

# SUPREME COURT OF INDIA

State of Bihar & Ors.

Vs.

Sanjay Kumar

C.A.No.4274 of 2014

(T.S.Thakur,CJI., and R.Banumathi,J.)

06.01.2016

## JUDGMENT

### **R.Banumathi, J.**

1. These appeals have been filed challenging the common impugned order dated 17.11.2009 passed by the Patna High Court allowing the writ petitions in CWJC Nos. 5129/2009 and 18039/2009 filed by the respondents herein and directing the appellant-State of Bihar to redo the entire selection process for the post of Librarian considering the case of the respondents also and further restraining the State from issuing appointment letters to other selected candidates.

2. Brief facts giving rise to these appeals are as under—state of Bihar framed Bihar District Council, Secondary & Higher Secondary Teacher (Employment & Service Conditions) Manual 2006 under Article 243G and Section 73 read with Section 146 of Bihar State Panchayat Raj Act, 2006. Rule 4(k) (vii) (a) of the said Rules was amended in 2008. The said amendment prescribes an essential qualification for appointments of teachers and librarians in the schools and also regulating appointments. As per amended Rule 4 for appointment as teachers/librarians, the candidates must possess the graduation degree from any recognized university with minimum 45% marks. An advertisement bearing No.11/employment1-13/91(Part-II)-1337 dated 25.08.2008 was issued by Government of Bihar, Human Resources and Development Department for appointment to the post of Librarian and Teacher in different schools under Zila Parishad and Nagar Nikaya in the State of Bihar. The said advertisement specifically referred to Recruitment Rules 2006 although the qualification or eligibility criteria was not specifically mentioned.

3. Respondents herein applied for the posts of Librarian. After the advertisement was issued, the Department issued order No. 11/Ma.1-01/2008 on 27.08.2008 containing exhaustive list of twenty eight colleges/universities/degrees that were not then recognized by the Government of Bihar for the purpose of the Recruitment Rules 2006 and the advertisement dated 25.08.2008 and those degrees were not valid for employment of teachers. The Department issued another Order No.11/M-44/2008-1968 (Annexure P/5) on 25.11.2008

declaring that the degree of Sahityaalankar awarded by Deoghar Vidyapeeth is not valid for employment. The State Government issued a letter dated 27.07.2007 clarifying the stand of the State regarding the degree of Sahityaalankar awarded by Vidyapeeth Deoghar is not equivalent to degree of graduation for the purpose of appointment under Bihar Education District Council, Secondary and Higher Secondary Teachers (Employment/ Services) Rules 2006. The letter dated 27.07.2007 was subject matter of challenge in Writ Petition No. 15237/07 titled Pramod Paswan vs. State of Bihar and in the said Writ Petition, the State was directed to take a fresh decision on the same. The State Government examined the matter and vide Memo No. 11/M-44/2008-1968 dated 25.11.2008, it was declared that the degree of Sahityaalankar awarded by Deoghar Vidyapeeth is not valid for employment. On 13.12.2008, the Government of Bihar, Human Resources Development Department, issued letter No.11/Na.1-9/2008-2053 wherein inter-alia it was specifically mentioned that the degree of Sahityaalankar awarded by Deoghar Vidyapeeth cannot be attached to merit list of candidates.

4. Pursuant to the said advertisement, respondents applied for the post of Librarian. The respondents possessed the degree of Sahityaalankar awarded by Deoghar Vidyapeeth. Challenging the validity, legality and correctness of the amendment of Rule 4(k) (vii) (a) of the Recruitment Rules 2006 as amended in 2008, respondents filed two writ petitions bearing Nos.5129/2009 and 18039/2009. The Patna High Court vide impugned order dated 17.11.2009 allowed the writ petitions filed by the respondents directing the State of Bihar to redo the entire selection process as above mentioned. Aggrieved by the same, State of Bihar has filed these appeals assailing the impugned order.

5. Mr. Gopal Singh, learned counsel for the appellants submitted that State of Bihar has issued order dated 27.08.2008 containing list of twenty eight institutions which were not recognized under the recruitment rules. It was submitted that the State has considered the matter at several occasions and has decided not to grant benefits to un-recognized degrees and accordingly the degree of Sahityaalankar awarded by Deoghar Vidyapeeth is not equivalent to graduation degree and the High Court has not considered the matter in the light of order dated 25.11.2008 (Annexure P/5).

