
(1985) 03 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2244 of 1984

Jai Prakash Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-03-1985

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 4(2)
Constitution of India, 1950 — Article 226, 227

Citation : (1985) PLJR 566

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Advocate : Ram Chandra Jha and Kameshwar Prasad Singh, for the Appellant; Mani Lal, (S.C. IV) and Kisto Kumar Gupta, (J.C. to S.C. IV), for the Respondent

Judgement

Birendra Prasad Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India. The petitioner has made a prayer for issuance of a writ of mandamus directing the respondents to treat the petitioner as an assistant teacher of Gayatri Yugal High School, Dohra in the district of Nawadah from the date of issuance of notice, contained in Annexure-1 i.e., from 23.9.1983. Shortly stated the case of the petitioner is that he was appointed as an assistant teacher in the school in question vide resolution No. 3 of the Managing Committee dated 15.12.1978 (Annexure-2). He got the appointment letter dated 22.12.1978 directing him to join the post on 31st of December, 1978 (Annexure-3). The appointment of the petitioner was approved by the Managing Committee on 15.1.1979 (Annexure-4). After joining the said school on 31.12.1978, the petitioner claims that he worked there continuously as an assistant teacher. At the time the school was taken over in 1983 he was holding educational qualification of Bachelor of Arts and had completed the training course. The Special Board constituted for recognition of the school and taking over of the management and control of the school inspected the school in question and submitted a report on 11.11.1982 (vide Annexure-5). The name of the petitioner

is mentioned at serial No. 7 in the list of teachers. Inspite of the fact that the petitioner was working in the school as an assistant teacher his services were not approved as his name was not included in Annexure-1.

2. Mr. Ram Chandra Jha learned counsel appearing on behalf of the petitioner submits that the service of the petitioner shall be deemed to have been taken over by the State Government with effect from the date of issuance of Annexure-1 in terms of section 4(2) of the Bihar non-Government Secondary School (Taking Over of Management and Control) Act, 1981. Learned counsel has relied upon a Bench decision of this court in Krishna Prasad Singh and Others Vs. The State of Bihar and Others, and on another decision by a single Judge of this Court in Yogendra Khan and Others Vs. The State Of Bihar and Others, as also on a decision by S.K. Jha, J. in Jainendra Kumar Jain and Another Vs. Director, Secondary Education-Cum-Additional Secretary, Deptt. of Education, Government of Bihar, .

3. Section 4 of the Act provides the consequences of taking over. Section 4(1) provides that all the assets and properties moveable or immovable owned or possessed by the schools taken over by the State Government u/s 3 shall stand transferred to and be deemed to have been taken into possession and ownership of the State Government. Section 4(2) provides that every officer, teacher or other employee holding any office or posts in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of the State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held before the taking over of the said school and shall continue to do so unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government. The position is simple. As soon as the school is taken over u/s 3 of the Act services of the teachers and other employees of the school are deemed to have been taken over and they become servants of the State. The question only is whether or not they were teachers or employees of the school on the date the school was taken over by a notification u/s 3 of the Act. No counter affidavit has been filed on behalf of the State and there is no denial of the fact that the petitioner was not an assistant teacher of the school on the date the school was taken over u/s 3. In fact, from the inspection report, which has been marked as Annexure-5 in the writ application, it will appear that the petitioner was a teacher in the school on the date of inspection. His name was included in the list submitted with the inspection report at serial No. 7.

4. Mr. Mani Lal, Standing Counsel IV, however, submitted that the Government can impose conditions at the time of taking over of the school u/s 3(3) of the Act; It is true that the Government may put conditions which it considers fit in the notification made u/s 3 of the Act. No condition seems to have been put in the notification (Annexure-1) by which the school was taken over except that

posts of nine teachers were only sanctioned in this school. As against the nine sanctioned posts the services of only six teachers were taken over. The petitioner being at serial No. 7 of the inspection report there appears to be no reason why his services were not taken over. It was submitted by the learned Standing Counsel that the petitioner was not a trained teacher at the time the school was taken over and that the qualification of training was necessary. In this connection he brought to my notice a Government letter No. 25550-80 dated 19.1.1981. This, however, relates to untrained teachers working against the sanctioned posts in the schools which were recognised between 16.10.1977 and 2.10.1980. There is nothing in this letter to show that the services of untrained teachers would not be taken over u/s 3 of the Act or that the untrained teachers who were working in the school as on the date of notification u/s 3 of the Act did not become Government Servants and that their services were not taken over. Learned Standing Counsel then placed before me a copy of letter No. 3464-3514 dated 25th May, 1984 from the Director of Education to the District Education Officers. This is with regard to the training of the untrained teachers of the school which were recognised between 16.10.1977 and 2.10.1980. This is not at all relevant for the purpose of decision of this case.

5. The position is that the petitioner was working as an assistant teacher on the date the school was taken over u/s 3 of the Act. It appears that by now he has also passed the training examination. In my opinion, the petitioner cannot be deprived of the benefit of section 4(2) of the Act and must be deemed to be an employee of the State Government with effect from the date of take over i.e. from 23.9.1983 (Annexure-1). It is not open to the respondents to submit that the service of the petitioner was not taken over as he was not trained. Not only that, this fact has not been asserted in any counter-affidavit but no such terms or conditions of taking over of this school have been produced before me. It is also not discernible from the notification (Annexure-1).

6. Having considered the facts and circumstances of this case and after hearing the counsel for the parties I find that the petitioner has made a case and is entitled to the relief prayed for. The result is that this application is allowed and the respondents are directed to treat the petitioner as an employee of the State Government on and from the date of taking over of the school by Annexure-1 i.e. from 23.9.1983. The respondents are also directed to pay the salary and other emoluments to the petitioner from that date. There shall be no order as to costs.