

(2004) 04 PAT CK 0132
In the Patna High Court
Case No : CWJC No. 4392 of 2004

Bihar State Primary Teachers Association and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : (2005) 3 PLJR 348

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : S.N. Jha, S.B.K. Kumar Manglam, K.M. Joseph, Rajendra Pd. Singh and Ganesh Pd. Singh in 4392, for the Appellant; Basudeo Ram, Law Secretary; Anil Kumar, IAS, Secretary, Primary Education; Subhas Sharma, IAS, Chairman, B.S.E.B.; Hassan Warin, Secretary, B.S.E.B. (in 4392) and M/s Ganesh Pd. Singh and Manish Kumar (in IA 2114, 2115, 2116) and Mr. H.S. Himkar (in IA 2112), J.P. Shukla (in 4392), S.K. Ghose (in 4392), for the Respondent

Judgement

Order (No. 2)

1. There are two aspects of the matter. One is an issue in the petition. Plainly the petitioner, the Bihar State Primary Teachers Association, and other primary Teachers as are represented in the cases which have been noted above, submitted that the teachers training examination is scheduled for 17 April, 2004. They refer to annexure 10 which is an advertisement No. 11 of 2004 issued by the Bihar Vidyalaya Pariksha Samiti, Patna. The advertisement is dated 30 March, 2004 signed by the Secretary, Bihar Vidyalaya Pariksha Samiti. This advertisement was subsequently published in the newspaper "Dainik Jagaram", annexure A/2 in I.A. No. 2112 of 2004 in C.W.J.C No. 6661 of 2003. This is one such advertisement dated 31 March, 2003. The contention in the petition is, to the effect, that the constituents of the Bihar State Primary Teachers Association are also the employees of the State Government, on the pay roll of the Government and they had been appointed from time to time on compassionate ground which otherwise is a valid policy of the State Government. In the

circumstances, they pointed out that in so far as the advertisement announced that only candidates selected by "Bihar Lok Seva Ayog" will be permitted to take the scheduled examination is concerned, this is a hostile discrimination.

2. In the circumstances, an issue has been made out of a non-issue and only for this purpose the matter should not linger. Whether the error in the advertisement is apparent or otherwise is clear to the naked eye. Learned A.A.G. II and learned Senior counsel appearing on behalf of the Bihar Vidyalay Pariksha Samiti sent for their respective Officers. The Chairman and the Secretary of the Bihar Vidyalay Pariksha Samiti are available to their counsel to give instructions. On the other hand, the Secretary, Primary Education is available to learned A.A.G. II for instructions.

3. Learned counsel appearing on behalf of the Bihar Vidyalay Pariksha Samiti as also learned A.A.G. II for the State have taken instructions and intimated the Court that the untrained teachers appointed on compassionate ground who have undertone in service training from Government Teachers Training Institutions will also be permitted for the teachers training examination which hitherto is scheduled 17 April, 2004.

4. In the circumstances, this particular writ petition (C.W.J.C. No. 6661 of 2003) and the interlocutory applications Nos. 2112, 2114, 2115, 2116 of 2004. on this order have received reliefs by concession of the State respondents, duly noticed by the Court, and ordered accordingly.

5. These records, the writ petition and the interlocutory applications, are consigned.

Order (No. 3)

6. This part of the order is separate from the previous order and has nothing to do with any issue which was presented/ resolved.

7. In an oft noticed exercise in which the Court had cautioned the State Government and Officers alike that it is never to happen again, it is unfortunate that this has happened in the present case. At the drop of a hat the civil servants and bureaucrats are prone to take the name of the High Court in running the administration. If there were directions clearcut or a judgment then it is entirely a different matter. But as it is understood one does not take the name of the High Court in vain. The High Court is a temple of justice. Casually, unmindfully one cannot take the name of the High Court to run the administration. The Court notices that a public advertisement which has been read throughout Bihar by primary school teachers in every village, in every Block, in every Districts, in the Secretariat and portals of the Government the very first sentence of the advertisement is

The Court itself was under the impression that it may have given some direction to cause this advertisement. The Court searched for the record. No order of the Court carries any directions in context in which the High Court's name has been

taken. The original record was placed at the Bar in front of learned A.A.G.-II so that if there be any order he may indicate it to the Court. Thereafter, learned Senior counsel, who appears for Bihar Vidyalay Pariksha Samiti also saw the original record. Between A.A.G. II and learned Senior counsel they could not trace out any order the like of which has been attributed in the public advertisement. This virtually comes down to this that the name of the authority of the High Court, an institution of the Constitution, has been taken in vain when no order exists. Ordinarily a man in a village, in a Block, in a District and within the portals of the Government must be under an impression that there is in fact an order on record on the basis of which the advertisement has been made. This is creating false evidence on record. This is an abuse of the process of the Court. This is also contempt. This definitely comes within the mischief of creating false evidence in the name of a court and for this a person creating mischief could be booked under Chapter XI of the Indian Penal Code, 1860.

8. The Court has no desire to take out any proceedings in contempt nor the Court desires to take out proceedings against a Government servant for manufacturing evidence but what has been done is bad. If court were to put it mildly, strictly, this is a criminal contempt. The Government servant concerned can be booked for contempt and can stand trial for creating false evidence.

9. Unfortunately, some neurosis has set in within the administration not to take administration on its initiative and do so in the name of another authority. In Bihar, this is rampant in administration. This case is one example.

10. In so far as Senior counsel appearing on behalf of Bihar Vidyalay Pariksha Samiti is concerned, he accepted that taking the name of the High Court when no order exists is a fact which is apparent from the record. He sought an apology on behalf of the Secretary. This is when the Court had indicated that it is a contempt in the face of the Court and on a record of a case. The Court put this entire matter to take guidance from A.A.G. II.

11. A.A.G II accepted that no part of the record and order authorised the Secretary to take the name of the High Court in a State inserted public advertisement and the circumstance was bad and shabby. He submitted that this may be taken as a mediocrity and lack of responsibility not to run the administration by the Officer at his level. It was submitted by A.A.G. II that according to him the intention perhaps was not mischievous. The habit perhaps may be mundane. After the address of learned A.A.G.-II and Senior counsel on behalf of the Bihar Vidyalay Pariksha Samiti the Court restrained itself in sending this Officer into custody or imposing a fine on him. But let this be a lesson to every civil servant not to take the name of the High Court in vain. For if the High Court discovers that its name has been taken and there is no order authorising it then, the consequence may be very serious. In so far as today's proceedings are concerned, a token punishment to the Secretary, Bihar Vidyalay Pariksha Samiti, Shri Hassan Waris till rising of the Court would suffice. His Senior Advocate has already addressed the Court, when the Court told him, that except his address

there is no formal apology before the Court. He submitted that this office will deliver his apology before the Registrar General during lunch recess. Thereafter, this Officer will remain in Court until it rises.