

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17970 of 2022

Chandra Bhanu Kumar Son of Late Sitaram Sinha Resident of Village-Gokhulpur, P.S.-Chandi, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Nalanda at Biharsharif.
4. The District Education Officer, Nalanda at Biharsharif.
5. The District Programme Officer (Establishment), Nalanda at Biharsharif.
6. The District Provident DFund Officer Nalanda.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

| | | |
|----------------------|---|-------------------------------|
| For the Petitioner/s | : | Mr. Ram Sagar Singh, Adv. |
| For the State | : | Mr. Hitesh Suman, AC to SC 13 |
| For the A.G., Bihar | : | Ms. Ritika Rani, Adv. |

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-01-2024

This Court has heard Mr. Ram Sagar Singh, learned Advocate representing the petitioner and Mr. Hitesh Suman, learned counsel for the State. Ms. Ritika Rani, learned counsel for the Accountant General is also present.

2. The petitioner by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the order dated 07.11.2022 passed



by the State Appellate Authority in O.A. No. T-582/2022, whereby and whereunder, apart from holding the appointment of the appellant-petitioner to be illegal and fraudulent, cancelled his appointment from the date of appointment and also held that he does not possess any right to payment of pension. The petitioner further sought a direction upon the respondents to ensure payment of post retiral benefits to him along with due salary from the period 01.10.20018 to 30.04.2022 and also for grant of other consequential benefits for which he is found to be entitled under the law.

3. Bereft of unnecessary details, the facts of the case are that the petitioner having completed his graduation admitted for B.Ed. course in session 1986-87 in Soghra College of Education, Biharsharif under the Magadh University and passed B.Ed. Examination in the year 1991. Subsequent thereto, against an advertisement published by the Bihar Public Service Commission, the petitioner having found himself eligible applied and appeared in the competitive examination and on being found successful, was appointed as Matric Trained Teacher in the Middle School, Chamarhara, Mahnar, Vaishali vide Memo No. 1407 dated 10.07.1999, issued by the District Superintendent of Education, Vaishali.



4. It is the case of the petitioner that upon verification of the B.Ed. Certificate, by the Controller of Examination, Magadh University, the same has been communicated to the District Superintendent of Education, Vaishali, vide letter dated 29.02.2000 and the petitioner has been allowed regular salary vide letter dated 15.05.2000 issued by the District Superintendent of Education, copies of which have been marked as Annexures 4 and 5 to the writ petition. The petitioner thereafter continued uninterruptedly discharging his duty to the satisfaction of the authorities concerned, and subsequently, he was transferred from Middle School, Chamarhara, Mahnar, Vaishali to Middle School, Gaurhapar, Chandi, Nalanda, where he joined on 03.07.2015. While he was working in the aforementioned school, a show cause notice as contained in letter No. 4278 dated 02.11.2018 has been served upon him, seeking his clarification within 3 days, questioning his B.Ed. Degree. However, even without completion of 3 days, on the next day itself, he was served with a memo of charge (*prapatra 'Ka'*) vide Memo No. 4268 dated 03.11.2018 stating therein that the appointment of the petitioner is based upon the certificate of B.Ed. Degree, issued by the Soghra College of Education, Biharsharif, Nalanda, which is not valid. The Block



Development Officer, Chandi, Nalanda has been appointed as Enquiry Officer and simultaneously the salary of the petitioner has been withheld with immediate effect.

5. Aggrieved by the action of the respondent authorities and the memo of charge, the petitioner along with one another identically situated teacher approached before this Court in CWJC No. 5631 of 2021. The Hon'ble Court after considering the matter, observed that the case of the petitioners is covered by the judgment dated 23.02.2022 passed in CWJC No.5489 of 2020 (Suresh Ram vs. The State of Bihar & Ors.) and connected matters reported in 2022(2) BLJ 381 and judgment dated 07.03.2022 passed in CWJC No. 34 of 2022 (Minakshi @ Sushre Minakshi @ Anr. vs. The State of Bihar & Ors.), disposed of the writ petition in terms of the judgment, afore-noted. It is further observed that if an appeal is preferred before the District Appellate Authority/State Appellate Authority, the same shall be taken up at the earliest and preferably decided within a period of three months. Pursuant thereto, the petitioner filed an Original Application No. T-582 of 2022 before the State Appellate Authority, Patna.

