
(2007) 05 PAT CK 0162
In the Patna High Court
Case No : CWJC No. 13843 of 2006

Jagdeo Bhindwar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Citation : (2007) PLJR 172

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Sadanand Jha and Dr. Anil Kumar Upadhyaya, for the Appellant;
Rabindra Kumar Choubey, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The twenty three petitioners before the court are Assistant Teachers in Government Sanskrit schools. They seek a direction to the respondent authorities to extend to them, like the other teachers of the erstwhile Bihar Subordinate Education Service, the benefits following from absorption in Bihar Education Service Class II. According to the petitioners, the Assistant Teachers appointed in Government Sanskrit High Schools were recognised as members of Subordinate Education Service and were also given pay scale admissible to the teachers of Subordinate Education Service. The petitioners claim is primarily based on a resolution of the Finance Department, dated 11.4.1977 and it is their case that by that resolution the Subordinate Education Service of the State was merged with the Bihar Education Service with effect from 1.1.1977. Apart from the resolution, dated 11.4.1977 the petitioners rely upon a decision of this court in CWJC No. 12122 of 1998. The order passed in that case by a Single Judge on 2.2.2000 was affirmed by the Division bench by order, dated 27.11.2000 in L.P.A. Nos. 980 and 998 of 2000. The State took the matter before the Supreme Court in Civil Appeal No. 4486 of 2003 but that too was dismissed by order, dated 19.4.2006. The petitioners further rely upon another resolution of the State Govt., dated 7.7.2006 issued under the hand of

the Commissioner-cum-Secretary, Department of Human Resource Development. They also seek to challenge the order, dated 8.9.2006 by which the Director, Secondary Education held that there was no question of absorption of Assistant Teachers of the Govt. Sanskrit Schools in the Bihar Education Service because a number of Assistant Teachers in Govt. Sanskrit Schools were granted the higher scale of Rs.6500-10500/- in place of the pay scale of Rs.5500-9000/- admissible for the post by giving an undertaking that they would not claim promotion in Bihar Education Service. On behalf of the petitioners it is pointed out that they were neither getting the higher scale of pay nor any sort of undertaking was given on their behalf.

2. In the counter affidavit filed on behalf of the State, it is stated that the Subordinate Education Service consisted of following four branches:--

- (a) Subordinate Education Service. Primary branch (male).
- (b) Subordinate Education Service, teaching branch (male).
- (c) Subordinate Education Service, female branch.
- (d) Subordinate Education Service, youth branch (Mixed).

3. It is then submitted that resolution, dated 11.4.1977 (vide item No. 7) envisaged only merger of teachers of Subordinate Education Service, teaching branch (male and female) cadres (except the teachers of Netarhat school) and in pursuance of that resolution only male and female teachers of Subordinate Education Service were entitled to merger of their cadres with the Bihar Education Service Class II. It is further stated that the petitioners were part of Subordinate Education Service (Sanskrit branch) which did not form part of the cadre of Subordinate Education Service (male and female) teachers. It is further stated that even the gradation list of petitioners was maintained separately.

4. In regard to the decision of the court, dated 2.2.2000 in CWJC No. 12122 of 1998 it is sought to be explained that that was with regard to teachers of Subordinate Education, teaching branch, (male and female cadres). It is further stated that even members of Subordinate Education Service, Primary Branch (Male) and of Subordinate Education Service, Youth Service Branch (Mixed) were not given the benefit of merger in pursuance of resolution, dated 11.4.1977.

5. Dr. S.N. Jha, Senior Advocate appearing for the petitioners submitted that the statements made in the counter affidavit were quite inconsistent with the plain and simple language of resolution, dated 11.4.1977. Learned Counsel pointed out that at serial No. 7 of the resolution, it was stated as follows:--

7 11.10 25 SHIKHA VIVIDHA SAMBARG--(1) SHIKHA BIBHAG ABHIYANTAYAON KE PADON KO LOK NIRMAN BIBHAG KE BIHAR ABHIYANTRAN SEVA SAMBARG ME SANIVISTA KARA DE AUR ABHIYANTAON KE TAUR PAR LE.

(2) DOCTORON KE DO PADON KO BIHAR SWASTHA SEVA SAMBARG ME SAMIL KAR LIYA JAI ABAM ABASYAKTANUSAR UNKI SEVAYEN PRATINIYUKTI KE ADHAR

PAR LIYA JAI.

(3) BIBHINNA PAD JAISE SHIKSHAK (NETARHAT KE SHIKSHAKON KO CHORKAR) STADIUM MANAGER ITYADI KE PADON KO BIHAR SHIKSHA SEVA SAMBARG ME SAMIL KAR LIYA JAI AUR SAMBARGIYA PADADHIKARIYON KO HI IN PADON PAR NIYUKTA KIYA JAI.

6. Dr. Jha argued that a plain reading of the resolution would not give any inkling that it envisaged merger of only teachers of Subordinate Education Service, teaching branch, (male and female) cadres with the Bihar Education Service Class II.

7. Learned Counsel also submitted that from the counter affidavit filed on behalf of the State, it appears that the departmental authorities were still not reconciled to the decision of this court in CWJC No. 12122 of 1998 and the observations of the Supreme court made in the order, dated 19.4.2006 by which Civil Appeal No. 4466 of 2003 was dismissed. The counter affidavit filed on behalf of the State also encloses a copy of the decision of this court, dated 09.12.2002 but that decision too does not support the case of the State that under resolution, dated 11.4.1977 only teachers of Subordinate Education Service, teaching branch (male and female) were absorbed in Bihar Education Service Class II.

8. In reply, the State Counsel submitted that for review of the decisions in CWJC No. 12122 of 1998 and 8147 of 1999, a review petition being Civil Review No. 123 of 2006 was filed by the Bihar Education Service Association that remains pending before the court.

9. Be that as it may. the order, dated 8.9.2006 passed by the Director, Secondary Education, Bihar is in any event untenable because it rejects the claim of the petitioners on a ground completely inapplicable to them. The order also does not take into account the resolution, dated 11.4.1977, the earlier orders of the court and the other materials relied upon by the petitioners.

10. I accordingly set aside the order, dated 8.9.2006 (Annexure 14) passed by the Director, Secondary Education -cum-Joint Secretary, Human Resources Development Department, Govt. of Bihar, Patna and remit the matter with a direction to reconsider the petitioner's claim in light of the earlier orders of this court, and the order of the apex court and to pass a fresh order in accordance with law. A fresh order on the petitioners' claim must be, passed within three months from the date of receipt/production of a copy of this order before the Director, Secondary Education. In the result, this writ petition is allowed to the extent indicated above.