

(2002) 10 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 6954 of 2002

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

Date of Decision : 03-10-2002

Acts Referred:

Bihar State Nationalised Elementary School Teachers (Transfer and Disciplinary Action) Rules, 2002 — Rule 24(2), 9(1), 9(2)
Constitution of India, 1950 — Article 309

Citation : (2002) 4 PLJR 750

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Ganesh Prasad Singh, S.B.K, Mangalam and Dinu Kumar, for the Appellant; SC 9 and JC to SC 9 for State, V.K. Kanth, U.C. Mishra and A.N. Singh for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the the parties.

2. Both these writ applications arise out of the common facts, therefore, they have been heard together and are being disposed of by this common order.

3. Both the writ Petitioners are associations of the Primary School Teachers of the State of Bihar and have challenged letter dated 1.4.2002, as contained in memo No. 560, issued by Respondent No. 2, the Secretary, Primary and Adult Education Department, Government of Bihar, Patna, whereby and where under instructions have been issued for implementation of the Bihar State Nationalised Elementary School Teachers (Transfer and Disciplinary Action) Rules, 2002 (hereinafter to be referred to as "the 2002 Rules").

4. The main thrust of the argument of learned Counsel appearing on behalf of the Petitioners is that the impugned instruction, issued by Respondent No. 2, is inconsistent with the provisions of the statutory Rules framed under proviso to

Article 309 of the Constitution, inasmuch as the Rules contain sufficient provisions enabling the authorities to issue guidelines, if required, from time to time.

5. Learned Counsel appearing on behalf of the Petitioners submitted that once statutory Rules have been framed by the State Government under proviso to Article 309 of the Constitution, there was no requirement of issuance of any instruction by the Secretary of the Department simultaneously. Learned Counsel in this regard pointed out that the Rules so framed was made operative with effect from 1.4.2002, and the instruction, issued by Respondent No. 2, which is under challenge, is also dated 1.4.2002, and, therefore, it is submitted that the authorities before implementation of the Rules have issued the impugned instruction, and, therefore, safely it can be said that there was no exigency for doing so and only when the Rules would have been made operational and certain exigencies would have arisen, then only the necessary instructions could have been issued by the State authorities in exercise of its power under Sub-rule (2) of Rule 24 of the 2002 Rules, and, thus, issuance of the instruction impugned was uncalled for. It has further been submitted by learned Counsel appearing on behalf of the Petitioners that by virtue of the impugned instruction, the authorities have tried to encroach upon the provisions of the 2002 Rules and legislative mandate already framed by the State Government is being overshadowed, and, therefore, the impugned instruction is unwarranted, arbitrary and without jurisdiction.

6. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the Petitioner in Civil Writ Jurisdiction Case No. 6954 of 2002 with reference to Sub-rules (1) and (2) of Rule 9 of the 2002 Rules submitted that there are enabling provisions to post male headmasters and teachers outside their Panchayat, but to the adjacent places of their home blocks, whereas as per Clause (1) of the impugned instruction all such teachers would not be posted in their own blocks and, therefore, exigency has been made to ask them to give names of three blocks in order of preference, where they went to be posted. Learned Counsel, therefore, submitted that if the impugned instructions are allowed to sustain, it will create anomalous situation and the headmasters and teachers will be deprived from accommodating them in their home blocks and, thus, it would amount to overriding the provisions of the Statutory Rules.

7. Lastly, it has been submitted by learned Counsel appearing on behalf of the Petitioners that there was no occasion to issue the impugned instruction simultaneously, as no conflict or difficulty in implementation of the Rules was reported to Respondent No. 2 by any of the authorities, and, therefore, the impugned instruction is unsustainable.

8. Several sets of intervention applications have been filed in these writ applications by different associations of the primary school teachers and also by the individual teachers praying therein to dismiss these writ applications and the intervention applications have been allowed and now they form part of the main

writ applications.

9. In the Intervention applications, a common plea has been taken by all the interveners that prior to filing of these writ applications one Public Interest Litigation (hereinafter to be referred to as "PIL") application was filed before this Court, which was registered as Civil Writ Jurisdiction Case No. 6291 of 2002 reported in Md. Mukhtar Alam and Others Vs. The State of Bihar and Others, whereby and where under a prayer was made to quash the 2002 Rules and the PIL application was dismissed by a bench of this Court on 21.5.2002 and the Rules framed was not interfered with, and, therefore, these writ applications are not maintainable.

