
(1986) 03 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 5577 of 1984, 119, 121, 123, 137, 141, 143, 148, 150, 152, 365 and 228 of 1985

Diwakar Pd. Yadav @ Diwakar Pd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-03-1986

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 8

Citation : (1986) PLJR 873

Hon'ble Judges : S. S. Sandhawalia, C.J;B. P. Sinha, J

Bench : Division Bench

Advocate : B. P. Pandey, Choubey Jawahar. Rajendra Pd. Singh. Tej Bahadur Singh, Dilip Kumar Tiwary, Ashok Kumar Jha, M.S. Madhup and Baidyanath Pd. no. II, for the Appellant; R. B. Mahto (A. G.). J. N. Pandey (G. P. II), Jagannath Jha (S. C. I), Manilal (S. C. IV), Dharnidhar Pd. Sinha, Ajit Kumar Singh, Jugal Kishore, A. K. Pandey, Mithilesh Kumar Singh, Nisha Nath Ojha, B. M. Mishra and Mrs. Asha Verma (J. Cs), for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—All these writ petitions were heard together and are being disposed of by a cammon judgment. The main questions which have come up for consideration in these writ petitions are these :

- (i) Whether the petitioners can claim to have been validly appointed ?
- (ii) If the first question is answered in the negative whether these writ applications can be allowed on the ground of alleged violation of the principles of natural justice ? and,
- (iii) Whether in such an event they can still claim the arrear of salary for the period they claimed to have worked ?

2. In order to answer these questions it may be relevant to state some of the

facts. The petitioners claim to have been appointed under the orders passed by three District Superintendent of Education, namely, Shri Bhola Ram, Shri Bari Narain Thakur and Shri Hari Narain Jha.

3. This writ petition has been filed on behalf of 58 persons. The letters of appointment were issued by Shri Bhola Ram District Su(sic) of Education, Sahebganj, It is claimed that Government of Bihar had sanctioned 2300 posts of assistant teachers vide letter no. 50 dated 20.2.1981 to the District Superintendents of Education and had directed to make appointments on these posts. The Government had also sanctioned posts for appointment of handicapped teachers and had issued separate orders to the District Superintendents of Education. Advertisements were issued for appointments and the petitioners applied for the same. After interview a panel was prepared which was approved and the petitioners were appointed by Shri Bhola Ram the then District Superintendent of Education, Sahebganj. They were, accordingly, posted in various schools and joined their respective posts. The petitioners claim that they were appointed on substantive posts. Suddenly payment of their Salary was stopped. Except petitioner no. 24 Prasana Kumar Sah the other petitioners came to these court for a direction to the authorities to make payment of their salary. Some of the writ applications were allowed and directions were issued by this Court for payment of salary. In the meanwhile the Special Secretary to the Government of Bihar in the Education Department, respondent no. 1 issued an order vide letter no. 1/2836 dated 13.9.1984 for the removal of 170 assistant teachers. Another letter no. 3103 dated 13.11.1984 was issued for removal of 335 assistant teachers who were also appointed by said Shri Bhola Ram the then District Superintendent of Education, Sahebganj. Names of the petitioners were included in the (sic) dated 13.11.1984, marked Annexure-1. The District Superintendent of Education, Santhal Parganas, Dumka and Sahebganj were directed to terminate the service of those in whose appointment letters temporary or purely temporary was written and to terminate the services of those in whose appointment letter these words were not written by giving them one month's salary in lieu of notice. Accordingly, orders for removal of the petitioners were issued on 12.12.1984 and were made effective from 12.1.1985. The petitioners have enclosed the removal letters in their supplementary petition and have marked them as Annexure-3 series. In the removal letters it has been stated that as directed by the Government in letter No. 3103 dated 13.11.1984 their services were not required by the Department and as such their services were terminated after giving them one month's notice with effect from 21.1.1985.

