

(2019) 09 PAT CK 0096

In the Patna High Court

Case No : Letters Patent Appeal No. 577 Of 2018 In Civil Writ Jurisdiction Case
No. 17365 Of 2014

State Of Bihar Through Principal Secretary And Ors

APPELLANT

Vs

Arun Paswan And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 PAT CK 0096

Hon'ble Judges : Anjana Mishra, J;Amreshwar Pratap Sahi, CJ

Bench : Division Bench

Advocate : Ashutosh Ranjan Pandey, Rakesh Narayan Singh, S.N.P. Singh,
Sanjay Kumar, Anant Kr. Mishra

Final Decision : Allowed

Judgement

After having heard learned counsel for the State of Bihar, we are satisfied that sufficient cause has been shown to condone the delay. Delay is accordingly, condoned and the appeal shall be treated to be within time.

1. The Appellant, State of Bihar, has preferred the present Appeal against the judgment an order dated 08.02.2016 passed by the Single Judge of this Court passed in CWJC No. 17365 of 2014. The said writ application was preferred by the writ applicant Arun Paswan aggrieved by Memo No. 3904 dated 19.11.2013 by which his appointment as an Assistant Teacher of State Upgraded Middle School, Basopatti had been terminated on the ground that the Basic Teachers Education Programme (BTC) certificate issued by the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) is not a recognized institution either under the NCTE or by the State Government. The writ petitioner claimed to have obtained such certificate in the year 2005.

2. The background of the case from which this Appeal emanates is as follows:-

i. The writ petitioner was appointed on the post of As-sistant Teacher in the State upgraded Middle School Ba-sopatti vide letter dated 6th February, 2012 and is a

mem-ber of the scheduled caste category.

ii. Having passed the matriculation examination in the year 1988 from the Bihar School Examination Board,

Patna, the petitioner passed the intermediate examination in the year 1980 and Bachelor of Arts (3 years degree honours course) in the year 1994.

iii. Subsequently, the petitioner completed his two years teachers training education from Nav-Bharat Shiksha Parishad, Rourkela (Odisha), which he passed in the 1st Division in May 2005 from its study centre situated in M.D.D.M. College, Bairgania, District-Sitamarhi.

iv. That the State of Bihar had neither disqualified nor accepted the certificate issued by the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) (hereinafter refereed to as the 'NSP') though the said had come into some contro-versy and the same was having an independent status to conduct different teachers education programme, the same came under some controversy with the UGC and the NCTE.

v. The NCTE also initiated the matter approval of differ-ent teachers education programmers conducted by the Parishad with the NCTE at the regional level Odisha, but having failed to evoke any response agitated the matter before the NCTE, New Delhi and the NCTE New Delhi vide order dated 20.03.2007 held the Parishad as an autonomous Body, but, the NCTE did not recognize the Parishad though they approached various universities for recognition.

vi. That the matter regarding recognition of the said de-gree remained pending at various levels.

vii. That pursuant to an advertisement to the post of As-sistant Teachers and lastly in the light of the order dated 13.10.2011 passed by the Hon'ble Supreme Court of the India in Contempt Petition (C) No. 297/2007 in S.L.P.(C) No. 22882/2004, out of 34540 vacancies advertised a list of 32127 teachers trained candidates was prepared in which the name of the petitioner appeared at serial No. 14058 and, accordingly, vide Memo No.1151 dated 06.02.2012, the petitioner was appointed as Assistant Teacher in State Upgraded Middle School, Basopatii, An-chal YogaPatti, District-West Champaran. The petitioner after giving his joining in 2012 continued to discharge his duties regularly to the satisfaction of all concerned with-out any adverse remarks.

