

(2007) 10 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 10091 and 14678 of 2006

Bihar Education Service Association and Others and
Radharaman and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Citation : (2007) 10 PAT CK 0044

Judgement

V.N. Sinha, J.—Heard learned Counsel for the parties at length.

2. Bihar Education Service Association an Association of the members of Bihar Education Service and other Members of the said Service have filed CWJC No. 10091 of 2006, praying inter alia to quash the resolution of the State Government, bearing Memo. No. 1209 dated 7.7.2006, Annexure-1, whereunder the State respondents, in compliance of the different orders of this Court and the Hon"ble Supreme Court referred to in the said resolution, have merged Teaching Branch of the Bihar Subordinate Education Service, Male and Female with the Bihar Education Service Class II in the light of the resolution No. 3521 F2 dated 11.4.1977, Annexure-3 with effect from 1.1.1977 on the ground that in compliance of the different orders of this Court as also of the Hon"ble Supreme Court, the Members of the Teaching Branch of the Bihar Subordinate Education Service were not entitled for being merged with the Bihar Education Service Class II and the impugned resolution has been issued ignoring the contents of the different orders of this Court and of the Hon"ble Supreme Court as also the aforesaid resolution dated 11.4.1977, which only provide for inclusion of the various posts of teachers of the miscellaneous cadre of Education Department (except the teachers of Netarhat), Stadium Managers etc. in Bihar Education Service, as is evident from Serial No. 7 of Schedule 1 of the said resolution. In this connection, it was pointed out that various posts referred to in the resolution belong to the Misc. cadre of the Education Department as indicated in paragraph 11.10 of the report of the Committee constituted to assess the extent of stagnation prevailing in different State Services, Annexure-2, which was the

basis for taking the decision contained in the resolution dated 11.4.1977, Annexure-3, With reference to the compliance report of the Chief Secretary dated 27.3.2003, Annexure-10, it was submitted that the posts which were to be included in terms of the resolution dated 11.4.1977, were included in the State Services much earlier as would be evident from the said report of the Chief Secretary dated 27.3.2003, Annexure-10 and in view of the report of the Chief Secretary the impugned notification dated 7.7.2006, Annexure-1 should not have been issued at all. In this regard assertions have been made by the petitioners of CWJC No. 10091 of 2006 in paragraph 25 of the writ petition. It was further submitted that merger of the Bihar Subordinate Education Service, Teaching Branch, Male and Female cannot be allowed with the Bihar Education Service Class II as the two services are inherently different from each other not only in the mode of recruitment but also in the minimum qualification required for entry in the two services as also in the nature, duties of the two services. In this connection reliance was placed on the judgment of Hon''ble Supreme Court in the case of S.P. Shivprasad Pipal Vs. Union of India and Others, , in the case of Association for the Officers of the W.B. Audit and Accounts Service and Ors. v. W.B. Audit and Accounts Service Association and Ors. reported in (1995) Suppl. 4 SCC 44, in the case of Inder Singh and Ors. v. Vyas Muni and Ors., reported in 1987 suppl. SCC 257 and in the case of Hydro-Electric Employees Union, U.P. and Others Vs. Sudhir Kumar Sharma and Others,

3. C.W.J.C. No. 14678 of 2006 has been filed by 51 petitioners claiming that the petitioners or their husband were appointed as teacher in the Bihar Subordinate Education Service and they be also allowed the benefit of the higher pay scale of Bihar Education Service Class II in the light of resolution dated 11.4.1977 in compliance of the different orders of this Court referred to in the subsequent resolution of the State Government dated 7.7.2006 and the State respondents is not justified in discriminating against them by not including their services in the Bihar Education Service Class II for which names were called for by the Director, Administration, the cadre controlling authority of the Bihar Education Service Class II and there is no earthly reason to distinguish the case of the petitioners or their husbands from the other members of the Bihar Subordinate Education Service, who have already been merged in the Bihar Education Service Class II.

