
(2019) 10 PAT CK 0089

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21970 Of 2013, 3240, 3622 Of 2015

Bidya Bhushan Kumar And Ors

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Citation : (2019) 10 PAT CK 0089

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Abhinav Srivastava, Nivedita Nirvikar, Amit Kumar Anand, Namrta Mishra, Bankey Bihari Singh, Prashant Pratap

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and the respondent-State.
2. Petitioners of CWJC No 3240 of 2015 have sought quashing of the decision of the Principal Secretary to the Government of Bihar in the Department of Education dated 09.02.2015. The decision has been taken pursuant to the petitioners' representation filed in light of order dated 17.09.2014 passed on the petitioners' earlier writ petition bearing CWJC No 24775 of 2013.
3. By the decision dated 09.02.2015, the Principal Secretary has rejected the petitioners' claim for being extended the benefit of Resolution dated 07.07.2006 (Annexure 8), whereby benefit of merger has been granted to Members of the Subordinate Education Service Cadre. While extending such benefits, the same has been limited to the Teachers serving in the Teaching Branch, male and female. With effect from 01.01.1977, their services have been merged and now they constitute part of the Bihar Education Service (Class II). The Resolution also contemplates that separate order would be issued as regards the consequential benefits to be extended to the Members of the Teaching Branch as a result of such merger.
4. The Subordinate Education Service, which comprises of Teachers, is further

divided into sub cadres/branches. The petitioners are Members of the Elementary Branch (Male). Since the Resolution dated 07.07.2006 has been confined to Teaching Branch, male and female, the petitioners are aggrieved.

5. It is the case of the petitioners that the Resolution dated 07.07.2006 is based on the Resolution dated 11.04.1977 bearing No 3521 (Annexure 1) whereby the State Government has approved the recommendations made by the Saran Singh Committee which was a Committee of Senior Officers constituted to submit recommendations to resolve the issue of stagnation of employees in the various Departments of the State Government since there was limited avenue of promotion/progression.

6. The State Government, after due consideration to the recommendations made by the Committee, resolved amongst other decisions, to merge the subordinate cadre into the higher cadre of various Departments so that the Members, who had limited avenues of promotion and were stagnating, could be granted progression in service. The members of the Subordinate Education Service were covered by that part of the Resolution which decided to merge the Subordinate Cadres to the higher cadres. In so far as the subordinate Education Cadre is concerned, the Resolution contemplated as follows:

"विभिन्न पद जैसे शिक्षक (नेतरहाट के शिक्षकों को छोड़कर) स्टेडियम मैनेजर इत्यादि के पदों को बिहार शिक्षा सेवा संवर्ग में शामिल कर लिया जाय और संवर्गीय पदाधिकारियों को ही इन पदों पर नियुक्त किया जाय।"

"Various accepted posts, like teachers (except teachers of Netarhat), Stadium Managers etc be included in Bihar Education Service Cadre and only officers of the cadre be appointed to these posts."

7. The recommendations of the Saran Singh Committee were made in the background that the avenues for promotion to Bihar Education Service (Class II) in the promotional quota was limited. Members of the Subordinate Education Service (hereinafter referred to as SES), like the petitioners, as a result were stagnating. The Members of the SES Cadre performed a very important function, i e, imparting education to the children of the country. In the circumstances, it was undesirable that its Members should be made to stagnate as they were entitled to honourable treatment and appropriate chances of promotion and higher pay scales so that they would discharge their role to raise the literacy rate with full devotion and dedication.

8. When the recommendations of the Committee were not being implemented, Members of the SES Cadre filed a writ petition. CWJC No 12122 of 1998, filed by them, was disposed of with a direction to the Authorities to act upon the Government Resolution dated 11.04.1977. The matter, thereafter, travelled up to the Apex Court which also disposed of the SLP observing that the High Court's direction for acting upon Government Resolution dated 11.04.1977, be carried out. The Apex Court, in its order dated 16.04.2001, has directed the State of Bihar, which was the petitioner before the Apex Court "to implement the

Resolution dated 27th April, 1977 in the manner it is meant to be implemented." Even after order of the Apex Court, the State Government was still dragging its feet as regards implementation of the Resolution dated 11.04.1977.