4. This writ petitioner has been filed on behalf of 30 persons who were appointed by the District Superintendent of Education, Dumka Shri Hari Narain Thakur. They also claim that in response to an advertisement they had applied and had been interviewed by a Selection Committee. A panel was prepared on the basis of the recommendation of the Selection Committee and the petitioners were appointed under the signature of the District Superintendent of Education,

Dumka vide Annexure-1 series. They were first appointed on a stipend of Rs. 150/-per month and their services were regularised vide letter no. 2152 dated 28.0.1982. Suddenly their services were terminated vide an advertisement in Dumka Darpan, a fortnightly magazine (Annexure-2) It was stated therein that Shri Hari Narain Thakur, the District Superintendent of Education. Dumka (now under suspension) had made a large number of illegal appointments from outside the panel and without approval of the District Establishment Committee and observing the prescribed procedure. The appointments were, accordingly, cancelled. Some affected teachers came to this Court in C.W.J.C. Nos. 20 of 1982, 147 of 1983, 215 of 1983, 860 of 1983, 261 of 1983, 835 of 1983, 836 of 1983, 837 of 1983 and 1356 of 1983. It is stated that some of the writ applications were allowed. The petitioners claim that their cases are identical and are covered by the decision in C. W. J. C. No. 20, 1982 and other cases. The petitioners approached the concerned authorities for the same relief as was granted by this Court but the authorities refused to grant them any relief.

5. This writ application is by the sole petitioner who claims to have been appointed as a teacher in a primary school in the year 1980. His appointment has been cancelled by the Special Secretary to the Government In the Education Department, respondent no. 1 vide orders contained in Annexure-7. His claim is that he bat been appointed by the State Government vide its memo. no. 1969 and 1970 dated 5.12.1979 against sanctioned post in a primary school in Dumka district under Annexure -1. By mistake his name had been wrongly spelled as Munshi Prasad Singh instead of Munji Prasad Singh and as a result of this he was not allowed to join the post. On his representation to the State Government for correction of his name in the appointment letter the matter was referred to the District Superintendent of Education by the Assistant Director vide Annexure-2. After making necessary correction in his name the District Superintendent of Education directed him to join the Primary School, Kalikapur against a vacant post (vide Annexure-3). The petitioner joined the school on 13.2.1980 and drew his salary upto November, 1984. A general letter appears to have been issued by the District Superintendent of Education to the Deputy Inspector of Schools and Headmasters of different school not to pay salary to any teacher who has been appointed by Shri Hari Narain Thakur the then District Superintendent of Education, Dumka, now under suspension. Consequently respondent no. 1 issued the letter (Annexure-7) cancelling the petitioner's appointment. It is further stated that Shri Hari Narain Thakur had made appointments of 167 teachers but only 37 teachers have been picked up without assigning any reason and their appointments have been cancelled.

6. This writ application is by Diwakar Presad Yadav the sole petitioner who claims to be a handicapped person. He also claims to have been appointed by the District Superintendent of Education Shri Hari Narain Jha after interview by the Interview Board.

7. In the counter affidavit filed on behalf of the respondent State and others it

has been stated, inter alia, that Government had laid down certain procedures for the appointment and promotion of teachers in the elementary schools in Exercise of powers u/s 8 of the Bihar Non-Government Schools (Taking Over and Control) Act, 1976 (hereinafter referred to as the Act). The Government had issued a notification on 15.12.1981. A copy of this notification has been annexed as Annexure-A to the counter affidavit filed on behalf of the State in C.W.J.C. Nos. 123 of 1985 and 5577 of 1984. According to this notification the appointment of a teacher is to be made by the District Establishment Committee. The District Establishment Committee is required to prepare a list of the selected candidates and to submit the same to the Regional Deputy Director of Education. The Regional Deputy Director is required to scrutinise the list of the selected candidates and send it to the Divisional Commissioner for approval. After approval the list has to be sent to the District Superintendent of Education for issuance of the appointment letters. It is further stated in the counter affidavit that the Government in order to re-habilitate the handicapped persons took a policy decision to provide opportunity of employment to them provided they fulfilled the requisite qualifications for the post of a teacher. 50 per cent of the existing vacancies were earmarked for the handicapped persons and advertisement no. 9 dated 10.4.1981 and advertisement no. 16 dated 17.1.1982 were published in the daily newspapers. Vacancies occurring in 1981 was only taken into consideration for the purpose of appointment of the handicapped persons to the extent of 50 per cent of the vacancies. The scheme was only for the year 1981 on the occasion of International Handicapped year. It may be stated that 1981 was declared to be International Handicapped year. This was made clear in the said advertisement. The manner of appointment of the handicapped persons was also the same as that of the general appointments except with the variation that the District Selection Committee was constituted to make preliminary selection which was to be sent to the District Establishment Committee. Except this the procedure as envisaged in Annexure-3 of the counter affidavit filed in C.W.J.C. No. 123 of 1981 was to be followed. The appointment of the handicapped persons at the initial stage was made at the headquarters level by the Director of Primary Education but later on the power was vested in the District Establishment Committee on the basis of the selection made by the District Selection Committee. It is further stated that in some of the offices of the District Superintendents of Education serious irregularities were committed. It was found that although no appointment letters had been issued but some persons claiming to have been appointed had drawn salaries. When this fact came to the notice of the State Government an enquiry was made from the respective Regional Deputy Director of Education. The Regional Deputy Director of Education, Bhagalpur gave a report that only one selection list for appointment to the post of science teachers had been forwarded by the District Establishment Committee through the District Superintendent of Education which had been found Infective and returned. He further reported that no other selection list was ever submitted. Thereafter an enquiry was made from the then District Superintendent of Education, Sahebganj (now under suspension) with regard to

