

(2016) 06 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.985 of 2015

Imran Alam

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 118

Hon'ble Judges : I.A Ansari, ACJ. and Chakrafhari Sharan Singh, J.

Bench : Division Bench

Advocate : Mr. Lalit Kishor, PAAG, for the State; Mr. S.B.K. Mangalam, Advocate Mr. Binod Kumar, Advocate, for the Petitioner in CWJC Nos. 18235, 18272, 18299 and 15299 of 2015; Mr. Rashid Alam, Advocate, for the Madarsa Board; Mr. Lalit Kishor, PAAG, for the State;

Final Decision : Disposed Off

Judgement

Mr. Chakradhari Sharan Singh, J. - We have heard Mr. S.B.K. Mangalam and Mr. Niranjana Kumar, learned Counsel for the petitioners and Mr. Lalit Kishore, learned Principal Additional Advocate General for the State-respondents. We have also heard Mr. Rashid Alam, learned Counsel for the Bihar State Madarsa Education Board, and Mr. Satyam Shivam Sundram, learned Counsel for the Bihar Sanskrit Education Board.

2. The facts which are germane and not in dispute in the present batch of writ applications filed under Article 226 of the Constitution of India, are short. There are 1119 non-Government recognised Madarsas and 9 (nine) girls Madarsas (total, 1128) in the State of Bihar. Besides the above Madarsas, there are 2459 Madarsas, which have been registered by the Bihar State Madarsa Education Board, but have not been recognised by the State Government. These Madarsas impart education to male and female students of the minority. Similarly, there are 531 Sanskrit Schools, which have due recognition by the State Government, which impart teaching in Sanskrit. The Madarsas and Sanskrit Schools,

recognised by the State Government, get grant-in-aid from the State Government for the purpose of making payment to the teaching and non-teaching employees, working in the said Madarsas and Sanskrit Schools in their respective pay scales, which has been mentioned in the resolution issued by the letter No. 10/o 3-06/1994 va"k 970, dated 31.08.2013, by Education Department, Government of Bihar (Annexure-4).

3. The grievance of the petitioners, in the present batch of writ applications, is that they had been appointed by the respective Governing Bodies/Managing Committees of the respective recognised Madarsas/Sanskrit Schools in their respective pay scales, which were among 1128 Madarsas and 531 Sanskrit Schools, since before 31.08.2013, but after 15.02.2011. Clause 6 of the aforesaid Resolution, dated 31.08.2013, however, prescribes that teaching and non-teaching employees, appointed in the said recognised Madarsas and Sanskrit Schools, against vacancies arising out of retirement of teaching/non-teaching employees, shall be treated to have been converted into teaching/non-teaching employees in fixed salary, with effect from 15.02.2011, for the purpose of quantifying the grant-in-aid to be released to the said recognised Madarsas/Sanskrit Schools on the basis of fixed salary for such employees.

4. The English translation of Clause 6 of the Resolution, dated 31.08.2013, reads thus:

"6. Posts which have fallen vacant after retirement of teaching/non-teaching employees working in 1119 non-government recognised (without grant-in-aid) Madarsas and 9 girls Madarsas, i.e., total 1128 Madarsas and 531 Sanskrit Schools of different categories of the State, shall be treated to be automatically converted in the fixed pay for grant by the Government with effect from 15.02.2011 and the grant shall be payable on the basis of calculation of pay fixed by the State Government for teaching and non-teaching employees, appointed against all vacancies on or after 15.02.2011."

5. It is the common grievance of the petitioners that Clause 6 of the Resolution, dated 31.08.2013, is in breach of Articles 14 and 16 of the Constitution of India for the following reasons:

(i) When the petitioners were appointed before issuance of the Resolution, dated 31.08.2013, they were entitled for regular pay scales. It is their plea that if Clause 6 is to be implemented, in the same recognised Madarsas/Sanskrit Schools, there will be two class of teachers, one appointed before 15.02.2011 and the others appointed on or after 15.02.2011; whereas, the teachers and non-teaching employees, appointed before 15.02.2011, would be entitled to salary and allowances on the basis of regular pay scale, those appointed on or after the said date (i.e., 15.02.2011) will be getting fixed salary. According to the petitioners, this classification is discriminatory, irrational and, therefore, violative of Articles 14 and 16 of the Constitution of India.

(ii) The decision of the State Government to introduce the scheme of fixed salary

for teaching and non-teaching employees of Madarsas/Sanskrit Schools with retrospective effect from 15.02.2011 is arbitrary and unreasonable.

6. Counter affidavits have been filed on behalf of the State of Bihar, taking a plea that the Human Resources Development Department (now, Education Department), Government of Bihar, for the purpose of providing quality education to Madarsa students considered the possibility of granting aid to such Madarsas which are registered with the Bihar State Madarsa Education Board, but were not recognised. Accordingly, it was decided that the Bihar State Madarsa Education Board shall get an enquiry conducted through the concerned District Education Officers, pertaining to 2459 Madarsas, which had been registered through Bihar State Madarsa Education Board in accordance with the procedure laid down in the Resolution No. 1090, dated 29.11.1980, regarding their feasibility. Accordingly, through the Resolution, dated 15.02.2011, it was decided to provide grant-in-aid in proportion to the fixed salary in said Madarsas, 2459 in number. The Resolution, dated 15.02.2011, has been brought on record by way of Annexure A to the counter affidavit, filed in CWJC No. 985 of 2015. It is the specific stand on behalf of the State of Bihar that the said Resolution, dated 15.02.2011, was published in Bihar Gazette.