9. Another writ petition was filed by other Members of the SES Cadre. CWJC No 8679 of 2002 filed by them again reiterated the same direction after taking into consideration that the Authorities were sitting over the directions of the Apex Court arising out of the earlier round of litigation. Specific direction was given "to implement Resolution dated 11.04.1977 in its totality within a period of six weeks from today, failing which ..." this Court had observed that the Authorities would be liable to be proceeded for violation of the various orders passed by this Court and the Apex Court.

10. Since the Resolution dated 11.04.1977 was still not being implemented, contempt proceedings were also initiated against the Authorities. The State of Bihar preferred Civil Appeal No 4466 of 2003 before the Apex Court against the directions passed by this Court to merge the SES with the Bihar Education Service (Class II) (hereinafter referred to as BES Class II). Civil Appeal preferred by the State of Bihar was dismissed on 19.04.2006.

11. Being faced with so many earlier orders, as well as contempt proceedings, State Authorities issued the Resolution dated 07.07.2006 merging the SES Cadre with the BES (Class II). State, while issuing the Resolution, limited the merger with respect to the Teaching Branch, male and female. All other Branches were excluded from the benefit of merger. Members of the Bihar Education Service Association and other Members of the said service filed writ petitions.

12. Some other persons, like the petitioners who claimed that the Resolution dated 07.07.2006 was discriminatory by restricting its applications to Members of the Teaching Branch, male and female, also filed writ petitions. Writ petition filed by the Association was numbered as CWJC No 10091 of 2006, which prayed for quashing the Resolution dated 07.07.2006 as it was submitted that the BES Class II Members were adversely effected by merger of the SES Cadre under the Resolution dated 07.07.2006.

13. CWJC No 14678 of 2006 was filed by the others who had been left out and not granted the benefit of merger by Resolution dated 07.07.2006 seeking a direction for extending the same benefit of merger to them. Both the matters were heard and decided together by order dated 31.10.2007 (Annexure 9). The Resolution dated 07.07.2006 was quashed in the said proceedings allowing the case of the Association. In so far as the writ petition filed by Members of the Subordinate Education Service Cadre, like the petitioners, this Court disposed of the same with liberty to the State Government to consider the case for inclusion/merger in accordance with law.

14. The matter, thereafter, travelled to the Apex Court again. Civil Appeal No 8226 and 8227 of 2012 was finally disposed of by the Apex Court by its order and judgment dated 23.11.2012. The Apex Court, in the said order, has

expressed great displeasure for the order passed by the High Court in the case filed by the direct recruits to the BES (Class II) through their Association. The Apex Court has, in the said order, made some observations which are relevant to the issues arising in the instant proceedings. The order was passed after hearing all aspects of the matter. Before the Apex Court, the case of the respondent-State was that the SES did not form part of the State Service and that report of the Saran Singh Committee was meant only for those who did not have scope for promotion in the State Service. The submission of direct recruits to the BES (Class II) was also considered by the Apex Court. They had specifically raised a plea that on account of merger of the SES in the Class II Services, Members of BES Class II were likely to suffer.

15. Members of the BES (Class II) resisted the claim of the Members of the SES Cadre for merger by contending that their cadre was not a State Service and, therefore, they could not be extended the benefit of the Resolution dated 11.04.1977 based on Recommendations of the Saran Singh Committee. They also raised a plea that such merger was likely to effect their seniority retrospectively. Having considered all aspects of the matter, the Apex Court deprecated interference with the State Government's Resolution dated 07.07.2006 by the High Court, since earlier the matter had attained finality in the writ proceedings which had finally been approved by the Apex Court in Civil Appeal No 4466 of 2003. The Apex Court in paragraph 44 has observed as follows:

"44. This entire discussion leads us to only one conclusion that the learned Single Judge who heard the petition CWJC No 10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association had no business to reopen the entire controversy even otherwise. The State Government had already passed a Resolution dated 07.07.2006 after the order of this Court dated 19.04.2006. While examining the legality of that Resolution (which was defended by the State Government at this stage before the learned Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res judicata or principles analogous thereto, does not permit any such reexamination, and the learned Judge clearly failed to recognize the same."