the appointments made by him. The District Superintendent of Education sent a report that there were two panels, one prepared for the science teachers by the District Establishment Committee and the other for appointment of the handicapped persons sent by the District Selection Committee. He also sent a list signed by the members of the respective committees marked Annexure-C and C/I in C.W.J.C. No. 123 of 1985. The said District Superintendent of Education also took a plea that he had made certain appointments on the direction issued by the then Deputy Commissioner and submitted a list of those appointments which is Annexure-D in the counter affidavit filed in C. W. J. C. No 123 of 1985. It is stated that a large number of appointments were based on forged appointment letters (vide the report submitted by said Shri Bhola Ram, District Superintendent of Education, Sahebganj). It has been asserted in the counter affidavit that three types of appointments were made in the district of Sahebganj, namely, (i) those who were appointed irregularly by Shri Bhola Ram, the then District Superintendent of Education, Sahebganj from the panel prepared by the District Establishment Committee or the District Selection Committee but without scrutiny by the Regional Deputy Director of Education and approved by the Divisional Commissioner as required by Circular No. 2060 dated 15.12.1981 (Annexure-A aforementioned); (ii) those who were illegally appointed by said Shri Bhola Ram without any panel either on his own or on the recommendation of the Deputy Commissioner who had no power to give such direction, and (iii) on forged appointment letters. It is stated that the petitioners of C. W. J. C. No. 119 of 1985 belong to different category. Petitioner nos. 1 to 50 except petitioner nos. II and 55 were illegally appointed. Their names do not find mentioned in the panel prepared for science teachers nor in the panel prepared for the handicapped candidates nor in the list of persons illegally appointed on the orders of the Deputy Commissioner. Their appointments were made on the strength of forged appointment letters. As regards petitioner nos. 11 and 55 it is stated that they were also appointed without any authority of law. It has been stated that all such illegal appointments numbering 961 have been terminated and any other illegal appointment which may be found in future shall also be terminated.

8. From the counter affidavit of the State filed in C.W.J.C. No. 123 of 1985 it will further appear that a report was submitted by Shri Bhola Ram (now suspended) stating that the appointment letters purported to have been issued by him were forged one and that he has not signed them (vide Annexure-B of the counter affidavit filed in C.W.J.C. No. 123 of 1985).

9. A general reply on behalf of the petitioners to these is that Annexure-A, the Government notification dated 15.12.1981 referred to above does not lay down any procedure and manner for appointment but lays down the procedure and manner for promotion. It is stated that according to Annexure-A a gradation list is required to be prepared and sent to the Regional Deputy Director of Education for approval. The District Establishment Committee and/or the District Superintendent of Education is the competent authority to appoint The

petitioners, according to them. It has been further asserted that the procedure envisaged in Annexure-A has no concern with the appointment of handicapped persons and the District Establishment Committee has no concern with the appointment of handicapped persons. They further assert that the decision as regards enquiry regarding the validity of the appointments were made *ex parte* and the petitioners had no notice about it. The reports said to have been submitted by some of the District Superintendents of Education were, according to the petitioners, procured under coercion as they have been put under suspension. In substance the petitioners assert that they were validly and legally appointed.