6. Apart from the submissions as noted hereinabove, the petitioner categorically averred in the memo of appeal that



his case is squarely covered by the judgment dated 06.04.2022 rendered by the learned Division Bench of this Court in LPA No. 280 of 2021. He further submitted that the College in question namely, Soghra College of Education was established as Minority Institution under Article 30(1) of the Constitution of India, wherein B.Ed. course was started from session 1981-82 and subsequently the college was granted the status of minority institution, vide Government Order as contained Memo No. 1265 dated 15.10.1985. He further brought on record a letter dated 30.03.1987 whereby the students of Soghra College were allowed to appear in B.Ed. Examination under the transitory regulation, but subsequently, despite conducting the B.Ed. Examination, when the result was not published, pursuant to the order of the Hon'ble Chief Minister, granting recognition and affiliation to the College, the result was published.

7. The Original Application was heard by the State Appellate Authority, however, taking note of paragraph nos. 9 and 10 of the order/judgment passed in LPA No. 280 of 2021, the State Appellate Authority held in paragraph no. 3 as follows:

“3. A perusal of this part of the order shows that the issue of recognition of training degree of Soghra College of Education, Biharsharif, Nalanda went up to the Apex Court and was rejected there. Thus, it is a closed chapter now. It



also becomes clear that this degree had never been recognized by the State Government. As a result of this the appellant did not have the eligibility for appointment under the rules because rules required possession of a recognized and valid training degree. In view of this appointment of appellant was obviously illegal. Besides, this Authority also notes that employment had been obtained on the implicit misrepresentation that this training degree was valid. As a result, the process of employment is also tainted by misrepresentation and fraud. Thus, this Authority holds appointment of appellant to be illegal and fraudulent and therefore cancels his appointment from the date of appointment itself.”

8. The State Appellate Authority further referring to the judgment in the case of ***R. Vishwanatha Pillai vs. State of Kerala & Ors., (2004) 2 SCC 105*** held that the appellant-petitioner is not entitled to payment of any salary by virtue of this illegal and fraudulent appointment, which has been ordered to be cancelled and it is further held that the appellant-petitioner does not possess any right to payment of pension as clearly laid down in the referred judgment.

9. This Court while examining the legality of the order also thinks it proper to quote the penultimate paragraph of the State Appellate Authority which reads as follows:

“5. A perusal of this judgment shows that the appellant is not entitled to payment of any salary by virtue of this illegal and fraudulent



appointment, which has been ordered to be cancelled by this Authority. He also does not possess any right to payment of pension as clearly laid down in this judgment. Besides, he is not entitled to any departmental proceeding in cancellation of this appointment because the Hon'ble Supreme Court has clearly held that no protection under Article 311 of the Constitution of India is available in such cases. In result, the appeal is rejected. The DEO is directed to take steps towards for realization of any amount paid to the appellant by way of the salary, in accordance with the process of law.”

10. While assailing the impugned order passed by the State Appellate Authority, Mr. Singh, learned counsel for the petitioner submitted that the State Appellate Authority has only taken note of paragraph nos. 9 and 10 of the judgment rendered in LPA No. 280 of 2021 and knowingly overlooked and ignored paragraph 21 onwards of the order/judgment dated 06.04.2022, where in the identical situation, the learned Division Bench has allowed ensuring all the retiral dues to the concerned teacher, apart from payment of salary for the period which was denied to him. He further submits that the State Appellate Authority has exceeded his jurisdiction by passing such kind of order where the appointment of the petitioner was not even in question and moreover, the impugned order is in the teeth of the judgment passed by the learned Division Bench. Further reliance has also been made that in an identical situation this Court in the case of



S.M. Mansoor Akhtar & Anr. vs. The State of Bihar & Ors., CWJC No. 5345 of 2021 (Annexure-23 to the writ petition), making reliance on the judgment passed by the Division Bench, had allowed the writ petition with a direction to the concerned respondent authorities to ensure payment of pending salary and to accord all the retiral dues.

11. Per contra, learned counsel for the State referring to the statement made in the counter affidavit has submitted that the State Appellate Authority, Patna, after considering the case of the petitioner in detail, cancelled the appointment of the petitioner from the date of his appointment and further held that the appellate-petitioner is not entitled to get any salary by virtue of his illegal and fraudulent appointment. In such view of the matter, the petitioner is not entitled to get any relief. He further submits that it is the admitted position that the petitioner has obtained B.Ed. Degree from Soghra College of Education, Bihar Sharif, Nalanda which is a non-recognized institution and it has also been affirmed by the Hon'ble Apex Court. On the basis of the aforesaid B.Ed. Degree, the petitioner has obtained the appointment on the post of Assistant Teacher and when this fact has been brought to the knowledge of the authority concerned, necessary action has been taken and the petitioner has been



served with a memo of charge. However, in the meantime, the petitioner has attained the age of superannuation.

12 This Court has heard the learned counsel for the respective parties and also carefully perused the materials available on record as well as the order of the State Appellate Authority.