16. The SLP was allowed. State Government's Resolution dated 07.07.2006 was upheld. The Apex Court further directed the State to proceed to act according to Government Resolution dated 07.07.2006. The order dated 31.10.2007 passed in the writ petition (CWJC No 10091 of 2006) was set aside.

17. It would be relevant to note here that on 31.10.2007, the High Court has passed the order on two writ petitions, one preferred by Members of BES (Class II) (Direct Recruits) claiming adverse impact of merger granted under Resolution dated 07.07.2006. The other writ petition was filed by Members of the Elementary Branch, like the petitioners who were complaining that by restricting the Resolution dated 07.07.2006 for granting benefit of merger only to Teaching

Branch (Male and Female), the State had acted contrary to its own Resolution dated 11.04.1977 and had subjected the Members of the other Branches of the SES Cadre to discrimination.

18. The Resolution dated 07.07.2006 granting benefit to Members of the Teaching Branch (Male and Female) was, thus, revived by the State Government on 02.04.2013 pursuant to decision of the Apex Court. The Resolution to this effect is Annexure 11 of the writ petition. Members of the SES Cadre in the other Teaching Branch were aggrieved by the Resolution dated 02.04.2013 reviving the earlier Resolution dated 07.07.2006. It was their case that in light of the observations of the Apex Court in paragraphs 40, 45, 46 and 47, the petitioners too were entitled to the benefit of merger as State Government Resolution dated 11.04.1977 never restricted the benefit of merger in respect of a particular Branch within the SES Cadre. The Resolution dated 11.04.1977 was to be applied to the entire Bihar SES, which is also evident from observations of the Apex Court in the aforesaid paragraphs which are being reproduced:

"40. That apart, even if one looks to the merits of the rival contentions, there is no dispute that although the rules do provide for a channel of promotion to the subordinate teachers, actually the chances of promotion for them are very less. There is a serious stagnation as far as the subordinate teachers are concerned. (emphasis mine) The Saran Singh Committee was essentially constituted to go into this very issue. As can be seen from the report of the committee, the various service associations in the State were clamouring for appropriate provision for promotion on par with the Bihar Engineering Service. It is true that the report of the committee does refer to the 59 posts in the miscellaneous cadre while examining the problem. However, after directing the shifting of the engineers in the Education Department to the Public Works Department, and the doctors to the Health Services in sub-clauses (1) and (2) of para 11.10, the committee recommended in sub-clause (3) that the remaining posts should be included in the general cadre and manned by officers of Bihar Education Service as far as possible. The notification issued by the State Government on 11.04.1977 approved the recommendation of the committee, but the wording used while approving the recommendation is bit different.

45. For the reasons stated above, these appeals (arising out of SLP Nos 26675-76 of 2010 are allowed. The judgment and order passed by the Division Bench of Patna High Court in LPA No 418 of 2009 and other LPAs dated 21.05.2010, and that of the learned Single Judge dated 31.10.2007 in CWJC No 8679 of 2002 are set aside and the said writ petition is hereby dismissed. Consequently the notification dated 19.11.2007 issued pursuant to the decision of the Single Judge will also stand quashed and set aside. The State Government Resolution dated 07.07.2006 is upheld. The State shall proceed to act accordingly. IA Nos 19-20/2011 are dismissed. As stated by Mr Patwalia, learned senior counsel for the appellants, the appellants no longer press for the action for contempt arising out of CWJC No 8679/2002. Contempt Petition Nos

386/387/2011 will also accordingly stand disposed of, as not pressed.