viii. Thereafter, on the basis of an enquiry made by one Barun Kumar Dwivedi, the District Programme Officer vide letter dated 487 dated 16.06.2012 made enquiries from the Director, Research and Training Centre ,Bihar Patna, regarding the guidelines of the validity of the cer-tificate of 'NSP', but since the same was not available with the DPO, though the D.P.O. issued an order con-tained in Memo No. 6538 dated 18.12.2012, in which the name of the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) did not figure. Further on, the UGC issued a public notice dated 27.09.2013 disclosing the names of the fake universities of the

country in which also the name of Nav-Bharat Shiksha Parishad, Rourkela (Odisha) was not treated as a fake institution, but its recognition matter was said to be pending with the District Court, Lucknow.

ix. However, vide Memo No. 3904 dated 19.11.2013, the District Education Office West Champaran, Bettiah is-sued an order terminating the services of the petitioner from the post of Assistant Teacher on the ground that education certificate issued by the Nav Bharat Shiksha Parishad is not valid as per order of Principal Secretary dated 17.05.213. Thus the petitioner contended that while of the one hand the District Education officer was not showing the name of the NSP as an invalid intuitions in the list, yet the very same officer was passing the impugned order of termination on the ground that the petitioner possesses the certificate from NSP and, therefore, his appointment be treated as a invalid. In view of such action by the respondents, the writ petitioner preferred the present writ praying for appropriate relief and quashing of his order of termination.

x. The respondent State of Bihar squarely denied the claim of relief by the writ petitioner on the ground that the degree certificate obtained from the Nav Bharat Shiksha Parishad could not be held to be valid. It was submitted by the State (the present appellant) that the status of Nav Bharath Shiksha Parishad, Odisha and degrees/certificates issued by the aforesaid institution could not be held to be valid for appointment in the State of Bihar as the State Government after due consideration has not recognized its degree/certificate to be valid for appointment of teacher in the state of Bihar as the same is a voluntary institution and has not been recognized by the NCTE.

xi. In view of the fact that the Council of Boards of School Education in India did not recognize NSP, Odisha and in its list the same did not figure as an accredited institution, as such the educational authorities of the State of Bihar have decided that the degree certificate of the said institution be treated as invalid for the purpose of appointment as Panchayat/Prakhand teacher. Accordingly, steps were taken to locate such persons who had been irregularly and illegally appointed as Panchayat/Prakhand teacher on the basis of degree/certificates issued from the said institution.

xii. It was further contended by the Respondents in the writ applications that several other teachers who had secured appointment on the basis of the certificate of Nav Bharat Shiksha Parishad had also been terminated. One such petitioner Rashmi Prabha came to this Court in C.W.J.C. No. 10236 of 2011 which was disposed of in the following terms:-

"After having heard learned counsel for the petitioner and learned counsel for the State, this Court is of the view that no interference is required with the impugned order by this Court as despite a many months having gone past, petitioner is still not in a position to produce any unimpeachable evidence with regard to the degree she has obtained from the Institution in question. Rigmarole kind of submission made by the learned counsel for the petitioner does not impress the

Court. It is an obligation on the part of the petitioner to produce evidence about the authenticity of the degree she obtained and not for the Court to go into investigative mode on demand of the petitioner.

Alternative argument is made on behalf of the petitioner that the list issued by the State of Bihar in regard to the non-recognised Institutions does not reflect the name of the Institution from where the petitioner has obtained the degree. The list issued by the State is not the final and all comprehensive list for the simple reason that thousands of Institutions which are fake in nature in the country cannot be crystalised in one place. The list issued by the State government to that extent is not exhaustive in nature. It is for the petitioner to establish authenticity of the degree and the Institution before indulgence can be shown by the court in her favour.

This writ application is dismissed."

xiii. The Appeal preferred against the said order was also disposed of as being devoid of merits. The said order passed in L.P.A. No. 921 of 2012 is extracted hereunder:-

"Re. Interlocutory Application No. 4216 of 2012. The delay of 26 days occurred in filing the Letters Patent Appeal is condoned.

Interlocutory Application stands disposed of.

Re. Letters Patent Appeal No. 921 of 2012 and Interlocutory Application No. 4217 of 2012.

