

(2015) 07 PAT CK 0002

In the Patna High Court

Case No : Letters Patent Appeal No. 1040 of 2007 in Civil Writ Jurisdiction Case
No. 14064 of 2006

Raghbendra Narayan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 07 PAT CK 0002

Hon'ble Judges : N.P. Singh, J;Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Mayank Rukhaiyar, AC to GA 1, Advocates for the Respondent

Final Decision : Disposed off

Judgement

N.P. Singh, J.—The present intra-Court appeal has been filed by the appellant, who was the writ petitioner, being aggrieved by judgment and order dated 12.09.2007 passed in CWJC No. 14064 of 2006.

2. The writ petitioner/appellant claimed that he was an Assistant Teacher in a Sanskrit School known as Radhakant Primary-cum-Middle Sanskrit School, Ughara, Darbhanga. He had been protesting against the School authority and the private Managing Committee. He came to know in the year 2006 that he has been shown to have been dismissed from service on 10.02.1996 by the private Managing Committee without any proceeding, without any notice and this fact was not even disclosed to him. He averred that it was for the first time, in the year 2006 when payments were received from the State Government with regard to salary of Teachers, he found that payment, in his respect, was sought and made only upto January, 1996 and, thereafter, he was shown as past Teacher. The writ petition was, thus, filed challenging the order of dismissal of the year, 1996 in the year, 2006 and for payment of salary for the intervening period.

3. It may be noticed here that in the writ petition, it was averred that all this was

done to accommodate the Headmaster's wife as an Assistant Teacher. It was also averred that the Secretary of the Managing Committee was the father-in-law of this lady who is respondent No. 9 and her husband is the Headmaster.

4. When the writ petition was taken up, an objection was raised on behalf of Bihar Sanskrit Shiksha Board (For brevity, the Board) that the School being a private School managed by a private Managing Committee, it would not be State within the meaning of Article 12 of the Constitution and consequently no writ petition would lie. The learned Single Judge accepted this and, merely on this ground, dismissed the writ petition.

5. While admitting this intra-Court Appeal on 29th of July 2008, the Division Bench noted that the order of the learned Single Judge holding that no writ would lie even though the School receives grant from the State was seriously doubted by the Bench presided by Hon'ble the Chief Justice. After notice, respondent No. 7, that is the Secretary of the Managing Committee and respondent No. 9 that is the wife of the Headmaster, have appeared and filed counter affidavit. The stand, both have taken, is that the writ petition was not maintainable and the learned Single Judge was correct for which various judgments of this Court including Division Bench judgments have been appended to the counter affidavit.

6. Let it be noted that this is a new practice that is developing amongst lawyers of this Court in annexing judgments and more so reported judgments as part of their pleadings under affidavit. It is an undesirable practice and should be discontinued by Members of the Bar as soon as it would be better. The reason for this we would also indicate.

7. Learned counsel for the respondents, as noted above, has annexed judgments, which are all reported, as a part of the affidavit filed by the concerned respondents to canvass his submission and, thus, has shown that it is all that he knows and is required to be shown and that is the end of the case. We regret that the learned counsel is not to be conversant to the development of this Court inasmuch as the recent judgment of the Special Bench of this Court since reported in the case of The Organizer, Dehri C.D. and C.M. Union Limited Vs. The State of Bihar and Others, AIR 2014 Patna 67 : (2014) 4 CTC 481 : (2014) 1 PLJR 695 being judgment of five Judges" Special Bench, which was just on the issue of concept of State within the meaning of Article 12 and for the purposes of Article 226 of the Constitution, was not known or referred by the lawyer. It is to avoid such an embarrassing situation and not to try down the submissions that judgments are never annexed to the affidavit more so if they are reported.

8. This judgment of Special Bench, in paragraphs-34 and 35, clearly settled the issue that the judgments, as sought to be relied by the respondents of the Single Bench of this Court or the Division Bench, are no longer good law.

9. It is not in dispute in the present case that though the School is privately managed, the salary payments are made from funds made available by the State

Government. All appointments in the School have to be approved by the Board. The School has to follow the regulations in regard to conduct of teaching as provided by the Board. Thus, there is no escape that a writ petition was maintainable and the learned Single Judge wrongly dismissed it. We decide accordingly.

10. But coming to the facts, we are unable to persuade ourselves to interfere. From the counter affidavits filed, it is pleaded that writ petitioner/appellant had been noticed several times for unauthorized absence. Ultimately, the Managing Committee took a decision on 10.02.1996 to dismiss the writ petitioner/appellant and he was, accordingly, intimated the same by a registered post on 12.02.1996. Obviously, the writ petitioner/appellant claims ignorance. In the counter affidavit, it is further stated that thereafter, on 14.03.1996, the Managing Committee appointed respondent No. 9 as an Assistant Teacher for a period of three months which was approved by the Board by Memo No. 841 dated 27.10.1997 and it was directed that School should advertise the vacancy and fill up the post. Accordingly, newspaper advertisement was issued on 09.10.2002. This advertisement was issued on 09.10.2002.

11. The first thing to be noted here is in view of Memo No. 841 dated 27.10.1997 of the Board, the Managing Committee having taken no steps to fill up the post, continuance of respondent No. 9 after three months of initial engagement on 14.03.1996, was bad in law till pursuant to advertisement, she was reappointed on 05.12.2002. Thus, any remuneration paid to her for this intervening period would be totally unauthorized and illegal. It would be the duty of the District Education Officer (now the District Programme Officer), Darbhanga to take immediate steps for recovering any remuneration that may have been paid to respondent No. 9 for the period aforesaid and take action against the persons responsible for making such unauthorized and illegal payment.

12. Thus, on the aforesaid facts, as the writ petitioner/appellant had been dismissed and as per himself, he had been protesting, it is for him to move either the district authorities or the Board against his alleged wrongful removal which he disputes and which is leading serious disputed facts which even otherwise difficult to be resolved under these proceedings.

13. Thus, though we hold that the writ petitioner/appellant was wrongly dismissed on the ground, as noticed above, no relief can be granted to the writ petitioner/appellant. On the other hand, in view of the facts noticed by us as pleaded by the respondents themselves, it is expected that the district authorities would take immediate action in the matter in accordance with the directions of this Court.

14. This appeal is, accordingly, disposed of.

15. Before closing, we may notice at least one thing in favour of the writ petitioner/appellant. Money for payment to the writ petitioner/appellant for the period 1992 to 1996, bill for which was sent in the year 2005 and received in the

year 2006, still remains to be paid to the writ petitioner/appellant. This fact that the money has been received or bills have been raised is not disputed in either of the counter affidavits.

16. I direct the district authorities and the Management and the School that within one month from today, the complete payment, as received under this account, shall be made to the writ petitioner/appellant failing which this Court would take serious view of the matter as against the district authorities, the Management and the Headmaster of the School.