46. The attitude of the State Government in this matter has caused unnecessary anxiety to a large number of teachers. The State Government must realize that in a country where there is so much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important. They have to be treated honourably and given appropriate pay and chances of promotion. It is certainly not expected of the State Government to drag them to the Court in litigation for years together.

47. Though the appeals stand disposed of as above, we do record our strong displeasure for the manner in which the State of Bihar kept on changing its stand from time to time. This is not expected from the State Government. The manner in which the learned Single Judge proceeded with the Writ Petition No 1009/2006 to reopen the entire controversy, and also the Division Bench in LPA No 418/2003 in approving that approach is also far from satisfactory. If the orders passed by this Court were not clear to the State Government or any party, it could have certainly approached this Court for the clarification thereof. But it could not have set up a contrary plea in a collateral proceeding. We do not expect such an approach from the State Government and least from the High Court. Having stated this, although we have expressed our displeasure about the approach of the State Government, we refrain from passing any order as to costs."

19. One writ petition bearing CWJC No 24775 of 2013 was, thus, filed by these petitioners earlier claiming the benefit of merger in terms of Resolution dated 11.04.1977. The same was disposed of. The petitioners were relegated to the Authorities. This Court directed the Principal Secretary to take a decision on the claim of the petitioners, upon representation being submitted in this behalf. Representation of the petitioners has been rejected by the impugned order dated 09.02.2015. It is in these circumstances that the present writ proceedings have been filed by the petitioners.

CWJC No 3622 of 2015

20. These petitioners have since retired. It is their complain that they had not been extended the pay scale of Bihar Education Service (Class II) nor given their seniority in the Class II services. They too are claiming the benefit of merger in the Bihar Education Service (Class II) as it is their case that in light of the Resolution dated 11.04.1977, they, being the Members of the SES Cadre, were entitled to the benefit of merger in the BES (Class II).

21. Petitioner No 2 has passed away.

22. IA No 3113 of 2018 has been filed for substitution of the name of the wife in place of the original petitioner.

23. Prayer made in IA No 3113 of 2018 is allowed.

24. Original petitioner No 2, namely, Rajendra Prasad Sharma stands substituted by his wife, namely, Godavari Devi. Substitution be effected in the writ records by the office as per details contained in the affidavit and Aadhar Card forming part of IA No 3113 of 2018.

CWJC No 21970 of 2013

25. These petitioners are also claiming the benefit of merger in light of the State Government's Resolution dated 07.07.2006 and had filed writ petition bearing CWJC No 2673 of 2007.

26. All the petitioners in the three writ petitions are claiming the benefit of merger on account of Resolution dated 11.04.1977 as well as observations made by the Apex Court in the proceedings arising out of Civil Appeal No 8226 - 8227 of 2012, which have been taken note of herein above.

27. On consideration of submission of rival parties, this Court would observe that ever since recommendations were submitted by the Saran Singh Committee, no distinction has been made in so far as the problem of stagnation of Teachers in the SES, with reference to the different Branches. The SES has been treated as a whole during the entire process of consideration. Even in the Government Resolution dated 11.04.1977, no such distinction was created. Decision of this Court as well as the Apex Court in the various proceedings, do not make any distinction as regards applicability of recommendations made by the Saran Singh Committee, as well as Government Resolution dated 11.04.1977 between the various Branches, which together constitute the Subordinate Education Service Cadre. Resolution dated 07.07.2006, in so far as the same restricts the benefits to Teaching Branch (Male and Female), is discriminatory. The benefit of merger which, as per the Government Resolution dated 11.04.1977, was for the SES Cadre, could not have been restricted only to the Teaching Branch (Male and Female). Such a classification is none est, discriminatory and to the prejudice of the Teachers of the other Branches who are Members of the same SES Cadre. Decision of the Principal Secretary to reject the petitioners' claim for benefit of merger is without any legal basis. The reason, which has been assigned, is that the petitioners were having promotional avenue and had accepted benefits arising out of merger of the post of Lower and Upper Division Clerks. On account of these reasons, the claim of the petitioners have been rejected by the Authorities in CWJC No 3240 of 2015.

