

(2024) 04 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9612 Of 2015

Maresh Prasad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-04-2024

Acts Referred:

Bihar State Non-Government Sanskrit High School (Condition of Service) Rule, 1976 — Rule 23, 24, 25, 26, 27

Bihar Sanskrit Education Board Act, 1981 — Section 22(2)

Citation : (2024) 04 PAT CK 0001

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Kumar Ravi Shankar, Shashank Shekhar Jha, P.K. Singh, Nand Kishore Prasad Sinha

Judgement

1. The petitioner has filed the present writ application for quashing the order dated: 19.11.2018 passed in Appeal No. 27 of 2016 by the Special Secretary, Education Department, Government of Bihar, Patna, whereby the order of termination issued vide Memo No. 3900 dated- 11.09.2014 by the Secretary of the Bihar Sanskrit Education Board has been upheld. The petitioner has also prayed for quashing of the proposal of the Ad-hoc Committee of Shri Ramashray Singh Sanskrit Primary-cum- Middle School, Naima (in short "Sanskrit School") dated 17.11.2013 and for payment of all consequential dues.

2. The brief facts of the case is that the petitioner was appointed as Headmaster in the year 1985 in a recognized Sanskrit School run by the Managing Committee / Ad-hoc Committee. The appointment of the petitioner was approved by the Secretary of the Bihar Sanskrit Education Board (hereinafter referred to as "Sanskrit Board") vide its letter no. 2933 dated 14.08.1986. In pursuance of the complaint filed before "Janta Darbar", an inquiry was made by the Block Sadhan Sevi Mid Day Meal Officer on 12.12.2011 wherein the allegation levelled against the petitioner regarding irregularities in Mid Day Meal (MDM) was found true, and thereafter, the District Magistrate, Jehanabad vide letter dated

07.01.2012 directed the D.E.O., Jehanabad to take action on the basis of enquiry conducted by the Block Sadhan Sevi Mid Day Meal Officer. The D.E.O., Jehanabad vide his letter dated 12/01/2012 recommended for suspension of the petitioner. Accordingly, suspension order dated 09-01-2013 was issued by the Secretary of the Ad-hoc Committee, which was constituted vide order dated 18.12.2012 by the Sanskrit Board.

3. The petitioner challenged the suspension order issued by the Secretary of the Ad-hoc Committee dated 09.01.2013 before this Court in C.W.J.C. No. 16831 of 2013. This Court vide its order dated 29-08-2013 disposed the writ application directing the respondent nos. 3, 4 & 5 to take final decision with regard to continuation of suspension of the petitioner within a period of three months from the date of receipt of the order with further direction to the District Education Officer, Jehanabad to release the amount of subsistence allowance along with arrears and current within a period of one month from the date of receipt of the order. The respondent no. 7 was also directed to pass final order in terms of the communication received by him from the respondent nos. 3, 4 & 5 with regard to further continuation of suspension order. The Secretary, Sanskrit Board vide Memo No. 3900 dated 11.09.2014 (i.e. the impugned order) approved the decision of the Ad-hoc Committee dated 24.03.2013 regarding the termination of the petitioner.

4. The appeal preferred by the petitioner against the impugned order has also been dismissed on the ground that petitioner did not choose to appear before the three men enquiry committee, which shows that the allegation against him was true. Further, in the light of the judgment passed in CWJC No. 5430 of 1987 any teacher aggrieved by the order of termination issued by the Managing Committee should file a suit before the competent civil court.

5. Learned counsel for the petitioner argued that in the enquiry conducted by the District Mid Day Meal In-charge Officer dated 02/07/2013 none of the charges relating to alleged irregularities were found to be substantiated. The petitioner was kept under suspension since 09-01-2013 without any subsistence allowance and his service has been terminated by the Secretary of the Sanskrit Board and upheld by the appellate authority without application of mind. Since termination order was approved by the Secretary of the Sanskrit Board and appeal thereof has been upheld by the Special Secretary, Education Department, hence, the judgment relied upon by the appellate authority is not applicable and accordingly the writ application is maintainable. The impugned order by the authorities has been passed without any show cause and / or opportunity to the petitioner to defend himself. The petitioner relied upon Rules 23, 24, 25, 26 & 27 of the Bihar State Non-Government Sanskrit High School (Condition of Service) Rule, 1976.