13. Before coming to the final conclusion, it is needless to observe that the Tribunal is a creature of statute. Its jurisdiction and power is confined to appeals made to it and therefore confined to the four corners of the complaint. It has neither the power of superintendence nor any inherent power to do justice. Its power is limited to resolve the *inter se* dispute between the parties. It is a court of limited jurisdiction in that sense. Thus, when a person appeals with a grievance, then the jurisdiction of the Tribunal is limited to the four corners of the grievance and the Tribunal has no inherent power of superintendence or any "*suo motu*" power to invoke any jurisdictional matter related to the *lis* inter-party.

14. In other words, to clarify the position, it can very well be observed that while entertaining a complaint or a grievance, the jurisdiction of a Tribunal/Authority is limited to what is complained against. It cannot undertake a roving



enquiry into all aspects of the matter connected or unconnected with the complaint, it has no power of superintendence. The Tribunal/Authority on its own, could not enlarge its own jurisdiction to become supervisory authority over the issue in question and pass judgment thereon.

15. It is also well settled that the Court cannot travel beyond pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by a court, it is just to be ignored. [*vide Union of India vs. Ibrahim Uddin, 2013(1) PLJR 48 SC*].

16. Now coming to the legality of the impugned order passed by the State Appellate Authority, this Court has no hesitation to observe that apart from the State Appellate Authority exceeded its jurisdiction in venturing on to decide an issue, which was not even complained from any of the party, the order has been passed in complete defiance of the judgment rendered by the learned Division Bench in LPA No. 280 of 2021. In fact, the Appellate Authority has ignored the ratio as laid down by the learned Division Bench, leading to the dismissal of the Letters Patent Appeal, preferred by the State Government. This Court, in such circumstances, deprecates such



practices, which leads to diversity of order/judgment on an identical issue.

17. Needless to observe that the uniformity is the hallmark of the judiciary and if it would not be persistently reposed, the faith of the citizens shall be shaken.

18. It would further be relevant to note here that the appointment of the petitioner cannot be said to be vitiated by fraud, forgery or crime or illegality as the issue with regard to the validity of B.Ed. Degree was under consideration the date on which the appointment of the petitioner took place. Thus, the very reliance on the decision of the Three-Judge Bench of the Hon'ble Supreme Court in the case of *R. Vishwanathan Pillai (supra) vs. The State of Kerala* by the Appellate Authority is wholly misconceived.

19. True it is that the issue regarding validity of the B.Ed certificate issued by the Soghra College of Education, Biharsharif, Nalanda stood settled and attained finality after the Special Leave to Appeal (C) No. 23619 of 2015 (Md. Bashar Faruque and Ors. Vs. State of Bihar & Ors.) dismissed by the Hon'ble Apex Court vide order dated 15.09.2015. However, the learned Division Bench meticulously took note of the fact that despite being acquainted with the aforesaid facts regarding



validity of B.Ed. Degree, the writ petitioner's services were continuously utilized and proceeding, if any was initiated well after retirement. Thus, the action of the State was considered to be entirely not in good faith. This Court deems it apt and proper to quote paragraph nos. 21 to 26 of the aforementioned judgment of the learned Division Bench which reads as follows:

“21. It must also be noted that in the present case, the State does not have entirely clean hands for its action to be considered to be in entirely in good faith. It is borne out from the record that the 2008 office order impose conditions which each person has to satisfy in order for recognition of service, i.e. all educational certificates/degrees be verified from the issuing institution by the concerned officer- which was purported to have been done and by the 2012 office order contingent upon the conditions being satisfied, arrears being paid. In approaching this Court, the writ petitioner has asked for salary and other dues starting from February, 2018 and from July, 2018 till his retirement in January, 2019. This implies that all other arrears and dues were paid to him on time. Well, it is now after twice being deemed eligible and duly recognized that the petitioner's employment is being claimed as having been done on unsound basis, and the only ground, i.e. his educational certification was from a un-recognized institution. Further, it is also noted that it was not post retirement when the factum of the petitioner's degree being from an un-recognized institution came to light. As noted in the facts above, one round of litigation has travelled all the way up to Hon'ble the Supreme Court for inclusion of that institution into the list of duly recognized one,



which has been dismissed by the Court in 2015.

*22. Therefore, from the date of the order dated 15.09.2015 passed by the Hon'ble Supreme Court in **Md. Bashar Faruque** (supra) till that of superannuation on 31.01.2019, the appellant, i.e. State, was in the know of the status of the institution and even then, the writ petitioner's services were continually utilized and proceedings under Rule 43(b) of the Rules were initiated well after retirement- nine months, i.e. vide memo dated 09.10.2019.*

23. Therefore, the State's grounds taken in this LPA cannot be sustained. Writ petitioner's service of more than three decade as a teacher cannot be disregarded, especially after the State itself must be held accountable for lax attitude in enforcing standards of employees in educational institutions.

