

(2000) 08 PAT CK 0093
In the Patna High Court
Case No : C.W.J.C. No. 4118 of 1999

Birendra Narayan Tewary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-08-2000

Acts Referred:

Citation : (2002) 4 PLJR 164

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Sadanand Jha and Hemant Kumar Jha, for the Appellant; Ganga Prasad Roy, for State and Board, for the Respondent

Judgement

S.N. Jha, J.—This writ petition on behalf of the four Petitioners, who are teachers and non-teaching staffs of Ramanuj Sanskrit Uchcha Vidyalaya, Arrah, has been filed for quashing the Government order contained in Letter No. 391 dated 30.11.95 of the Under Secretary, Secondary, Primary and Adult Education Department, communicating the decision of the Government to deprive 86 Sanskrit Schools including the school in question, of the grant with effect from 18.12.89, and secondly for a direction to the Respondents to pay the Petitioners arrears of salary etc. with effect from 1.12.95. However at the stage of hearing the grievance of the Petitioners was confined to payment of salary.

2. It has been submitted on behalf of the Petitioners that in the light of the orders of this Court as well as the Supreme Court, unless and until the recognition of the school is parcelled the Respondents have no option but to pay salary to the teachers and non-teaching staffs. It may at the very outset be mentioned that the dispute relating to payment of salary and other emoluments to the teachers and non-teaching Staffs of the Sanskrit Schools which were taken over by the State of Bihar under the Bihar Non-Government Sanskrit Schools (Taking Over of. Management and Control) Ordinance, 1989 (Ordinance 32 of 1989) replaced by successive ordinances, came up for consideration before this Court in batch of cases entitled Subhash Chandra and Others Vs. The State of

Bihar and Another this Court issued certain directions in the matter of payment of salary, the relevant part of which contained in para 106 runs as follows:

There is absolutely no justification for non-release of the salary of the teachers who had been getting the same, in view of the fact that even according to the State of Bihar they were entitled to the payment of salary in the same manner which was being paid to them when the Ordinance 32 of 1989 did not come into force.

Even so far as teachers for such schools against whom "Pratikul" reports have been submitted would be entitled to salary in the same manner unless schools are derecognised or some other suitable orders in accordance with law are passed.

The dispute however was taken to the Supreme Court by the State of Bihar. The Supreme Court passed interim orders from time to time. One such order passed on 26.4.96 runs as under:

In view of the application for clarification it is clarified that our order dated January 9, 1995 shall be construed to mean that the employees shall be paid salary at the rate applicable on December 17, 1989 and shall continue to be paid till further orders.

3. The appeals have since been referred to larger Bench in view of divergence of opinion between two Judges before whom they were earlier listed for hearing. Though attempt was made on behalf of the Petitioners to draw support from the observations made in the so called dissenting judgment of one of the learned Judges, I do not propose to rely on them, for in my opinion they are merely opinions, the final judgment is yet to come. The Petitioners still, in my opinion, have a case, for unless directions of this Court contained in para 106 of the judgment in Subhash Chandra's case (supra), are not set aside or stayed, they would hold the field. As a matter of fact, another Division Bench of this Court on 13.2.96 clarified the directions of this Court in Subhash Chandra's case, in MJC No. 1206/94 in the following manner:

In our view, all the teachers who have been appointed against sanctioned posts in the schools after following the normal procedure as also the non-teaching staff who were so appointed before the ordinance of 1989 will be entitled to the payment of salary and allowance at the old scale of which they were entitled, as if the Ordinance was never passed. Even after the lapse of the Ordinance they will be entitled to payment of salary and allowances. During the period the ordinance was in force the Members of the teaching and non-teaching staff who came within the Manak Mandal will be entitled to the salary and allowances as Government servant. The above general rules are subject to the only following exceptions:

(1) Where the school has been derecognised or any additional post sanctioned has been cancelled, the teaching and non-teaching staff of that school or the

incumbent of that additional post will not be entitled to the payment of salary under the judgment with effect from the date on which such an order of derecognition or cancellation is passed. In no case such orders be given retrospective effect for depriving the persons concerned of the salary and allowances to which they are entitled. This will be without prejudice to the right of the affected parties to seek appropriate remedy in accordance with law. We make it clear that in individual cases, if a Court of competent jurisdiction has passed any interim order in the nature of an order of stay, that must be respected by the State.