Feeling aggrieved by the order dated 21st February 2012 made by the learned single Judge in CWJC No. 10236 of 2011, the writ petitioner has preferred this Appeal under Clause 10 of the Letters Patent.

The appellant claims to have secured Secondary School Examination certificate from one Nababharat Shiksha Parishad (NSP), Rourkela and that she is eligible for appointment as Panchayat Teacher. In support thereof, she has produced the mark sheet issued by the Nababharat Shiksha Parishad (NSP), India bearing the seal of Nababharat Shiksha Parishad, Rourkela.

The appellant has failed to prove or establish that the aforesaid institution is recognized by the State of Bihar for appointment to the post of Panchayat Teacher.

In our opinion, the learned single Judge has rightly rejected the Writ Petition.

Appeal is devoid of any merit.

Appeal is dismissed in limine.

Interlocutory Application stands disposed of."

xiv. In another writ application being C.W.J.C. No. 1634 of 2014 wherein the

appointment as Panchayat Teacher on the basis of degree/certificate of Nav Bharat Shiksha Parishad, Odisha was also subject-matter of adjudication was also dismissed by this Court and, accordingly, in the said application, the Director Primary Education, Bihar was directed to make an enquiry in all of the districts. As such, the Director Primary Education, Bihar vide letter No. 960 dated 22.07.2014 issued directions to the concerned authorities to take steps for removal of the teachers appointed on the basis of the decree of the said institution. It was under such premises that the respondents state prayed for rejecting the case of the writ petitioner.

xv. The writ application, however, was heard and disposed of allowing the same by the learned Single Judge on the premise that the appointment of the petitioner had been occasioned in the light of the order of the Hon'ble Apex Court in view of the recommendations of the Staff Selection Commission. An extract of the order which finds place in Para 4 of the impugned judgment of the present appeal is extracted hereunder:-

"4. This Court finds that there is no material on record to establish that the institution was recognized by State of Bihar or NCTE. Furthermore, the petitioner was appointed in the light of the order of the Hon'ble Apex Court in view of the recommendations of the Staff Selection Commission, wherein his name figured at se-rial no. 14058, amongst 34540 assistant teachers. The impugned order cancelling the appointment, as such, would not be sustainable and is accordingly set aside.

5. The authorities, namely, the Staff Selection Commission or the Education Department, Government of Bihar should have been awake to all these aspects prior to making recommendation to the Hon'ble Apex Court, which approved such appointments. It is too late for the respondents to interfere with the appointment on any ground in view of order of Hon'ble Apex Court, the details of which has been discussed in order dated 14.01.2016, passed in C.W.J.C. No. 6753 of 2013.

6. The writ application is allowed with liberty to the respondents to take any other action permissible under the law."

3. Being aggrieved against this order, the Appellants have preferred the present Appeal.

4. The crux of the issue in the present appeal, therefore, is as to whether respondent No.1/writ petitioner, whose services were terminated on account of possession of a certificate from the Nav Bharat Shiksha Parishad, Rourkela, an unrecognized institution, which was not legal and valid, could be sustained.

5. Learned counsel for the appellant contended that the order passed by the learned Single Judge is against the well established legal principle that the appointments could not be made on the basis of the certificates which were not legal and valid. It was urged that the degree of Nav Bharat Shiksha Parishad,

Rourkela, Odisha, has not been recognized by the State of Bihar, nor does it find place in the list of recognized boards/institutions prepared by the Council of Boards of School Education in India. The issue of appointment and recognition of Nav Bharat Shiksha Parishad, Rourkela, Odisha, was examined in different proceedings and at all stages this Hon'ble Court has declined to accept the said degree as a valid and recognized degree which is evident from the order passed in L.P.A. No. 921 of 2012. It was further contended that when such a matter i.e. C.W.J.C. No. 14819 of 2012 was remanded as per direction of this Court on 20.09.2012, the Principal Secretary, Education Department, has categorically held out after due enquiry vide Memo No. 617 dated 17.05.2013, that the degree is not a valid degree for appointment. This issue was once examined at the level of the directorate and the Director, Primary Education vide order contained in Memo No. 146 dated 03.02.2016 has decided that the degree of the Nav Bharat Shiksha Parishad, Rourkela (Odisha) is not a valid degree.