10. Annexure-A to the counter affidavit filed in C.W.J.C. No. 123 of 1985 is a notification by Government of Bihar in exercise of powers u/s 8 of the Act. This notification amended Government letter no. 4557 dated 15.12.1976 regarding appointment and promotion of teachers in Government Elementary Schools and superseded Government notification No. 1938 dated 21.8.1981. In paragraph 2 it lays down the educational and administrative qualifications for the appointment and promotion of teachers. Paragraph 4 of this notification relates to appointment and promotion of teachers. It reads thus :--

It is clear that before issuance of any letter regarding appointment or promotion the list has to be scrutinised by the Regional Deputy Director, Education. After his scrutiny it has to be sent to the Divisional Commissioner for approval. If it is approved it has to be sent to the District Superintendent of Education for the purpose of appointment.

11. It is no where the case of the petitioner that the lists on the basis of which they claim their appointments were ever sent to the Regional Deputy Director, Education for scrutiny of the same was ever approved by the Divisional Commissioner. It is clear, therefore, that the petitioners' appointment were made in violation of Government notification dated 15.12.1981 as contained in Annexure-A. Section B of the Act empowers the Government to issue notifications from time to time regarding the service conditions of the teachers of the elementary Schools including the manner and procedure of appointment. There are some materials on record indicating that some of the appointment letters were forged but even without going into that question it must be held that the procedures laid down by the Government for the purpose of appointment of teachers were not followed at all in the cases of the petitioners. It is obvious, therefore, that the petitioners cannot claim to have been validly appointed and the first question mentioned above has to be answered against them.

12. On the second question it was contended on behalf of the petitioners that cancellation of their appointments on the grounds of alleged illegality or irregularity in their appointment visited them with civil consequences and as such the principles of natural justice required that they should have been noticed and heard. The question for consideration is as to whether in the facts and circumstances of these cases the petitioners were entitled to this protection.

13. The rules of natural justice are not embodied rules, it is true that these rules have been made applicable to administrative enquiries also but whether or not it will apply to a given case depends upon the facts and circumstances of that case. It is not a futile exercise and cannot and should not be made an empty formality. The rule of natural justice is intended to inject justice into law and cannot be applied to defeat the ends of justice or to make the laws lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation"(De Smith's Judicial Review of Administrative Act, page 238). The petitioners in these cases were said to have been appointed on temporary basis and their services were terminated after giving them one month's notice. In the case of Bijoy Kumar Bharti.& others v. The State of Bihar and others (1983 P.L.J.R 667) Full Bench of this Court held that in the case of temporary appointee who had no right to the post termination could take place without giving them any opportunity of being heard before taking the decision. In a similar situation it was further held that the effect of the impugned orders, where the termination was on the ground of illegality or irregularity in the initial appointments, was to declare that from the beginning there was no valid appointments. In such cases it was only fit and proper that the alleged illegality or irregularity should be explained in the order. If the reasons are not supplied, the order would be liable to challenge on the ground that non-supply of reasons could raise a presumption that no reasons existed. So far the present cases are concerned the impugned orders would show that the services were terminated on the grounds of illegality and irregularity in the initial appointments. There were no allegation against the petitioners. The guilty parties are the appointing authorities or officers of the State. In the case of Bijoy Kumar Bhati (supra) it was observed that in such cases it was expected that the Government authorities concerned should take appropriate action against those who were guilty for the alleged illegality or irregularity in the appointment. We are informed that proceedings have been initiated against the erring officers. A similar view appears to have been taken by Mathew, J. as a Judge of the Kerala High Court in P. Kunhikrishnan v. State of Kerala (A.I.R. 1965 Kerala 149). In that case the termination of service was on the ground that the persons appointed was ineligible for being appointed. The learned Judge observed that it was not an order cancelling a valid or even a voidable order; it was merely a declaration that there had been no appointment to the post. In such circumstances it was found that there was no violation of principles of natural Justice if opportunity of being heard had not been given. A Division Bench of Kerala High Court in K. N. Gopalan v. the Managing Director and another [1979(2) Service Law Reports 408] also took the same view that where the termination was on the ground of illegality or irregularity in the initial appointment it was only to declare that from the beginning there was no valid appointment. In such a situation I hold that the petitioners were not entitled to any show cause, in the facts and circumstances of these cases and the question of allowing the applications on the ground of alleged violation of principles of natural justice does not arise.