28. On going through the counter affidavit of respondents No 2 & 3 in CWJC No 3240 of 2015, it is clear that Teachers of the Teaching Branch (Male and Female) were also having promotional avenue and had been granted benefit of merger of the post of Lower and Upper Division Clerk in the Subordinate Education Service Cadre. Grant of such benefit or availability of some promotional avenue was nothing unique to the petitioners as the situation on these parameters has been the same in respect of all Branches of the SES Cadre. Having considered all these aspects, the Saran Singh Committee has submitted its recommendation and the

Government had taken the decision contained in Resolution dated 11.04.1977 for the SES Cadre as a whole.

29. The distinction, sought to be created by the order of the Principal Secretary, is baseless and unsustainable. There is no basis for the distinction. This Court, by order dated 01.02.2019, had allowed the respondent-State to come out with its stand in this respect, in CWJC No 3240 of 2015. The pleadings of the petitioners that merger of pay of lower and upper division was effected in both sub cadres/branches of SES, i e, Teaching Branch (Male & Female) and primary Branch stand admitted in paragraph 30 of the counter affidavit filed on behalf of respondents No 2 and 3 in the instant proceedings recently. The specific stand on the plea of the petitioners in paragraph 30 of the counter affidavit is as follows:

"30. That so far as statements made in para - 39 of the writ application is concerned, it is not in dispute that in the year 1978 merger of pay scale of upper & lower division of SES cadre was effected but, this merger of pay scale will not make the petitioners' cadre entitled to claim further merger in BES (Class - II) cadre, in any manner and merger of lower & upper pay scale was effected in various cadres of services of various department in the light of the instruction issued by the Finance Department to carve out the pay anomaly. With regard to further contention of the petitioners, it is relevant to state here that lower & upper division was there in both the sub-cadres of SES i e SES (teaching Branch - Male & Female) & SES (Primary Branch) and merger of pay of lower & upper division posts was effected in both the sub-cadres. It is further stated that after their respective merger of pay in their respective sub-cadres, members of SES (teaching Branch - Male & Female) sub-cadre were not covered under the scheme of promotion in BES (class - II) on regular basis, for the reasons stated above whereas, the members of SES (primary Branch) were benefited with regular promotion in BES (class - II) and this fact has also been appreciated & observed by this Hon'ble Court as well as Hon'ble Apex Court and further, the said aspect of the matter cannot be denied by the petitioners as well. It is not out of place to mention here that the petitioners are trying to establish two unequal as equal but the same has got no substance in view of facts & circumstances stated herein above."

30. The stand of the State regarding the petitioners, who are Members of SES, Primary Branch being different with that of Members of SES, Teaching Branch (Male & Female), who have been granted the benefit of merger, clearly is not based on any tangible and substantial difference.

31. The background leading to recommendation of merger of SES into BES (Class II) also makes it clear that there has never been a distinction between Members of the SES, Primary Branch and the Members of SES, Teaching Branch (Male & Female). While issuing the Resolution of merger in respect of SES (Teaching Branch, Male & Female), for the first time, the respondents have sought to create a distinction between the two. The Resolution dated 07.07.2006 sought to create a distinction which was unreal and without any basis. There was no basis for

excluding the petitioners in the matter of merger, when the same was granted to Members of the SES (Teaching Branch, Male & Female).

32. The test of validity of classification and reasonableness thereof, has been considered by this Court in light of the settled principles of law in relation to classification. In this connection, this Court would refer to a recent case wherein the law relating to classification has been considered in the context of judicial review. The Apex Court in the case of Union of India & Others -Versus- N S Rathnam and Sons, reported in (2015) 10 Supreme Court Cases 681, has reiterated the settled principles of reasonable classification and the scope of judicial review in the matters concerning classification.

