdiction to scrutinise such disputed facts. That apart, from a bare reference to the provisions contained in Section 24 of the Act, it would appear that against an order of the Chairman or the Board, a remedy of statutory appeal was available before the Special Secretary to the Government. Unfortunately, although the Petitioners had knowledge about the order of the Chairman, the moment approval of the Board was communicated to the School, but they did not choose to file any appeal.

7. Learned Counsel next contended that in absence of any rule framed by the State Government or specific provision under the Act, the Chairman or the Board had no jurisdiction to approve or disapprove the list of teachers furnished by the Managing Committee. Because such lists were furnished with a view to obtain necessary fund for payment of salary to the teaching and non-teaching staff. It is not the duty of the Chairman to examine as to which teacher was validly appointed by the Managing Committee. In this regard he contended that in absence of any rule framed by the State Government, as required u/s 22 of the Act to carry out the put pose of the Act, no administrative power has been vested with the Board or the Chairman except the power u/s 14 which authorises the Board to grant necessary fund for payment to the teachers.

8. In my view, having regard to different provisions of the Act and that of Section 14, there appears no force in the contention of the learned Counsel. As per Section 13 of the said Act, a fund has been created known as Sanskrit Shiksha Nidhi which in terms of Section 14(ka), is to be utilised for payment of salary to Sanskrit teachers and other allowances to teaching and non-teaching staff of the recognised schools. In terms of Clause (anga) of this section, the Board has also to make payment of contribution towards pension, gratuity and provident fund of

the teachers and other employees. As per Section 14(ka), the Board has the duty to pay salary and other allowances to the teachers and employees of the school. Therefore, from perusal of aforesaid provisions, it would be evident that as per scheme and object of the Act, the Managing Committee will have no immediate control for payment of salary to the teachers and staff. All the time, therefore, it will be the jurisdiction of the Board to approve appointment of teachers while granting fund for payment of salary. Because undisputedly payment of salary out of fund in question, can only be made to a teacher of a recognised school. Therefore, while exercising such power, the Board will have complete jurisdiction to ascertain whether the list submitted by the "Managing Committee contains the names of genuine teachers.

9. It Was lastly contended that no notice was given by the Chairman to the Petitioners while disapproving the list submitted by the Secretary of the Managing Committee and allowing the claim of Respondent Nos. 6 to 9.

10. Learned Counsel for the Respondents on the other hand, contended that from the impugned orders itself it would appear that proper opportunity was given to the Secretary of the Managing Committee and the Principal of the School who had submitted such list. Therefore, those authorities were given full opportunity to satisfy about the genuineness of the list of teachers submitted by them. That apart, if the Petitioners were aggrieved by the order of the Chairman, it was open to them to file an appeal before the Special Director. Therefore, having not availed such remedy, it would not be open to them to question the validity of such orders at this stage.

11. In my view, having regard to the consistent findings of the Chairman and Special Director and reports of the District Education Officer and Assistant Director, it would be difficult for this Court to hold that Respondents are not the genuine teachers. That apart, sufficient opportunity was given to the persons concerned, who had submitted the list of Petitioners to explain the allegation of interpolation/change of records. Therefore, it can not be alleged that the decision of the Chairman or Special Secretary was passed without considering the relevant materials.

12. For the reasons stated above, I find no merit in this case. Accordingly, this writ application is dismissed but without any order as to costs.

Shiva Kirti Singh, J.

13. I agree.