4. Learned Counsel for the State has opposed the prayer made in the two writ applications with reference to the averments made in the counter affidavit/supplementary counter affidavit filed in both the applications and submitted that the contents of the resolution dated 11.4.1977 was the subject matter of CWJC Nos. 12122 of 1998 and 8147 of 1999, whereunder prayer was made to implement the resolution dated 11.4.1977 as anomaly was being created in the light of subsequent notification dated 8.2.1999 and this Court having considered the prayer made in the two writ applications, directed the Commissioner-cum-Secretary of the Secondary, Primary and Mass Education Department of the State Government to act upon the Government''s decision contained in resolution dated 11.4.1977, which order became the subject matter of L.P.A. Nos. 980 and

998 of 2000 and Petition(s) for SLP to Appeal (Civil) No. 4937-4938/2001 and subsequently another writ petition, bearing CWJC No. 8679 of 2002 was filed in which observations were made that the authorities of the State Government were in contempt of the earlier orders of this Court as also of the Hon''ble Supreme Court as they had not yet implemented resolution dated 11.4.1977 and ultimately matter was taken to the Division Bench by the State respondents in L.P.A. No. 65 of 2003, which was also dismissed and then the matter was again taken to Hon''ble Supreme Court in Petition(s) for Special Leave to Appeal (Civil) No. 6450 of 2003/ Civil Appeal No. 4466 of 2003, which was also dismissed under orders dated 19.4.2006 and the authorities thereafter had no option but to issue the impugned resolution dated 7.7.2006 in the light of the resolution dated 11.4.1977. In the light of different orders of this Court and the Hon''ble Supreme Court, the members of the Teaching Branch of the Bihar Subordinate Education Service, Male & Female have been merged in the Bihar Education Service Class II and this Court should dismiss CWJC No. 10091 of 2006 and direct the authorities to consider the representation of the petitioners of CWJC No. 14678 of 2006 for being granted the benefit of merger with the Bihar Education Service Class II.

5. Intervenor-Respondents of CWJC No. 10091 of 2006 including the Bihar Education Service Association, Intervenor Respondent No. 10 as also counsel for Sri Janardan Rai, petitioner in CWJC No. 8679 of 2002 reiterated the same submissions in support of the impugned notification and submitted that the same has been issued in compliance of the different orders of this Court and the Hon''ble Supreme Court and this Court should not interfere in the matter as the matter has already been considered by this Court and the compliance report dated 27.3.2003, Annexure-10 was also placed on the records of Civil Appeal No. 4466 of 2003 before the Hon''ble Supreme Court but the same was not accepted by the Hon''ble Supreme Court as compliance of the resolution dated 11.4.1977.

6. In order to consider the correctness or otherwise of the submissions made by the learned Counsel for the parties, it is necessary to take a birds eye view of the resolution dated 11.4.1977, Annexure-3, whereunder the State Government has considered the report of the Committee constituted to assess the extent of stagnation prevailing in the different State Services together with the different orders of this Court and the Hon''ble Apex Court. It appears from Schedule I of the said resolution that the recommendation of the Committee as regards the Education Department were made in paragraph 11.10 at page 25 of the report, Annexure-2, which was considered at serial No. 7 and decision was taken to include various posts of misc. cadre of Education Department like teachers (except the teachers of Netarhat), Stadium Managers etc. in the Bihar Education Service Cadre. The said resolution dated 11.4.1977 became the subject matter of C.W.J.C. Nos. 12122 of 1998 filed by The Bihar State Government Secondary School Teachers' Association and Ors. and 8147 of 1999 and both the writ applications were considered by the learned Single Judge of this Court under orders dated 2.2.2000, Annexure-4 and this Court having taken into account the anomaly created by a subsequent notification dated 8.2.1999, directed the