10. Beside the intervention applications, a detailed counter affidavit has been filed on behalf of the Director, Primary and Adult Education Department, Government of Bihar, Patna, duly sworn by the Director himself stating therein, inter alia, that the impugned instruction has been issued in aid of the Rules and for clarifying the Rules to be followed while doing the exercise of transfers and postings, the impugned instruction has been issued after full application of mind and after obtaining approval of the Government and the impugned instruction is in consonance with Sub-rule (2) of Rule 24 of the 2002 Rules and a mere guideline has been issued to avoid complications, which may arise in implementation of the 2002 Rules.

11. Learned Standing Counsel No. 9 appearing on behalf of the State with reference to the statements made in the counter affidavit submitted that the impugned instruction is consistent with the 2002 Rules and it has not, in any manner, encroached upon the statutory provisions as framed by the 2002 Rules and it is simply a guideline.

12. Before coming to the merit of these writ applications, I would like to mention here that in the PIL application in Civil Writ Jurisdiction Case No. 6291 of 2002 Md. Mukhtar Alam and Others Vs. The State of Bihar and Others, , the Petitioners had prayed before this Court to quash the 2002 Rules and a bench of this Court declined to interfere with the same, and, ultimately the writ application aforesaid was dismissed The impugned instruction, however, was not challenged in that PIL matter and, there fore, order dated 21.5.2002 passed in Civil Writ Jurisdiction Case No. 6291 of 2002 (the PIL matter) will not operate as res judicata in disposal of these writ applications.

13. Having heard counsel for the parties and noticing the rival contentions of the parties, it appears to me that the statutory Rules framed in 2002 exclusively deals with regular transfers and postings of the headmasters and teachers of the Nationalised Elementary Schools and it has been legislated for ensuring quality teaching in the schools in question and it appears to be a self-contained Statute and provides provisions also for taking disciplinary action against the teachers of the school Sub-rule (4) of Rule 8 of the 2002 Rules provides that in case, the number of headmaster/teachers in any block/urban area more than the

sanctioned units available in that area, then such teachers and headmasters will be posted on bordering block/ Urban area, for which they were required to give three options, whereas Rule 9(1) of the 2002 Rules categorically states that in general conditions male headmasters and teachers will not be posted in their home Panchayat/Urban area. However, a provision under this Rule has been made to exempt such persons, who are either handicapped to the extent of 40% or a person, who is suffering from serious disease, as a consequence of which, finds difficulty in movement or such headmasters and teachers, who apprehend threat to their lives and properties. Thus, it is manifest that the Rules so framed by the State Government, under Article 309 of the Constitution is very categorical and it states that in no circumstance, a male teacher or headmaster will be posted in his own Panchayat/Urban area. However, he may be posted in his home block on the basis of availability of sanctioned units in his particular block and in case, there are more teachers/ headmasters than the sanction units, in that case, they will be posted in their adjoining blocks in order of the "preference given by them.

14. Besides these questions, it is further manifest from Sub-rule (2) of Rule 24 of the Rules that in case there will be certain difficulties in implementing the Rules, the State Government may clarify the same by issuing instructions.

15. For the reasons aforesaid and in view of the enabling provisions made in the statutory Rules, I will have no hesitation to hold that the impugned instruction is in consonance with the provisions of the statutory Rules and it must be deemed to be an instruction, issued under Sub-rule (2) of Rule 24 of the 2002 Rules and in no way, it encroaches upon the provisions of the statutory Rules framed by the State Government.

16. It is true that the statutory Rules and the impugned instruction have been issued simultaneously, but the impugned instruction appears to have been issued in abundant precaution for making the statutory Rules operational from the very beginning and the same must be held to be an instruction under Sub-rule (2) of Rule 24 of the Rules.

17. In the result, I do not find any merit in these writ applications. They are, accordingly, dismissed. Interim order dated 10.7.2002 passed in both these writ applications is hereby vacated.

18. No order as to costs.