7. It is further stand of the State Government that in compliance of the aforesaid Resolution, dated 15.02.2011, another resolution, being Resolution No. 970, dated 31.08.2013 (impugned), has been issued, indicating that the teaching and non-teaching employees of Madarsas who were appointed on or after 15.02.2011 shall be paid fixed salary and grant-in-aid to the Madarsas and Sanskrit Schools shall be released accordingly.

8. It has been stated, in paragraph 17 of the counter affidavit filed on behalf of the State of Bihar in CWJC No. 985 of 2015, that the decision, for quantifying grant-in-aid on the basis of fixed salary to the teaching and non-teaching employees of the Madarsas, had already been taken on 15.02.2011, and, thus, it is contended on behalf of the State of Bihar that it cannot be said that the impugned Clause 6 of the Resolution, dated 31.08.2013, amounts to implementing the scheme of fixed salary from a retrospective date.

9. It has been argued by Mr. Lalit Kishore that decision to release grant on the basis of fixed salary against the posts filled up on or after 15.02.2011, consequent upon retirement of the original employees of recognised Madarsas/Sanskrit Schools was taken to maintain parity in matter of release of grant to recognised and un-recognised Madarsas/Sanskrit Schools. Accordingly, it is his plea that State action is not in breach of equality clause of the Constitution of India rather the same is to ensure that all Madarsas and Sanskrit Schools, either recognised or unrecognized, are treated at par.

10. We have closely examined the Resolution, dated 15.02.2011, brought on record by way of Annexure A to the counter affidavit and the Resolution, dated 31.08.2013, brought on record by way of Annexure B to the counter affidavit,

filed on behalf of the State of Bihar in CWJC No. 985 of 2015.

11. On bare reading of the two resolutions, it is easily noticeable that the said two resolutions deal with two different classes of Madarsas. The Resolution, dated 15.02.2011, is confined to 2459 Madarsas, which were not recognised by the State Government, but duly registered by the Bihar State Madarsa Education Board. The said resolution contains the decision of the State Government for providing grant-in-aid to such Madarsas, for payment of fixed salary to the teachers of such Madarsas, at par, with the fixed salary payable to teachers of High Schools/Primary Schools. On the other hand, the Resolution, dated 31.08.2013, is with respect to 1119 Madarsas and 09 girls Madarsa (total, 1128) and 531 Sanskrit Schools, which were duly recognised by the State Government and were getting grants from the State Government for the purpose of making payment of salary to the teaching and non-teaching employees. The said Resolution, dated 31.08.2013, is with respect to grant of a revised pay to the teaching and non-teaching employees of Madarsas/Sanskrit Schools, which also contains a decision in paragraph 6, as noted above.

12. In our considered view, the State Government of Bihar has taken an incorrect plea in paragraph 17 of the counter affidavit that issuance of Resolution, date 31.08.2013, is in compliance of the earlier Resolution, dated 15.02.2011. The Resolution, dated 15.02.2011, which is confined to 2459 non-recognised Madarsas, does not at all refer to release of grant-in-aid on the basis of fixed salary for teaching and non-teaching employees of recognised 1128 Madarsas and 531 Sanskrit Schools. The plea on behalf of the State Government, justifying the provision as contained in the impugned Clause 6 of the Resolution, dated 31.08.2013, by referring to Resolution, dated 15.02.2011, cannot be accepted.

13. It has, however, to be kept in mind that decision, in question, relates release of grant-in-aid to the Madarsas and Sanskrit Schools, by the State Government for payment of salary to teaching and non-teaching employees. The said Madarsas and Sanskrit Schools are, admittedly, privately managed by the Governing Bodies/Managing Committees. There is no dispute that the petitioners claim to have been appointed by the said Governing Bodies/Managing Committees against regular pay scale. Whether appointment of the petitioners by Governing Bodies/Managing Committees of recognised and Government aided privately managed Madarsas/Sanskrit Schools with salary based on pay scale, confer upon them any indefeasible right against the State Government to claim release of grant-in-aid to the said Madarsas/Sanskrit Schools, is one of the basic issues which the present case involves.