Commissioner-cum- Secretary of the Secondary, Primary and Mass Education Department of the State Government to act upon the Government decision contained in resolution dated 11.4.1977. Subsequently the said order became the subject matter of L.P.A. No(s). 980 and 998 of 2000 at the instance of the State, which were dismissed under orders dated 27.11.2000, Annexure-6 with observation that this Court under orders dated 2.2.2000 had directed the Government to comply with the resolution dated 11.4.1977, there appears to be no reason for the State to be aggrieved by such direction. The State of Bihar, thereafter preferred Petition(s) for Special Leave to Appeal (Civil) No. 4937-4938 of 2001 against the order dated 27.11.2000, Annexure-6 in which the Hon"ble Supreme Court under orders dated 3.4.2001 directed that the resolution dated 11.4.1977 be placed on record and the matter was finally considered on 16.4.2001 when the Hon"ble Court having perused the resolution dated 11.4.1977 observed that the final direction which has been given to the State is to implement the resolution dated 11.4.1977 in the manner, it is to be implemented and having made such observations, the Hon"ble Court disposed of the said S.P.L. While the matter remained pending one Janardan Rai, a member of the Teaching Branch of the Bihar Subordinate Education Service, approached this Court by filing CWJC No. 8679 of 2002 complaining inter alia that although he has superannuated but has not been allowed the consequential benefit of merger in the Bihar Education Service in terms of the resolution of the State Government dated 11.4.1977, whereafter this Court under orders dated 12.8.2002 issued notice to the State respondents to file counter affidavit and under orders dated 3.9.2002 allowed I.A. No. 3898 of 2002 filed by the Bihar State Government Secondary School Teachers" Association, the original writ petitioners in CWJC No. 12122 of 1998 and further called upon the Additional Finance Commissioner and the Finance Commissioner to be present in Court on 17.9.2002 so as to explain their failure to comply with the orders dated 2.2.2000, passed in the said CWJC No. 12122 of 1998. On 17.9.2002, this Court having considered the show cause filed by the Commissioner and the Additional Commissioner, Finance Department, who were present in Court recorded that there appears to be a dispute going on in between Education and Finance Department of the State government and this Court will not like to become an arbitrator in the inter departmental dispute and granted them further indulgence to comply with the orders of this Court and adjourned the matter to 27.11.2002 and thereafter having heard counsel for the parties disposed of the writ petition under orders dated 9.12.2002 granting six weeks further time to comply with the resolution dated 11.4.1977, failing which liberty was granted to Janardan Rai to approach the Court again inviting non-compliance on the part of the authorities by filing Interlocutory Application. In spite of the indulgences granted by this Court under order dated 9.12.2002, resolution dated 11.4.1977 was not complied with and petitioner filed I.A. No. 272, 315 of 2003, which were considered under orders dated 22.1.2003 and notice was issued directing that the matter be listed after three weeks. Meanwhile, State respondents challenged order dated 9.12.2002, passed in C.W.J.C. No. 8679 of 2002 by filing L.P.A. No.

65 of 2003 and in the said L.P.A., Division Bench of this Court under orders dated 27.1.2003 directed for appearance of Chief/Finance/Education Secretary(s) and Director Administration, Education Department, Government of Bihar, who were present before this Court on 28.1.2003 and in their presence, with reference to the directions of the Hon''ble Supreme Court, contained in judgment reported in (1992) Suppl. 2 SCC 432 and (1995) Suppl. 4 SCC 541 as regards the manner in which the inter departmental dispute is required to be settled, at the request of the Chief Secretary adjourned the matter by four weeks observing that only anxiety of the Court is that the State of Bihar will ensure that the orders of the Hon''ble Supreme Court having attained finality is not compromised. In the light of the proceedings taken before the Division Bench in L.P.A. No. 65 of 2003 on 28.1.2003, the Chief Secretary examined the contents of the resolution dated 11.4.1977 as also other relevant documents to verify whether the said resolution has been complied with and having examined the relevant records referred to in his report, prepared report dated 27.3.2003, as contained in Annexure-10 but before the said report could be filed in L.P.A. No. 65 of 2003, the same was dismissed under orders dated 10.3.2003 against which order the matter went to the Hon''ble Supreme Court in Petition(s) for Special Leave to Appeal (Civil) No. 6450 of 2003 in which under orders dated 17.4.2003, notices were issued and the contempt proceedings were stayed. Later the petition(s) for Special Leave to Appeal (Civil) No. 6450 of 2003 was converted in Civil Appeal No. 4466 of 2003, which appeal, after hearing the parties was dismissed under orders dated 19.4.2006 and the stay of the contempt proceeding was also vacated observing as to whether the implementation of the resolution dated 11.4.1977 has been done in the manner required by the said resolution, is for the High Court to decide. Under orders dated 10.5.2006, passed in C.W.J.C. No. 8679 of 2002 (Janardan Rai v. State), this Court took notice of the fact that Civil Appeal arising out of the contempt matter has already been dismissed and the stay of the contempt proceeding has also been vacated, directed the Commissioner-cum-Secretary of Finance and Education Department(S) along with their predecessor in office to remain in attendance on 10.7.2006. Before which date the State Government considered the memorandum dated 3.7.2006, Annexure-13 in the light of the different orders of the High Court and the Hon''ble Supreme Court referred to in the said memorandum as also in the light of the advice tendered by the learned Advocate General, who opined that in view of the different orders of the Hon''ble Supreme/ High Court, the State Government has no option but to implement the resolution dated 11.4.1977 as regards the merger of the Bihar Subordinate Education Service, Teaching Branch with the Bihar Education Service Class II. The Government having considered the matter in the light of the different orders passed by this Court and the Hon''ble Supreme Court referred to in the resolution dated 7.7.2006, Annexure-1, issued resolution dated 7.7.2006, merging the Teaching Branch, Male and Female of the Bihar Subordinate Education Service with the Bihar Education Service Class II.