6. It was also contended in the Appeal that the contention of the writ petitioner that his appointment for the post of Assistant Teacher was in pursuance of his name having figured in the merit list of 32127 candidates out of the 34540 vacancies so advertised is erroneous as the same was provisional, and subject to the genuineness and the validity of the training certificate. However, such certificate, after verification/scrutiny was found to be invalid as it had been issued by an unrecognized institution and as such his appointment was cancelled and it was found in enquiry that the qualification of the petitioner from the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) was not a recognized institution. It is important to indicate here that the appointments against the aforementioned 34540 vacancies came under series of litigation before this Court and the same traversed to the Apex Court and finally in contempt petition (c) No. 297 of 2007 in S.L.P. No. 22882 of 2004 vide order dated 13.10.2011, the Court while dealing with various categories of applicants wherein it was clarified as follows:-

"The second issue which has been raised by Mr. Kailash Vasdev is with regard to the examination of the certificates and other documents that may be produced by the candidate concerned at the time of counselling and appointment. In the event, during scrutiny it is found that any of the documents do not conform to the requirements, the concerned authorities will be at liberty to take appropriate steps regarding the said candidate."

The contempt application was, accordingly, disposed off.

Raising ancillary issues in the S.L.P.(c) Nos. 22882-22888 of 2004 filed by the several trained teachers for direction on the State of Bihar to appoint them in the vacancies of primary teachers in the State of Bihar, several orders were also passed which also included order dated 19.01.2011 and 13.10.2011. The Apex Court vide order dated 18th July, 2013, took into notice the cases of some other candidates who had not appeared before the Justice Chattopadhyay enquiry and as such at paragraph No. 7 which is quoted hereinunder held as follows:-

"The matter did not end there. On account of the fact that some of the candidates, who had not appeared before Justice Chattopadhyay, came up with fresh applications in support of their cases and urged that there were various omissions from the final select list, we decided to entertain the said applications, particularly, on account of the directions, which we had given, in our judgment and order dated 13th October, 2011, that no court would entertain any objection or applications with regard to the list of candidates, who had already been appointed, in terms of our earlier order."

It is this part of the order which is sought to be taken shelter of by the writ petitioner and it was on the basis of this direction, the learned Single Judge has set aside the impugned order of termination of the writ petitioner.

However, what was not noticed were the subsequent paragraphs of the aforementioned orders which is quoted hereunder which was with regard to the residual posts:-

"8. During the hearing of these applications, special leave petitions and writ petitions, what emerged is that most of the applicants were aggrieved by some defect or the other in the preparation of the select list, which occurred on account of the failure of the candidates to give their relevant particulars to Justice Chattopadhyay.

9. Be that as it may, in the event, some discrepancies had crept in the final select list, the individual grievances contained various anomalies, which it is difficult for us to unravel. Accordingly, we modify our order dated 13th October, 2011, and allow the applicants to approach the High Court for redressal of their grievances. We also direct that the applications, special leave petitions and writ petitions filed before us be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments of those teachers who have already been appointed against the vacant 34, 540 posts and are working. We have been informed during the hearing that about 2413 posts out of the 34, 540 posts were still left to be filled up. All the applications, Special Leave Petitions and Writ Petitions are, therefore, disposed of in the light of the aforesaid observations. We make it clear that none of the persons appointed out of the 34, 540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question."