14. The same question had arisen before a Division Bench of this Court (comprising of both of us), in the case of The State Government of Bihar through the Secretary, Department of Higher Education and Others v. Parvati Kumari and Others, reported in .This Court, in Parvati Kumari (supra), referring to two decisions of the Supreme Court, in the cases of State of Assam v. Ajit Kumar

Sharma (AIR 1965 SC 1196) and Cyril E. Fernandes v. Sr. Myria Lydia and Others (AIR 1977 SC 2145), has held in paragraphs 30 to 34 as follows:

"30. So far as question Nos. I and II, as referred to above, are concerned, they have been answered in Supreme Court's decision, in the case of State of Assam v. Ajit Kumar Sharma (AIR 1965 SC 1196), which has been subsequently relied by the Supreme Court in its another decision in the case of Cyril E. Fernandes v. Sr. Myria Lydia & Ors. (AIR 1977 SC 2145). In Ajit Kumar Sharma (supra), the Supreme Court held that withholding of grant-in-aid to a private College by the Government is a matter between the concerned Government and the management of the private College. The Supreme Court held that the conditions or instructions as to grant-in-aid confer no right on the teachers of the private Colleges and they cannot ask that either particular instructions or conditions should be enforced or should not be enforced.

31. Relying upon its decision in Ajit Kumar Sharma (supra), the Supreme Court, in Cyril E. Fernandes (supra), held that the appellant of that case, being teacher of a private institution, was not directly concerned with the question whether the rules in grant-in-aid code conferred on the management of the institution an enforceable right against the Government, which is entirely a matter between the management and the Government.

32. Following the aforesaid decisions in Cyril E. Fernandes (supra) and Ajit Kumar Sharma (supra), we have no hesitation in holding that in the matter of the said policy or State action, touching release or withholding of grant to a private institution, cannot be said to be conferring any enforceable right on the employees of the institution or taking away any right from the employees of the institution, since they cannot be said to be directly concerned with the dispute between the private institution and the Government, particularly, when the institution does not question the decision of the Government to withhold such grant. We are of the clear view that the private respondents, herein, had no locus standi to question the order passed by the Secretary, Department of Higher Education, dated 09.11.2001, pursuant to the order of this Court, dated 16.09.2002, as the said dispute was raised by the Governing Body of the College against the decision of the State Government of stopping Recurring Annual Grant to the College and the dispute, as regards grant-in-aid, was between the Governing Body of the private College and the State Government. The Governing Body elected not to question the decision of the said State Government and, thus, accepted it.

33. Further, the right of the private respondents/writ petitioners, if any, is determinable on the basis of contract of employment between them and the management of the private institutions inter se. Question of denial of their right will depend upon the nature of agreement between them and their employer. The writ petitioners-private respondents could not have, in our considered opinion, raised any grievance and/or seek release of grant-in-aid in favour of the College inasmuch as there was no legal right vested in them, which can be said to have

been violated.

34. The law is well settled that a mandamus cannot be issued to create a right; but mandamus is to be issued to restore a party, who has been denied right, to enjoyment of such right. A person can be said to be aggrieved only if his legal rights are directly affected. In our opinion, thus, the private respondents/writ petitioners had no locus standi to maintain writ petitions, under Article 226 of the Constitution of India, against the order passed by the Secretary, Department of Higher Education, rejecting the plea of the Governing Body to continue with the release of recurring annual grant-in-aid to the College."

(Emphasis is added)

15. One of the effects of Clause 6 of the Resolution, dated 31.08.2013, is that the State Government would, now, release grant for payment of salary to the persons appointed as teachers/non-teaching employees on or after 15.02.2011, on the basis of fixed salary and not on the basis of regular pay scales and, thus, Madarsas/Sanskrit Schools would be getting less grant-in-aid from the State Government than what they would have received had regular pay scale of the teachers appointed after on or after 15.02.2011 been taken into account.

16. It cannot be said that eventually, the said Madarsas may or may not be able to pay to their teachers/non-teaching employees, salary on the basis of regular pay scales from the grant they would be receiving in the light of the Resolution, dated 31.08.2013. We are not concerned with the same.

17. Evidently, Madarsas/Sanskrit Schools, in question, are privately managed by their respective Governing Bodies, who have not raised any grievance against the said decision of the State Government, dated 31.08.2013.

18. On the basis of pleadings on record and submissions advanced on behalf of the parties, it appears that the State Government releases grant to respective Madarsas/ Sanskrit Schools in accordance with its policy decision, the grant so received by the respective Madarsas/Sanskrit Schools is utilized for payment of salaries/ wages to the teachers and non-teaching employees of the respective Madarsas/Sanskrit Schools by their Governing Bodies/Managing Committees, as the case may be. The petitioner being employees, appointed by the Government Bodies/Managing Committees cannot, in our opinion, raise a grievance against the State Government for release of grant on the basis of pay less than what was allowed by their employees.

19. Considering the above, in our view, no relief can be granted in the present proceedings, the same having been preferred by the individual teachers of privately managed institutions, raising grievance against the decision of the State Government.

20. It will be, however, open to the Governing Bodies/Managing Committees of the concerned institutions to question the validity of the impugned decision of the State Government, as contained in Clause 6 of the Resolution, dated

31.08.2013, in appropriate proceeding in accordance with law.

21. Before we part with the present order, we consider it appropriate to observe that in the facts and circumstances of the case, the State Government of Bihar may reconsider the applicability of Clause 6 of the said Resolution, dated 31.08.2013, with effect from the date of its issuance.

22. These applications shall stand disposed of with the observations, as above.

I. A. Ansari, ACJ. - I agree.

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