7. While dismissing the Civil Appeal No. 4466 of 2003 and vacating the stay of

contempt proceeding under orders dated 19.4.2006, Hon''ble Supreme Court categorically observed that it was for the High Court to decide whether the resolution of the State Government dated 11.4.1977 has been implemented in the manner required to be implemented by the said resolution, but without inviting the High Court to record findings about the implementation of the resolution dated 11.4.1977, the State Government, with reference to the earlier orders of the High Court and the Hon''ble Supreme Court, including the one passed in Petition(s) for Special Leave to Appeal (Civil) No. 6450 of 2003/ Civil Appeal No. 4466 of 2003, proceeded to merge the services of the Teaching Branch of the Bihar Subordinate Education Service in the Bihar Education Service Class II in the light of the resolution dated 11.4.1977.

8. In the circumstances, I have examined the Government decision contained in resolution dated 7.7.2006, Annexure-1 in the light of the resolution dated 11.4.1977, Annexure-3 and from perusal of Schedule I of the said resolution dated 11.4.1977, to me it appears that thereunder the Government had considered the report of the Committee to assess the extent of stagnation prevailing in different State Services, Annexure-2 and having considered paragraph 11.10 at page 25 of the said report, vide Serial No. 7 of Schedule I appended to the resolution dated 11.4.1977, resolved to include various posts of teachers (except the teachers of Netarahat), Stadium Managers etc. of misc. cadre of the Education Department in the Bihar Education Service. From the report of the Chief Secretary dated 27.3.2003, Annexure-10 in CWJC No. 10091 of 2006, it appears that compliance of the resolution dated 11.4.1977 was made by the State Government earlier vide instructions dated 10.5.1982 and statement to that effect has been made in the report of the Chief Secretary dated 27.3.2003, Annexure-10 contents whereof has not been disputed by any of the intervenor respondents, including Janardan Rai, petitioner in CWJC No. 8679 of 2002. Reference in this connection be made to paragraph 33 of I.A. No. 3897 of 2006 filed by intervenor- respondent No. 6. In the circumstances, there was no occasion at all for the State to have issued the subsequent notification dated 7.7.2006, Annexure-1 merging the Teaching Branch of the Bihar Subordinate Education Service with the Bihar Education Service Class II in compliance of Resolution dated 11.4.1977. Resolution dated 11.4.1977 provides for inclusion of posts of teachers (except the teachers of Netarhat), Stadium Managers etc. of misc. cadre of the Education Department in the Bihar Education Service as was recommended in paragraph 11.10 at page 25 of the report, Annexure-2. Bihar Subordinate Education Service is not a State Service, which is evident from perusal of Appendix 16 of the Bihar Service Code and thus their case was never being considered by the Committee to assess the extent of stagnation prevailing in the different State Services and if there was no report submitted as regards the stagnation prevailing in the Bihar Subordinate Education Service then there was no occasion for the State to take a decision about Bihar Subordinate Education Service while passing resolution dated 11.4.1977, which is evident from Schedule I Serial No. 7, which approved inclusion of various posts of

teachers (except the teachers of Netarhat), Stadium Managers etc of misc. cadre of the Education Department in the Bihar Education Service. Bihar Subordinate Education Service is not part of misc. cadre of the Education Department, in the circumstances, there was no occasion to merge the Teaching Branch, Male and Female of the Bihar Subordinate Education Service with the Bihar Education Service in compliance of resolution dated 11.4.1977 and resolution dated 7.7.2006, Annexure-1 in CWJC No. 10091 of 2006 is, accordingly, quashed, however, with liberty to the State Government to consider the case of Bihar Subordinate Education Service, Teaching/ Inspecting Branch and if the Government is of the view that the case of the members of the Bihar Subordinate Education Service, Teaching/ Inspecting Branch is similar to that of the teacher of the misc. cadre of the Education Department, then the State Government is at liberty to take appropriate decision about their inclusion/ merger in the Bihar Education Service Class II.

9. In the result, CWJC No. 10091 of 2006 is allowed and CWJC No. 14678 of 2006 is disposed of with aforementioned liberty to the State Government to consider the case of Bihar Subordinate Education Service, Teaching/ Inspecting Branch for inclusion/ merger in the Bihar Education Service in accordance with law.