24. It is surprising that a person with improper qualifications passed scrutiny initiated upon an order of Hon'ble the Apex Court and was duly recognized and paid arrears in accordance thereof. Such an action of a State cannot be construed lightly and steps must be taken to ensure that such glaring errors do not become repeated occurrences.

25. It is in the interest of justice that the writ petitioner's services be recognized and the money he has earned be paid to him. If at this point, the appellants' argument is acceded to, a life time dedication to a noble profession of teaching will be unfairly maligned.

26. In the light of the aforesaid discussion, we dispose of the appeal in the following manner:-

(a) The present Appeal against the impugned order dated 23.06.2020 passed in CWJC No.864 of 2020 titled as Surendra Prasad Sinha v. The State of Bihar & ors. by a learned Single Judge of this Court stands dismissed.

(b) The pending salaries and the retiral



dues along with statutory interest of the writ petitioner-respondent herein shall be calculated and paid within a period of four weeks from the date of this judgment, failing which interest upon the same at the rate of six percent per annum shall be payable.

(c) Interlocutory Application, if any, shall stand disposed of.”

20. The learned Division Bench before reaching to the aforementioned conclusion has also taken note of various factors, as has been duly explained right from paragraphs 14 to 20. While considering the issue with regard to non payment of retiral dues or salary for the working period on account of his appointment being based on a degree provided by Soghra College of Education, Biharsharif, Nalanda have held that in the interest of justice, the writ petitioner's service be recognized and the money he has earned be paid to him and if at this point, the argument of the State is acceded, to a lifetime dedication to a noble profession of teaching will be unfairly maligned.

21. The learned Division Bench also highlighted the State role as a model employer with its action must be fair, consistent, ensuring rule of law and more specifically meeting the requirement of Articles 14 and 16 of the Constitution of India. It must not create a situation so as to put the hopes of the employee in despair. Its action must not be deceitful;



treacherous; insensitive; betraying the trust created of its employees. Trust, which an employee reposes upon the employer, is not to be betrayed, for not only it leads to an unsavoury feeling amongst employees not having been treated in a dignified and fair manner, but also it not being a concept of good governance. [*vide State of Haryana v. Piara Singh, (1992) 4 SCC 118; Bhupendra Nath Hazarika and another v. State of Assam and others, (2013) 2 SCC 516 and State of Jharkhand and another v. Harihar Yadav and others, (2014) 2 SCC 114*]

22. This Court also cannot lose sight of the fact that the petitioner was appointed as a Matric Trained Teacher way back in the year 1999 itself upon verification of all his documents/testimonials, including the B.Ed. certificate in question, and after verification of such certificate at the level of Controller of Examination, Magadh University, which was duly communicated to the then Superintendent of Education, Vaishali vide letter dated 29.02.2000, whereupon the petitioner started getting his regular salary and till the fag end of the service of the petitioner, no notice to show cause or any action has been taken, even when the matter, regarding validity of B.Ed. Degree issued by the Soghra College of Education, Biharsharif, Nalanda has



attained finality by the Apex Court in the year 2015 and belatedly a perfunctory departmental proceeding has been initiated at the fag end of the career of the petitioner. Thus, in such circumstances, the action of the State cannot be considered to be in good faith and meeting the requirement of Articles 14 and 16 of the Constitution.

23. It has also been informed to this Court that apart from Surendra Prasad Sinha who was party to the Letters Patent Appeal No. 280 of 2021, two others, namely, S. M. Mansoor Akhtar and Md. Jamil Ahmed, in whose favour there is also an order of this Court in CWJC No. 5345 of 2021 (Annexure-23 to the writ petition), the respondent State have accorded all the benefits, including their salary as well as retiral benefits.

24. In that view of the matter, it would be also apt and proper to observe that the Bihar State Litigation Policy, 2011 also mandates that all similarly situated employees should be granted the benefit of covered matters, and if orders of the Court have been implemented in case of certain litigants, it should be implemented in respect of all other identically situated persons. [*Vide Amresh Kumar Singh Vs. The State of Bihar (2018(2) PLJR 929 FB)*]

25. For the reasons, noted hereinabove, this Court set



aside the order dated 07.11.2022 passed by the State Appellate Authority in O.A. No. T-582/2022 as contained in Annexure-1 to the writ petition and further hereby directed the respondents to ensure payment of all the post retiral benefits to the petitioner along with his due salary and consequential benefits, admissible to the petitioner in accordance with the law, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

26. The application stands allowed.

27. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

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