7. Learned counsel for the appellant further contended that the Hon'ble Apex Court had never put a ban on scrutiny or legality of the educational certificates including training certificates and in the wake of the findings by the authority that the petitioner was in possession of a certificate from Nav-Bharat Shiksha Parishad, Rourkela (Odisha), which was not a recognized institution, it was open to the Appellant to proceed in accordance with its Rules. The petitioner could not continue on the job and, thus, his services were legally terminated. It was, thus,

contended that the order passed against the petitioner was fully legal and valid as the writ petitioner has procured a job on the basis of an invalid certificate.

8. Shri Ashutosh Ranjan Pandey, learned A.A.G.-5, appearing on behalf of the appellant-State of Bihar further contended that the learned Single Judge failed to appreciate that the order passed in the S.L.P. that 32127 candidates who have been appointed should not be disturbed, did not mean that there was an absolute ban with regard to any enquiry being made with regard to their educational qualifications. In this context, it was submitted that the directions in Contempt Petition (C) No. 297 of 2007 passed by the Hon'ble Apex Court was, however, clarified by the order passed in the same Contempt Petition. It was further averred that merely because the petitioner name serials in the list of 34540 candidates, it would not be presumed that the petitioner was having the degree from the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) possessed a valid degree which was recognized by the State of Bihar. It is important to indicate here that a review application was preferred bearing Civil Review No. 16 of 2016 and other analogous review application arising out of L.P.A. No. 1491 of 2014 and L.P.A. No. 1472 of 2014 as also Civil Review no. 210 of 2016 as also other analogous cases. In the aforesaid review applications, the third grievance which was urged by the review petitioners was that so far as 32127 candidates were concerned who were selected in course of time when the state verified their testimonials, almost ten thousand were found to be holding fake and fabricated certificates and testimonials and their appointments were cancelled. That being so, those ten thousand vacant seats ought to be filled up in the same process. However, at para 18 while disposing of the review application, the court has noted as hereunder:-

"The third submission would require some consideration on behalf of the State. It is submitted that the Supreme Court has put a final seal, so far as the 32127 appointments are concerned. They are not to be questioned. There is no quarrel with that. The submission is almost 10000 of such person appointed were later found to be ineligible for selection and consequently their selection was cancelled. They had been selected and appointed on the basis of forged and fabricated documents. Their selections and appointments were fraudulently obtained. Thus, fraud vitiates all. Those appointments cannot be held to be appointments ever made. They were not even eligible for consideration."

The SLP preferred against the said order was also dismissed.

9. It has further been brought on record by the appellants, that much earlier the case of one Meneka Mishra Vs. the State of Bihar was considered by the State in pursuance of an order passed in C.W.J.C. No. 5121 of 2016 and by order dated 27.03.2018 contained in Memo No. 474, the Principal Secretary, Department of Education, has stated that from the records of the case vide letter No. 998 dated 05.10.2010, the then Principal Secretary, Department of Education have noted that the certificate issued from the Nav-Bharat Shiksha Parishad, Rourkela (Odisha) was not recognized as its name figured at Sl. No. 125 and that UGC

vide Notification No.7-3/2012 (AMPC) dated 30th June, 2016 indicated that at Sl. No. 22 Nav-Bharat Shiksha Parishad, Rourkela (Odisha) was a fake institution. Since, the appointment on the basis of a fake institution was against the guidelines and rules of appointment, the said could not be sustained. In such view of the matter, her candidature was also rejected. The list of institutions as notified by the UGC (Annexure-3 to Appeal) is extracted hereunder:-

