

(1983) 11 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 190 of 1983

Narain Shastri and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Citation : (1985) 33 BLJR 304

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.S. Sahay, J.—The petitioners, who are teachers, clerk and peon of Maithli Vidyapith Sanskrit Uchchal Vidyalaya, Sankat Mochan Dham, Darbhanga (hereinafter to be referred to as Sanskrit School), have prayed for a writ of mandamus directing respondents 1 to 3 for payment of their salary with effect from April 1961.

2. I will state some necessary facts in order to appreciate the points involved in this application, petitioner No. 1 was the Headmaster and petitioner No. 2, the Assistant Headmaster of the school. Petitioners No. 3 to 7 were Assistant teachers, petitioner No. 8 the clerk and petitioner No. 9, the office peon of the aforesaid Sanskrit School. The school was given recognition for one year with effect from 1st April 1972 on 23rd December 1978 by Annexure 5 which was further extended up to 31st March, 1974 by Annexure 6. Further there was another extension in July, 1974 by Annexure 7 and the Sanskrit school was recognised by Annexure 8 on 31st October 1975. Thereafter payment of salary was made to some of the petitioners and in support of that, reliance has been placed on Annexure 12 and Annexure 14. For the payment of salary of the teachers for the year 1981-82 pay bill was submitted on 28th November 1981, and copy of the same has been filed and marked Annexure 9. It is also stated that the salary of the petitioners was paid for financial year 1980-81 through the secretary of the Sanskrit school and in support of that reliance has been placed

on Annexure 10. The dearness allowance of the petitioners was also increased by the letter of the State Government dated 26th December 1980 vide Annexure 11. It has further been stated that the petitioners have not been paid their salary since 1981 though they have been working in the school. The petitioners, thereafter moved this Court in C.S.J.C. No. 4015 of 1982 which was disposed of on 8th October 1982 with a direction to petitioners to file their representation within ten days before the Bihar Sanskrit Shiksha Board and the representation will be disposed of within one month thereafter. In spite of the aforesaid direction the representation was not disposed of and, therefore the petitioners have moved this Court, Though this application was filed on behalf of nine petitioners, Mr. Chandra Shekhar, learned Counsel appearing on behalf of the petitioners confined his prayer only to petitioners No. 1, 3, and 8.

3. Counter affidavit has been filed on behalf of respondents No. 2 and 3, the Bihar Sanskrit Shiksha Board, and its Secretary and it has been stated that the statement that the petitioners working in the Sanskrit school is not correct. As regards petitioner No. 1 it has been stated that he was an assistant teacher and he was removed from the service by the Managing Committee and this was published in "Aryavarta" dated 9th May, 1977, and in this connection reliance has been placed on Annexure K filed by the caveator. Regarding petitioner No. 3 it is stated that he is the sister of the then Secretary of the school and her date of birth was shown as 7th September, 1959 in various documents and she was a minor on 14th August 1976, when she was appointed. Similarly, it is stated that Om Prakash Sandilya, petitioner No. 8, was the son of the then Secretary, and he was also a minor having been born on 13th August, 1960 and was appointed on 1st April 1978. In the counter affidavit reference has also been made regarding illegal appointment of other teachers but it is not necessary to refer to the in view of the fact that the case of those teachers have not been passed. It is further stated that the representation filed by the petitioner in pursuance of the order passed in the aforesaid writ application was duly considered and was rejected by the Chairman of the Board on 24th March 1983, and a copy of the same has been filed and marked Annexure A-1. It is further stated that the petitioners have manufactured documents in order to create materials in their favour but they were not actually working in the Sanskrit school. The Managing committee of the school was mismanaging the affairs of the school and a committee was constituted to enquire into the matter and a report was submitted. In that report various irregularities were found and thereafter an ad-hoc committee was constituted on 26th December, 1982. Copies of these papers have been filed which are Annexures B-1, C-1 and D-1. A copy of the petition was filed on behalf of Chandrakant Jha who claims to be the Headmaster incharge of the School. It is also stated on behalf of the caveator that petitioner No. 3 was dismissed from that school. It has also been stated that various irregularities had been committed by the then secretary for which enquiry had been made and the allegations were found to be true. The caveat petition filed on behalf of Chandrakant Jha was ordered to be considered at the time of

hearing of the main application, on 10th October 1983. Reply to, the counter affidavit, supplementary affidavit, and reply to the caveat petition have been filed on behalf of the petitioners.

4. Mr. Chandra Shekhar, learned Counsel appearing on behalf of the petitioners has contended that the petitioners were validly in the Sanskrit school and they also got their salary up to March 1981 but their salary has been illegally stopped with effect from April 1981. He, therefore, contended that from materials which have been brought on the record it was clear that the petitioners are entitled to their salary. In support of his contention, reliance has been placed on annexures 5, 15 and 16.

5. Mr. Dinesh Charan, learned Counsel on behalf of the Board, has contended that the recognition was given to the school which was located at village Chhapki and the petitioners claim to be the teachers of Sankat Mochan Dham which is quite different from the Chhapki school. In this connection the letter head used by the school has also been relied upon which is annexure C-1. Regarding petitioner No. 1, it is stated that his services had been terminated which was also published in the papers and petitioners. No. 3 and 8 could not have been appointed as they were minors. It is further stated that petitioners 3 and 8 were close relations of the then secretary and their names have been deliberately entered though they were neither appointed in the school nor they were working there. Regarding petitioner No. 8 it is also stated that he was a student of M. N. institution of Medical Sciences during the relevant period which will be clear from annexure I and, therefore, he could not have worked in the school at that time.

6. learned Counsel appearing on behalf of the interveners has enforced the submission made by the learned Counsel for the Board and has further submitted that from the statements made in the petition filed on behalf of the caveator and the supplementary petition, it is absolutely clear that the petitioners No. 1, 3 and 8 were never validly appointed teachers of the school and the documents have been granted by the Secretary in order to favour petitioner No. 1, 3 and 8. He has also submitted that petitioner has been working at another place which clearly shows that his services have been terminated. Reliance has also been placed on behalf of the caveator on various documents which are annexures B-1, Q and R.

7. After hearing learned Counsel appearing on behalf of the parties and after going through the petition and various affidavits, in my opinion, the petitioners have not been able to establish that they were validly appointed teachers of the school in question. No doubt, there are some papers to show that they were working in the school and they had also drawn their salary but the fact that petitioners No. 3 and 8 happened to be close relations of the then Secretary cannot be ignored. From the materials it is difficult to hold that petitioner No. 1 is still working in the School. Moreover a number of disputed questions of facts have been raised in this application which cannot be resolved in this Court.

8. The application, therefore, fails and it is dismissed but, in the facts and circumstances of the case there will be no order for costs. Mr. Chandra Shekhar, learned Counsel appearing on behalf of the petitioners prays that a direction may be given to the petitioners to file a fresh representation before the authorities. It will be open to the petitioners to do so and the authorities may consider the representation of the petitioners in accordance with law.