

IN THE HIGH COURT OF JUDICATURE AT PATNA

LPA No.972 of 2007

KUMARI RANJANA MISHRA & ORS

Versus

THE STATE OF BIHAR & ORS

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For the appellants : Mr. Rajiv Verma  
Sr. Advocate

For the State : Mr. Ramchandra Pd. Bharti  
S.C.14

For the NCTE : Mr. S.N. Pathak

For the Board : Mr. Lalit Kishore,  
Sr. Advocate

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**THE HON'BLE THE CHIEF JUSTICE**

**AND**

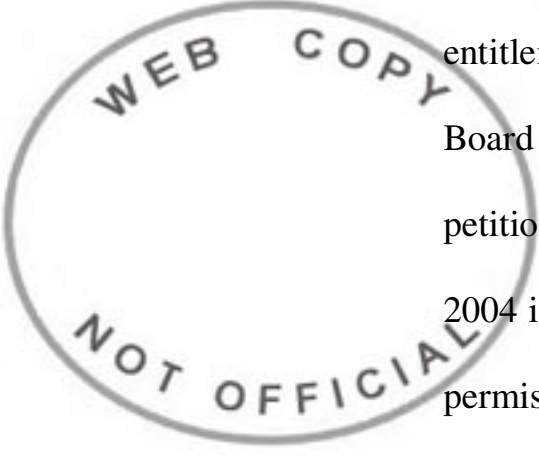
**HON'BLE MR. JUSTICE C.K.PRASAD**

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23.5.2008

The appellants are unsuccessful petitioners.

They prayed before the Single Judge in the writ petition that the Bihar School Examination Board and its functionaries be directed to permit them to appear at the ensuing Physical Teachers Training Examination in the year 2007. The petitioners' case was that they had completed Physical Teachers Training Examination Course from Champaran Physical Training College, West Champaran in the Sessions 1989-90, 1990-91, 1992-93, 1994-95 & 1995-96 when the said institution had valid recognition. According to them the enactment of National Council For Teacher Education Act, 1993 (for short, 'Act of 1993') which came into effect on



29<sup>th</sup> December, 1993 had not affected the petitioners' entitlement of appearing in the examination conducted by the Board in the year, 2007. It was also the case of the petitioners that derecognition of the institution in the year 2004 is also not an impediment for the petitioners in seeking permission to appear in the examination to be conducted by the Board in the year 2007. Strong reliance was placed before the Single Judge upon a decision of the Supreme Court in the case of Sunil Kumar Parimal & Anr. Vs. The State of Bihar & Ors., 2007 (4) PLJR (SC) 163,.

2. The Single Judge was not persuaded by the contentions of the petitioners and dismissed the writ petition by his order dated 7.11.2007. In the present appeal, the legality and correctness of the said judgment has been challenged.

3. Mr. Rajiv Verma, senior counsel for the appellants, canvassed the same contentions which were advanced before the Single Judge. Besides the decision of the Supreme Court in the case of Sunil Kumar Parimal, he relied upon the Division Bench decision of this court in the case of B.N. Mandal University vs. Md. Mustaque Alam & Ors., 2003 (4)

PLJR 197 . He also relied upon a decision of this court in the case of Sanjay Kumar Mahto & Anr. Vs. The State of Bihar & Ors., 2005 (1) PLJR 491, wherein a decision of the Supreme Court in the case of Suresh Pal and others vs. State of Haryana and others, (1987) 2 SCC 445, has been referred to.

4. The following facts are not in dispute:

(i) That the appellants took Physical Teachers Training Course from Champaran Physical Training College, West Champaran, in the Sessions 1989-90, 1990-91, 1992-93, 1994-95 and 1995-96.

(ii) That the National Council for Teacher Education Act, 1993 came into force on 29<sup>th</sup> December, 1993 and regulations for Physical Training Course were framed in the year, 1999.

(iii) That the institution, namely, Champaran Physical Training College, West Champaran did not apply for any recognition under the Act of 1993 or the regulations framed thereunder.

(iv) That Champaran Physical Training College, West Champaran was derecognized in the year, 2004.

(v) That the appellants sought to appear in Physical Teachers Training Examination to be conducted by the Board in the year 2007.

5. In the backdrop of the aforesaid facts, the question that falls for determination is as to whether the Board was

unjustified in not permitting the appellants to appear in the Physical Teachers Training Examination conducted in the year 2007.

6. There is nothing on record to show that the State government directed the Board to allow the students of the institution viz. Champaran Physical Training College, West Champaran in the examinations conducted in the years, 1993-94, 1994-95, 1995-96, 1996-97 or thereafter and that the Board did not comply with that. As a matter of fact, the counsel for the appellants did not dispute that at no point of time the State government made any such request.