6. On the other hand, learned counsel for the respondent no. 7 / Managing Committee of the Sanskrit School submits that the report dated 02-07-2013 (Annexure -7) has been obtained in connivance of the concerned officials and the same was manipulated. The Secretary of the earlier Managing Committee was

the own sister-in-law of the petitioner. The writ application is not maintainable in view of the judgment of this Court passed in Chandra Nath Thakur and Ors. versus The Bihar Sanskrit Shiksha Board & Ors. reported in 1999(1) PLJR 529.

7. Learned counsel for the respondent nos. 2 & 3 argued that in compliance of the order passed in CWJC No. 16831 of 2013 dated 29/08/2013 a three men committee was constituted by the Ad-hoc Committee for inquiring into the matter but the petitioner never appeared before the Committee to produce any evidence in his support. Notice was published in newspaper on 05-09-2013 for appearance of the petitioner but he failed to appear. Accordingly, the Committee on the basis of available records submitted its report on 03.11.2013 with the finding that the petitioner has committed irregularities in MDM and has misappropriated Government fund.

8. In the light of the said report dated 03.11.2013 the Ad- hoc Committee in its meeting dated 17.11.2013 decided to dismiss the petitioner from service. The Secretary of the Ad-hoc Committee vide his letter dated 25.11.2013 requested the Board to approve the dismissal / termination of the petitioner. The D.E.O., Jehanabad also vide his letter dated 25/04/2014 requested the Board to take decision in the light of the decision of the School Committee. In pursuance thereof the Secretary of the Sanskrit Board vide order dated 11.09.2014 approved the termination of the petitioner which has further been upheld in Appeal No. 27 of 2016 by the Special Secretary, Education Department, Government of Bihar, Patna vide Memo No. 166 dated 19/11/2018.

9. I have heard learned counsel for the parties and have gone through the materials available on record including the impugned order. In the Division Bench judgment relied upon by learned counsel appearing for the respondent no. 7, Chandra Nath Thakur Case (Supra), the Division Bench taking note of the Bihar Sanskrit Education Board Ordinance, 1980, which was ultimately enacted as Bihar Sanskrit Education Board Act, 1981 (hereinafter referred to as the "1981 Act") has held that in absence of any statutory Rule framed by the State Government as required under Section 22(2) of the Act; the Board or the Chairman can not exercise any disciplinary power to accord approval of the order of dismissal passed by the Managing Committee against a teacher of such school. Therefore, for all practical purposes, it has to be held that the Board will have the administrative control over the affairs of the schools, except the power of dismissal and termination of the teaching and non-teaching employees of such school until a Rule is framed as required under sub section (2) of Section 22 of the 1981 Act. The Division Bench has also held that a teacher of a privately managed school, even though financially aided by the State Government or the Board, can not maintain a writ petition against an order of termination from service passed by the Managing Committee. The power to grant approval of the appointment of the teachers or dissolution or constitution of the Managing Committee only vests with the Board.

10. In the present case the Ad- hoc Managing Committee on the basis of the

report dated 03.11.2013 submitted by the three men committee took a decision on 17-11-2013 to terminate / dismiss the services of the petitioner. Since the Division Bench of this Court has held that in absence of any statutory Rule framed by the State Government as required under Section 22 (2) of the 1981 Act, the Board or the Chairman can not exercise any disciplinary power to accord approval of the order of dismissal passed by the Managing Committee against a teacher of such school, the approval of termination / dismissal by the Chairman of the Board vide the impugned order dated 11.09.2014 is inconsequential and without jurisdiction. Accordingly, the order passed in Appeal is also inconsequential for the maintainability of the writ application. The order of termination / dismissal passed by the Managing Committee (Ad hoc) dated 17.11.2013 has ostensibly been under challenge in this writ application.

11. Considering the aforesaid, I come to the conclusion that writ application is not maintainable against the order of termination passed by the Managing Committee. Hence, this writ application is dismissed as not maintainable.

12. However, the petitioner shall be at liberty to approach competent court of civil jurisdiction for redressal of his grievance.