14. On the third question it was strenuously urged that the petitioners were entitled at least to the arrears of salary for the period they actually worked. Learned counsel pointed out that several writ petitions were filed by the persons whose services were so terminated and orders were passed by this Court that they shall be entitled to their salary for the period they had actually worked, Learned counsel specially referred to certain observations made by S. Sarwar Ali, Acting Chief Justice, in the case of Bijoy Kumar Bharti (Supra) stating, inter alia, that the appointees cannot be deprived of their salary etc. provided they had worked on the post they were appointed. The Full Bench was considering the effect of illegal and irregular appointments of various departments of Governments of Bihar. With great respect the observations made by the Full Bench in the case of Bijoy Kumar Bharti (Supra) is obiter dicta inasmuch as the question did not come up directly for consideration. It is true that directions were issued by this Court in several cases to pay the salary of such persons for the period they actually worked Reference may be made to C.W.J.C. No. 3476 of 1985 (Ganesh Chandra Purbey and others v. State of Bihar, decided on 36th of August, 1985), C.W.J.C. No. 566 of 1955 (Nagendra Prasad Singh v. State of Bihar, decided on 12th April, 1985) etc. Even after certain observations made by the Full Bench no direction to pay the salary to the affected persons was given in the case of Bijoy Kumar Bharti (supra). Even in the case of Ganesh Kumar Jha and others v. State of Bihar and others (C.W.J.C. Nos. 20 and 147 of 1983, decided on 16th March, 1983), which appears to have been followed later in several cases, the orders were quashed on the ground of denial of natural justice but no direction for payment of salary was given. The direction was only to give notices to the affected persons to show cause why their appointments should not be cancelled on the ground of infirmity in the appointments. I have not found myself in agreement with the decision in C. W. J. C. No. 20 and 147 of 1983 decided by a single Judge of this Court and I find that that decision is contrary to the principle laid down by the Full Bench. In fact, the learned single Judge while deciding C.W.J.C. No. 20 of 1983 observed that where a few individuals were said to have been irregularly appointed, it was not difficult to give full and adequate opportunity to the affected party to show cause, and the adjudicatory procedure of fair play was given effect to. But, where such, irregularities were found in large scale, whereby one arbitrary and mala fide decision several hundreds of people illegally appointed and on detection of the same immediate action was required, how far the rule of fair play shall extend and to what extent the rule of Audi Alterem Partem shall protect the affected person? Will it not be necessary to balance the rule in the manner that in the name of fair play illegal appointments are not perpetuated". The learned Judge, therefore, was himself in doubt whether the rule of natural Justice should be extended in such cases. I do not, therefore, think that any order can be made in these writ applications for payment of salary to the petitioners for the period they claim to have worked. Firstly, by virtue of illegal appointments they had not acquired any right to the post and, secondly, it will be a question of fact whether they had worked for a particular period. I do not propose, therefore, to give any direction in this regard.

15. To sum up I find and hold that the petitioners of these writ application have not been validly appointed. They cannot challenge the impugned orders on the ground of alleged violation of principles of natural justice. I also hold that they are not entitled to any direction for payment of arrears of their salary for the period they claim to have worked. In the result, C.W.J.C. Nos. 319, 228, 365 of 1985 and C.W.J.C. No. 5577 of 1984 are dismissed but without costs: So far as C.W.J.C. Nos. 121, 123, 137, 143, 148, 150, 152, and 365 of 1985 are concerned they were not pressed at the time of hearing by Mr. Rajendra Prasad Singh and Mr. D. K. Tiwary learned counsels for the petitioners of these cases. They are therefore, dismissed as not pressed.

S.S. Sandhawalia, C.J.

I agree.