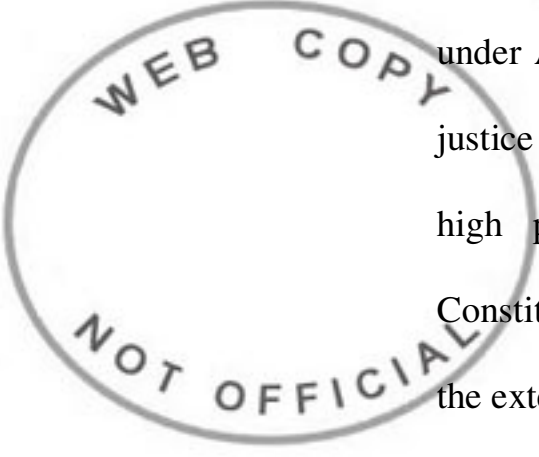
7. In the case of Sunil Kumar Parimal the Apex Court noticed that the Board failed to discharge its functions in conducting examination of Tirhut Physical Education College, Muzaffarpur despite repeated directives by the State government. Sunil Kumar Parimal was a case where although the institution, namely, Tirhut Physical Education College, Muzaffarpur was recognized and there were repeated requests of the State to allow the students to appear in the examination of the said institution but the Board did not follow such directions. It was in this backdrop that the

Apex Court made following observations:



“21. In the above-noted peculiar facts and circumstances of the case, we are of the opinion that it is a fit case where we should not hesitate to exercise our jurisdiction under Article 142 of the constitution of India to do complete justice to the appellants to whom palpable injustice is shown to have been done because of the sheer fault and inefficiency of the respondent-Board, who, despite repeated requests of the State authorities, did not take steps to admit the appellants to appear in the examination till the respondent- College was derecognised in terms of the provisions of the NCTE Act. It is again unfortunate that in spite of fighting a long legal battle for vindicating their genuine and legitimate claims, the appellants could not get any justice even from the court of law. Thus, in our considered view, the order of the learned Single Judge as affirmed by the Division Bench of the High Court holding that the respondent – College has since been de-recognized after the enforcement of the NCTE Act, therefore, the appellants could not be granted the permission to take examination of the C.P.Ed. and D.P.Ed. course from the unrecognized institution, is erroneous and untenable. The NCTE Act came into force with effect from 17.8.2005 and its provisions will be applicable prospectively to those students who have undertaken examination after 17.8.2005 from recognized institution. The respondent-College has lost its recognition only with effect from 17.8.2005 when the NCTE Act was enforced and before that date, the respondent-College was duly recognized institution by the State government. Therefore, the finding and reasoning of the High Court holding the appellants not eligible to appear in the examination of C.P.Ed. and D.P.Ed. courses from the respondent – College are not based on proper appreciation of facts of the case and principles of law.”

Moreover the decision in the case of Sunil



Kumar Parimal is an exercise of the inherent jurisdiction under Article 142 of the Constitution of India to do complete justice between the parties. Although the High Court has high prerogative jurisdiction under Article 226 of the Constitution of India but the said jurisdiction is surely not to the extent that the Supreme Court possesses under Article 142 of the Constitution of India. As a matter of law, the decision of the Supreme Court in exercise of the power under Article 142 of the Constitution of India is confined to the fact situation obtaining therein and is not a binding precedent which in any other decision of the Supreme Court would have been under Article 141 of the Constitution of India.

9. We are, thus, of the view that Sunil Kumar Parimal cannot be applied to the present fact situation and is of no help to the appellants.

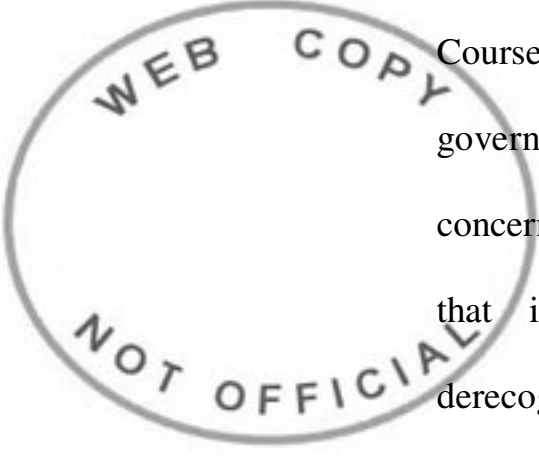
10. In so far as the decision of this court given by the Division Bench in the case of B.N.Mandal University is concerned, it transpires from para -6 of the report that the concerned institution, namely, Milia College after coming into force of the Act of 1993 applied for recognition and in terms thereof the Eastern Regional Committee allowed the

Milia College to continue the B.Ed. course and provisional recognition was granted. It was only after a year 1999-2000 due to deficiencies, provisional recognition of the Council was withdrawn.

11. There is nothing on record in the present case to indicate that the institution applied to the concerned authority under the Act of 1993 or the regulations framed thereafter and that any provisional recognition was granted. B.N.Mandal University is also of no help to the appellants.

12. Sanjay Kumar Mahto was a case where the petitioners prayed for quashing the order whereby matric trained scale granted to them was rescinded and excess remunerations paid to them was directed to be recovered. We are afraid, the said judgment has no relevance at all to the present fact situation that we have already noticed above. The decision of the Supreme Court in the case of Suresh Pal also has no application.

13. Two facts should clinch the issue, namely; **(one)** that in the year 2004, the recognition of the institution was cancelled and until the institution was recognized, no steps were taken by the appellants in either compelling the Board



to conduct examination for Physical Teachers Training Course nor was there any directive issued by the State government asking the Board to allow the students of the concerned institution to appear in the examination and (two) that it was only after the institution had already been derecognized that the appellants sought to appear in the examination to be conducted by the Board in the year 2007, to which, obviously, they were not entitled to.

14. There is no merit in this letters patent appeal and it is dismissed accordingly.

**R.M.Lodha, CJ.**

Neyaz/

**C.K.Prasad, J.**