4. From bare reading of the above quoted orders of this Court it is clear that the teachers and non-teaching employees of the taken over schools are entitled to salary in the scale applicable to Government servants during the period of take over i.e. up to 30.4.92, and in the old scale in which they were getting salary prior to 18.12.89, after lapse of the ordinance i.e. from 1.5.92, until the school is derecognised. This precisely is the contention of the Petitioners. It has been submitted that in view of the orders of this Court the Respondents are obliged to pay salary to the teachers and non-teaching staffs of the school. It may be mentioned here, that the Petitioners have been paid salary up to 30.11.95, the payment of salary has apparently been stopped on account of impugned Government order contained in Letter No. 891 dated 30.11.95.

5. The stand of the Respondents is two fold. Firstly it is stated that though a direction was issued by the State Government vide Memo No. 1195 dated 23.6.97 of the Secretary, Secondary, Primary and Adult Education Department, as well as by the Director, Secondary Education vide his letter No. 797 dated 21.11.95, to cancel the recognition of the 86 schools which have been found to be "Pratikul" after necessary enquiry, by reason of the interim orders passed in the case of Sudhakar Jha, CWJC No. 9869/95, restraining the Respondents from passing final order derecognising any of such schools, it has not been possible to cancel the recognition of the school. Secondly, it has been submitted that unless the Government order contained in letter dated 30.11.95 is quashed the teachers and non-teaching staffs of the school cannot be paid their salary. In this contention it is pointed out that if the Government does not provide fund in the shape of grant, it is not possible for the Bihar Sanskrit Shiksha Board to make available money to the school for payment to its teachers and non-teaching staffs.

6. The plea that the Respondents have been restrained from derecognising the "Pratikul" schools is based on misconception of the orders of this Court in Sudhakar Jha's case, CWJC No. 9869/95. It is true that in course of first hearing of the case on 21.11.95 a learned single Judge of this Court did pass that kind of order. But at that time, apparently, the impugned Government order dated 30.11.95 had not seen light of the day. After the State Government order was brought on record, the learned Judge on 19.2.95 directed the case to be listed for admission before a Division Bench observing that "the matter relating to

Interim relief may be pressed before the Division Bench". When the case came up for admission before the Division Bench on 25.3.96 it was admitted for regular hearing. While admitting the case the Bench observed as under:

We may make it clear that pendency of this writ application shall not stand in the way of Respondents in implementing the Bench decision of this Court in the case of Subhash Chandra v. State of Bihar and Ors. (1994 II P.L.J.R. 359).

7. From bare reading of the above order it appears that instead of reiterating the interim order passed earlier on 21.11.95, the Division Bench rather observed that the Respondents should implement the decision in Subhash Chandra's case. There can be little doubt that interim orders are valid during particular period unless expressed otherwise, and may be superseded/modified by another interim order. This is what happened in the case of Sudhakar Jha. The impression of the Respondents that interim order passed in that case prohibited them from taking steps to cancel the recognition of the school is thus unfounded.

8. The plea that without getting the Government order dated 30.11.95 quashed no direction can be issued for payment of salary to the teachers and non-teaching staffs of the school, is equally misconceived. It is true that as between the State Government and the Sanskrit Shiksha Board, fund may not be readily made available by the former to the latter, but that does not mean that no direction can be issued for payment of salary to the teachers and non-teaching staffs of the other schools as if they are disentitled to such payment. The orders of this Court bind the State Government as much as the Sanskrit Shiksha Board. As clarified by this Court vide its order dated 13.2.96 in MJC No. 1206/94 (supra), unless and until the school is derecognised, payment has to be made. In the case of Sudhakar Jha also in which validity of the Government order has been challenged, the Division Bench observed that the Bench decision in Subhash Chandra's case should be implemented. It was/is open to the Board to cancel recognition of the school. This was not done, may be, under a misconception but it was open to the Board to seek clarification from this Court in this regard. Having not cancelled the recognition, the Board or, for that matter, the State Government have no option but to pay salary to the teachers and non-teaching staffs of the school.

9. I accordingly direct both the State of Bihar as well as the Bihar Sanskrit Shiksha Board to make available necessary fund to the school within two months of receipt of a copy of this order to facilitate payment of salary to the teachers and non-teaching staffs of the school without prejudice to the right to cancel the recognition, making it clear, as already done of this Court in MJC No. 1204/94 (supra), that such cancellation will be prospective in effect. Thus, even if the Board decides to cancel the recognition such derecognition will not affect the entitlement of teachers and non-teaching staffs to payment of salary up to the date of cancellation and will be subject to challenge by them.

10. This writ petition stands disposed of in terms of the observations and

directions mentioned above.