
(1991) 09 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 218 of 1991 (R)

Father Albinus Drea and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Citation : (1991) 09 PAT CK 0061

Judgement

R.N. Sahay, J.—The Ranchi Catholic Archdioces is a Society registered under the Societies Registration Act, 1860. The activities of the Society extend to various fields including establishment and management of Primary Middle School in the Chhotanagpur Region. The Society has established about 500 Middle Primary Schools in the districts of Ranchi, Gumla, Lohardaga and Singhbhum as is evident from Annexure 2 to 2/c of the writ petition. The teachers of the school are appointed by the managing committee of the respective schools after obtaining approval by the District Superintendent of Education of the concerned area. The Petitioner No. 1 is Inspector of Catholic schools. Petitioner Nos. 2 to 4 are teachers working in Primary Middle Schools in the district of Ranchi. The schools in question have been recognised as minority schools by the State of Bihar. The salary of the teachers working in the schools managed by the society is received from the State Govt. in terms of a grants-in-aid scheme. According i to the scheme as set-out in the writ petition, the pay bills of the teachers of each school submitted by the Principal or Headmaster of, the respective schools to the District Superintendent of Education (Respondent Nos. 3 to 6) who forward the same to Respondent No. 2 with their counter signature. The Respondent Nos. 3 to 6 send Bank draft to the respective Banks where salaries are deposited in the respective account of the teachers.

2. The monthly pay bills of all the teachers of Middle and Primary Schools are being submitted regularly to Respondent Nos. 3 to 6. The teachers of Ranchi district have not been paid salary from July, 90 onwards. The teachers of Gumla district have also not received their salary since January, 90 and the teachers of Lohardaga district have also not received their salary since long.

3. The Petitioners have alleged that on one hand the teachers appointed by the Mission have not been paid their salary while on the other hand the teachers appointed by the State Govt. working in these very schools have been receiving their salary regularly. The stoppage of salary of the teachers for such a long time has caused great financial hardship. It is alleged that the stoppage of salary amounts to denial of grants-in-aid guaranteed under Article 30(2) of the Constitution of India. The Petitioner have, therefore, prayed that a writ of mandamus be issued against Respondents to carry out their constitutional obligation in the matter of payment of salary.

4. There is no dispute that the teachers of the institution managed by the Ranchi Catholic Archdiocese are entitled to receive salary from the State Govt. According to the counter affidavit filed by the Superintendent of Education, Ranchi (Respondent No. 3) it is contended that the teachers of the minority schools receive payment through the District Superintendent of Education on availability of the fund allotted by the State Govt. The Respondent No. 3 has stated that he received a sum of Rs. 44, 12,000/- from the Human Resources Development Govt, of Bihar vide Office Memo No. 1046 dated 25th July, 1990 (Annexure-A). Again a sum of Rs. 1,25,77,00/- was released in May 1991 (vide Annexure-B) It appears that no fund has been released thereafter. So it is apparent that the District Superintendent of Education is not to be blamed for non-payment of the salary. The State Govt. has not filed any affidavit disclosing the reasons for not releasing the funds for disbursement of salary to the concerned teachers. The learned standing counsel stated that the salary shall be paid as soon as the fund is released by the State Govt.

5. The learned Counsel for the Petitioners has invited our attention and placed reliance on Section 54A of the Bihar Local Self Govt. (Amending and Validating) Act, 1954, Rule 26 of Bihar Primary and Middle School Education Rules which provide for creation of District Education fund for payment of grant-in-aid to minority schools and Educational institutions. But these provisions have been repealed by Section 9 of the Bihar Non-Govt. Elementary Schools (Taking Over of Control) Act 1976. In any view it is not controverted by the Respondent that the minorities schools have been receiving grant-in-aid since long. The learned Counsel for the Petitioner has invited our attention to Annexure-7 (reply to the counter affidavit filed on behalf of the Respondent No. 3) and submitted that the District Superintendent of Education is guilty of gross dereliction of his duty resulting in non-payment of salary to the teachers. Annexure-7 is xerox copy of a telegram sent by Education Commissioner to all the Regional Deputy Directors of Education and all District Superintendents of Education to the effect that "payment to minority and created primary school teachers and non-teaching staff held up for want of utilisation certificate from the concerned District Superintendent of Education" and all the District Superintendents of Education have been directed to issue utilization certificate.

It appears that the District Superintendents of Education and other authorities

have been taking the matter rather casually resulting in inordinate delay in disbursement of salary to the teachers of the minorities schools. There cannot be valid jurisdiction for this callous attitude on the part of the authorities.

As held by the Supreme Court in *The State of Bombay Vs. Bombay Education Society and Others*, .

In the modern times it is impossible to run educational institution without State aid. Hence, the right of a minority community under Article 30(1) to establish and administer educational institutions of its choice indirectly carries with it right to receive State aid in terms which will not make impossible to run the institution without surrendering the right of Management.

6. In my opinion, by not releasing the funds for payment of salaries to the teachers, the State is not carrying out its constitutional and statutory obligation under Article 30(1) of the Constitution of India.

7. In the circumstances, the writ application is allowed and a writ of mandamus is issued against the Respondent No. 1 to immediately provide funds for payment of salaries to the teachers of the minority institution and the State Govt. is directed to release the fund within six weeks from the date of receipt of a copy of this order.

In the facts and circumstances of the case, there shall be no order as to costs.

S.B. Sinha, J.

9. I agree with the order proposed to be passed by my learned brother. However, I would like to add a few words of my own.

10. Article 30 of the Constitution of India reads as follows:

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

11. From a bare perusal of the aforementioned provision, it is evident that the State cannot discriminate in making grants only on the ground that the Institution in question is under the management of a minority community, whether based on religion or language. However, the extent of such grant is to be determined by the State of Bihar.

12. It has not been disputed before us by the learned Counsel appearing on behalf of the State that a policy decision has been adopted, and various circulars have been issued by it from time to time whereby, the teachers in employment of the minority institutions are also to be paid their salaries by it.

13. In terms of the said policy decision, therefore, it is obligatory on the part of the Respondent-State to adhere thereto and any deviation or departure from the said policy decision on its part would not only be violative of Article 30 of the Constitution of India, but, would also be violative of Article 14 thereof. In this view of the matter, Brother Sahay, J has rightly held that the State is bound to make grant-in-aid to the Institution of the Petitioner.