6. Per contra, Mr.N.Rai and Mr. S.B. Sanyal, learned Senior Counsel for the respondents contended that the degree of Sahityaalankar makes the person eligible for appearing in the competitive examinations conducted by the Bihar Public Service Commission and it would be arbitrary to say that degree of Sahityaalankar does not make a person eligible as per Bihar District Council, Secondary & Higher Secondary Teacher (Employment & Service Conditions) Manual 2006 as amended in 2008 and the same is violative of Articles 14 and 16 of the Constitution of India.

7. We have considered the rival contentions of both the parties and perused the material on record.

8. The issue involved in these appeals is concerned with the interpretation of provisions in Rule 4 (k) (vii) (a) of Bihar District Council, Secondary & Higher Secondary Teacher

(Employment & Service Conditions) Manual 2006 as amended in 2008. As noticed earlier, Rule 4(k)(vii)(a) prescribes that the candidate must have passed graduation examination with minimum 45% marks from any recognized university. It is the contention of the State that the respondents do not fulfill the eligibility criteria as they possessed graduation degree from Hindi Vidyapeeth Deoghar which is not a recognized university. As noticed above, as per the direction of the Patna High Court in CWJC No.15237/2007, the State of Bihar examined the matter and by an order dated 25.11.2008 held that degree of Sahityaalankar cannot be a valid degree for appointment as teacher. Para 6 of the said order reads as under:-

“In Bihar District Council/Urban Body Secondary/Higher Secondary (Employment and Service Conditions) Manual, 2006, there is no provision to employing on any equivalent degree. Besides it, for employment, after deciding the all phases, the degree of “Sahityaalankar” given by Deoghar Vidyapeeth and other many degrees have not been decided recognized.” Mainly, the holder of Sahityaalankar Degree appear only at exam of some Sahitya papers while general B.A. pass the exam of graduation in many papers, which is more useful for education, due to this reason the degree of Sahityaalankar from Deoghar Vidyapeeth is not valid for employment.”

Contention of the appellants is that pursuant to the above, the State sent instructions to all the districts vide Order dated 13.12.2008 directing them to have appointment of teachers and librarians in accordance with Recruitment Rules 2006 as amended in 2008 and notification governing the validity of degrees.

9. On behalf of the State, it is further submitted that the validity of Sahityaalankar degree from the Hindi Vidyapeeth Deoghar and its equivalence with the graduation degree has been considered in detail by the Patna High Court in subsequent decisions filed by the State of Bihar in CWJC No.13343/2011 and several other connected matters. It is submitted that in the above batch matters, High Court has rejected the claim of the petitioners thereon that the Degree of Sahityaalankar is equivalent to graduation degree and the State of Bihar heavily relies upon the said judgment in CWJC No.13343/2011 and batch matters. It was also submitted that the letter dated 11.01.1991 should be read in consonance with earlier circular with respect to Hindi Vidyapeeth Deoghar wherein it has been mentioned that any recognition given to such degrees including Sahityaalankar is only for the purpose of Hindi examination and not at par with graduation or equivalence and in this regard reliance is placed upon Press Note dated 05.05.1988 issued by the Central Government.

10. Having regard to the stand of the appellants and reliance placed upon order dated 25.11.2008 and the Press Note dated 05.05.1988 and the subsequent decision in CWJC 13343/2011 etc. and in the interest of justice without commenting on the merit of the case, we deem it necessary to remit the matter back to the High Court for consideration afresh.

11. In the light of the aforesaid discussion, the impugned order is set aside and the same is remitted back to the High Court for consideration of the matter afresh after affording sufficient opportunity to both the parties. Liberty granted to the parties to file additional documents/pleadings. We request the High Court to dispose of the matter as expeditiously as

possible. The appeals are disposed of accordingly. Consequently, intervention application stands disposed of granting liberty to the interveners to approach the High Court in accordance with law. In the facts and circumstances of the case, we make no order as to costs.