- i. "Maithili University/Vishwavidyalaya, Darbhanga, Bihar
- ii. Varanaseya Sanskrit Vishwavidyalaya, Varanasi, UP/Jagatpur, Delhi
- iii. Commercial University LTD, Daryaganj, Delhi.
- iv. United Nations University, Delhi
- v. Vocational University, Delhi
- vi. ADR Centric Judicial University, ADR House, 8J, Gopala Tower, 25 Rajendra Palace, New Delhi-110008.
- vii. Indian Institute of Science and Engineer, New Delhi
- viii. Badaganvi Sarkar World Open University Education Society, Gokak, Belgaum (Karnataka)
- ix. St. John's University, Kishanattam, Kerala
- x. Raja Arabic University, Nagpur
- xi. D.D.B. Sanskrit University, Putur, Trichi, Tamil Nadu
- xii. Indian Institute of Alternative Medicine, 80, Chowringhee Road, Kolkata-20
- xiii. Institute of Alternative Medicine and Research, 8-A, Diamond Harbor Road, Buitech inn, 2nd Floor, Thakurpukur, Kolkata-700063.
- xiv. Mahila Gram Vidyapith/Vishwavidhyalaya, (womens' University), Prayag, Allahabad (UP)
- xv. Gandhi Hindi Vidyapith, Prayag, Allahabad (UP)
- xvi. National University of Electro Complex Homeopathy, Kanpur.
- xvii. Netaji Subhash Chandra Bose University (Open University), Achaltal, Aligarh.
- xviii. Uttar Pradesh Vishwavidyalaya, KosiKalan, Mathura (UP)
- xix. Maharana Partap Shiksha Niketan Vishwavidyalaya, Pratapgarh (UP)
- xx. Indraprastha Shiksha Parishad, Institutional Area, Khoda, Makanpur, Noida, Phase-II, (UP)
- xxi. Gurukul Vishwavidyalaya Vrindavan, Mathura, (UP)
- xxii. Nababharat Shiksha Parishad, Anupurna Bhawan, Plot No. 242,Pani Tanki

Road, Shaktinagar, Rourkela-769014."

10. We have heard learned counsel for the parties and have deliberated fully on the issues involved. The first issue to be resolved is whether the writ petitioner having a certificate from a non accredited institution could be given an order of appointment on the premise that his name had figured in the list of 32127 candidates. Having given deep consideration to the issue we find that State of Bihar had decided that the degree/certificate of the Nav Bharat Shiksha Parishad, Odisha, was invalid for the purposes of appointment of Panchayat/Prakhand teacher, as its name does not find place in the list of recognized/boards institutions prepared by the Council of Boards of School Education in India. Accordingly, it embarked on an exercise of locating those whose appointments was on the basis of such certificates and the petitioner's appointment, amongst other candidates as well, was terminated. Thus, we are of the considered opinion that there was no illegality in the impugned termination order of the writ petitioner.

11. We further observe that the learned Single Judge while disposing of the writ application has clearly given a shelter to the petitioner under the umbrella of the order passed by the Apex Court, stating that those names which had been finally settled and appointments made, i.e., 32127 candidates could not be disturbed in any manner. We further find that he has failed to notice the following order passed in the next Contempt Petition (C) 297 of 2007 bearing No. in S.L.P. (c) No. 22882/2004 wherein vide order dated 13.10.2011 "in the event during scrutiny it was found that any of the documents do not confirm to the recruitment, the concerned authorities will be at liberty to take appropriate steps regarding the said candidates." The learned Single Judge further failed to notice that it was not merely the present writ petitioner, but also several other similarly situated Niyojit teachers who had secured appointment on the basis of a training certificate which was fake /unrecognized by the NCTE or UGC whose appointments had been cancelled and it was only on the basis of this very finding that their appointment had been cancelled.

12. Considering the aforementioned facts and circumstances, we are of the firm opinion that the learned Single Judge could definitely not entertain any such plea for cancellation of such termination orders which was based on an invalid certificate as it would amount to going against the mandate of law as the said candidates and particularly the petitioners were ineligible to even apply for appointment as they were holding training certificates which was not recognized by the State of Bihar.

13. Having observed thus and for the many reasons stated hereinabove, we have, but to conclude that the order of the learned Single Judge stands faulted and deserves to be set aside

14. Accordingly, we set aside the judgment and order dated 08.02.2016 passed in C.W.J.C. No. 17365 of 2014 and uphold the order of termination passed

against the petitioner vide Memo No. 3904 dated 19.11.2013.

15. The Appeal stands allowed.