

**SUPREME COURT OF INDIA**

Zakir Hussain Prim.Tech.Edu.Col.

Vs.

State of Bihar

C.A.Nos.8239 - 8240 of 2009

(R.V.Raveendran and K.S.Radhakrishnan JJ.)

16.03.2010

**JUDGEMENT**

**K.S.Radhakrishnan, J.**

1. Heard the counsel. These appeals arise out of the judgment of the Patna High Court in LPA No.99 of 2007 (arising out of CWJC No.11428 of 2006) dated 23.6.2008 and the order dated 25.7.2008 in MJC No.1590 of 2008 rejecting the application for modification of the judgment dated 23.6.2008. These appeals were originally posted along with SLP(C) Nos.6511/2009, 9378/2009, 14746-14747/2009 and 14744-14745/2009. By order dated 10.12.2009, these two appeals were de-linked from other cases.

2. The Director (Research and Training), Department of Primary Higher Secondary and Public Education, Government of Bihar passed an order on 26.4.1995 granting recognition to the institution for the period 1979-81 to 1994-96. A copy of the communication was forwarded to the Secretary, Bihar Schools Examination Board with a request to declare the results for the examination conducted for the academic sessions 1979-81 to 1983-85.

“Later, another communication dated 6.2.1997 was forwarded by the Director (Research and Training) to the Secretary, Bihar Schools Examination Board, Patna, intimating that 14 such training institutes were recognized by the Government including Dr. Zakir Hussain Primary Teachers Training College, Sultanganj (first appellant herein). Dy. Secretary, Department of Primary, Higher Secondary & Adult Education, allegedly sent a letter dated 4.9.1997 to the first appellant stating that permission has been granted for granting recognition to first appellant college for the sessions 1979-81 to 1994-96 and consequently the prior order dated 26.4.1995 stood revoked.

Board, however, addressed a letter dated 17.10.1997 to the Dy. Director for ascertaining the veracity of the department letter dated 4.9.1997 which was replied by the Deputy Secretary to the Government in the affirmative vide letter dated 3.2.1998.”

3. The Board, however, passed a resolution dated 27.2.2004 deciding to cancel the results of the students of Primary Teachers Training Colleges which had been withheld and not declared for several years. The legality of that Resolution was the subject matter of a writ petition - CWJC No.3794/2004 filed by the students of first appellant college. The writ petitioners sought a direction to the respondents to produce the Resolution No.3 dated 27.2.2004 of the Bihar School Examination Board and to quash the same. The writ petitioners also sought a direction to publish the result of the examination and other consequential reliefs. The writ petitioners stated that they were admitted to the primary teachers training course for various sessions between 1979-81 and 1981-83 conducted by the first appellant - Dr. Zakir Hussain Primary Teachers Training College, Sultanganj; that at that time the College was not recognized, though application for recognition was pending; and that since no order was passed by the State Government on the application for recognition, a writ petition bearing no.CWJC 2428/1985 was filed which was disposed of by the learned Single Judge of the Patna High Court on 28.1.1993 directing the State Government to dispose of the application for recognition.

4. Counsel for the Board had opposed the said writ petition filed by the students on the ground of delay and laches. Further, it was also pointed out that the order passed by the Director granting recognition was contrary to the provisions of National Council for Teacher Education Act which came into effect on 17.8.1995. Learned Single Judge noticed that the examination took place in the year 1984 and the writ petition was filed only on 25.3.2004 and hence there was considerable delay in approaching the court. He therefore, dismissed the writ petition on 23.3.2005 mainly on the ground of delay and laches. The appeal against the said order (LPA No.396 of 2005) was dismissed on 8.7.2005.

5. Therefore, the appellant college filed a writ petition (CWJC No.11428 of 2006) seeking a direction to the respondents to conduct an examination for its students of the academic sessions 1984-86, 1985-87, 1986-88, 1987- 89, 1988-90, 1989-91, 1990-92, 1991-93, 1992-94, 1993-95, and 1994-96 by issuing examination forms, and admissions cards and publish their results.

“The said writ petition was also dismissed by a learned Single Judge on 6.12.2006, on the ground of delay.”

6. Aggrieved by the judgment of the learned Single Judge, the appellants filed an appeal before the Division Bench and the appeal was dismissed in limine on 23.6.2008. Appellants then preferred MJC No.1590/2008 for recalling the order dated 23.6.2008 passed by the Division Bench which was dismissed on 25.7.2008. Aggrieved by those orders, these appeals have been preferred by the appellants.

7. We heard Shri PP Rao, learned senior counsel appearing for the appellants, learned counsel appearing for the Board and the learned counsel appearing for the State of Bihar.

8. Dr. Zakir Hussain Primary Teachers Training College was established in the year 1975 and the relief sought for was with regard to the recognition of the college from the years 1979-81 to 1994-96. Several documents were produced before this Court in support of the various contentions raised by the parties. We find that the dismissal of the writ petition on the ground of delay may not be justified in view of the orders dated 20.4.1995, 6.2.1997, 4.9.1997, 3.2.1998 passed by the government from time to time. It is also stated that the Board has not held the examination for the last two decades and for the delay on the part of the Board, the college and its students cannot be punished. Only when the examinations were announced, the college could approach the court. Further, by interim order dated 13.6.2007, the High Court had directed that the students of the college be permitted to pay their fees and submit examination forms. In the circumstances we are of the view that the writ petition ought not to have been dismissed on the ground of delay and laches and the matter ought to have been considered on merits.

9. At this stage, the learned counsel appearing for the Board submitted that the Board did not get an opportunity to file its counter affidavit before the High Court since writ petition was dismissed mainly on the ground of delay and laches. Counter affidavit for the first time was filed before this Court along with a copy of the order dated 9.4.2009 issued by the Department of Human Resource, Government of Bihar canceling the earlier order dated 4.9.1997 stating that the said order passed was against the provisions of NCTE Act, 1993. To examine the various contentions raised by the parties and also the effect of the various orders produced before us, a detailed examination of the facts are necessary. Since the writ petition was dismissed mainly on the ground of delay and laches and the Letters Patent Appeal was dismissed at the admission stage and that the Board did not get an opportunity to file its counter affidavit, we feel it would be appropriate to give an opportunity to the Board to file its counter affidavit before the High Court so that the High Court would be in a better position to examine various contentions urged by the parties.

10. In these circumstances, we are inclined to set aside the judgment of the High Court and request the Division Bench of the Patna High Court to hear the matter on merits after giving the parties an opportunity to file counter affidavits and reply affidavits, if any. In view of the fact that a large number of students are affected and as the matter relates to courses undergone more than two decades ago, we request the High Court to dispose of the matter expeditiously. We make it clear that we have not expressed any opinion on the merits of the case. The appeals are accordingly disposed of.