33. The law in this regard is well settled. In order to pass the test of permissible classification, two conditions are required to be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the classification effected must have a rational relation to the object sought to be achieved by such classification. The Government has failed to support classification in the instant case on the basis of any intelligible differentia. No rational basis has been shown. Classification by excluding the petitioners' claim in the facts and circumstances of the instant case is, therefore, found to be arbitrary and discriminatory.

34. This Court has also heard the intervenors, who are direct recruit Members of BES (Class II). They have raised objection to the claim made by the petitioners in the instant proceedings. Mr P K Shahi, learned Senior Counsel appearing on their behalf has submitted that the direct recruits in the Class II service are already facing a peculiar situation where Members of the Teaching Branch, who are beneficiaries of Resolution dated 07.07.2006, have been placed above the direct recruits. Intervenors' seniority is suffering and is likely to suffer more if benefit of merger is granted to the instant petitioners. It is also submitted that petitioners have approached this Court after delay and only after passing of order by the Apex Court in Civil Appeal No 8226 - 8227 of 2012. It is also submitted that the prejudice being caused on account of merger in terms of loss of seniority have already been agitated by the direct recruits by way of a separate writ petition, which is pending adjudication in another writ petition. He submits that the petitioners should not be granted the relief since the seniority of the intervenors would be adversely effected on account of grant of benefit of merger to the petitioners.

35. The submissions made by the learned Senior Counsel representing the Direct Recruits in BES (Class II) is more or less the same, and which has already been considered by this Court in the proceedings arising out of CWJC No 10091 of 2006 by the Bihar Education Service Association which was allowed by learned Single Judge of this Court by order dated 31.10.2007. The judgment is reported in 2008 (1) PLJR 66 (Bihar Education Service Association & Others -Versus- State of Bihar & Others). The same led to filing of Letters Patent Appeals No 941, 946,

947 and 974 of 2007. Subsequently, LPA No 418 of 2009 was also filed by the Secondary School Teachers Association. All the Letters Patent Appeals were heard together.

36. LPAs were dismissed by the Division Bench of this Court by judgment and order dated 21.05.2010.

37. Arising out of these Letters Patent Appeals, two Civil Appeals were decided by the Apex Court bearing Civil Appeal No 8226 and 8227 of 2012. Observations made in paragraphs 40, 45, 46 and 47 by the Apex Court in the said cases have already been taken note of hereinabove. Having considered the grievances of Members of the BES (Class II) raised in their writ petition, the same was dismissed by the Apex Court. The State Government Resolution dated 07.07.2006 granting benefit of merger to Members of the SES (Teaching Branch) (Male & Female) was upheld. In view thereof, this Court is not persuaded to take a different view as regards entitlement of the instant petitioners, who are also members of SES and similarly situated as the beneficiaries of judgment of the Apex Court in the case of Bihar State Government Secondary School Teachers Association (*supra*) in Civil Appeals No 8226 and 8227 of 2012. Once the issue has been considered and decided by the Apex Court, judicial discipline would demand that this Court should not even make an attempt to have a relook at the same issue. This Court has no option but to reject the grievances of Members of the BES (Class II) following the judgment of the Apex Court in the case of Bihar State Government Secondary School Teachers Association (*supra*). This Court would, thus, direct that the State Government should extend the same benefits to Members of the other Branches of the SES Cadre, who are petitioners in these writ petitions, as has been done for the Members of the Teaching Branch (Male & Female). While doing so, it would be open to the State Government to work out the modalities for extending the benefits maintaining uniformity between Members of the various Branches of the Subordinate Education Service Cadre having regard to the various relevant considerations for an effective, non-discriminatory treatment.

38. The petitioners, who perform/performed a very important role in Society and are entitled to be treated honorably by giving appropriate pay and chances of promotion, have been dragged into this litigation, now for decades together. In the circumstances, this Court would observe that State Government should work out the modalities for extending benefits of the State Government's Resolution dated 07.07.2006 to the petitioners expeditiously, without undue delay and preferably within three months from the date of receipt/production of a copy of this order.

39. Writ petitions stand allowed.