

(1992) 09 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7690 of 1992

Kamta Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-09-1992

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 3(I)

Bihar Secondary Education Board Act, 1976 — Section 57, 58

Citation : (1993) 1 BLJR 645 : (1993) 1 PLJR 327

Hon'ble Judges : S.B. Sinha, J; Dharampal Sinha, J

Bench : Division Bench

Judgement

S.B. Sinha and Dharampal Sinha, J.—In this application the petitioners have prayed for issuance of a writ of or in the nature of mandamus directing the respondents to pay salary to the petitioner Nos. 1 to 4 with effect from 10th August, 1978 to 16th May, 1983 and to petitioners 5 to 6 from 10th August, 1978 to 31st May, 1982 with interest.

2. The fact of the matter lies in a very narrow compass.

3. The High School Begadaha situate in the District of Gaya was established in January, 1970.

4. The petitioners were appointed by the Managing Committee on the different posts. The said school was granted recognition by the Bihar School Secondary Board with effect from 10-8-1978. In the order of recognition which is contained in Annexure-1 to the writ application it was specifically stated that all the untrained teachers should be removed. The services of the petitioners were not approved. They filed a representation. The petitioner Nos. 1 to 4 thereafter filed a writ application in this Court being C.W.J.C. No. 2463 of 1980. The said writ petition was disposed of on 1st December, 1981. Similarly petitioner Nos. 5 and 6 also filed a writ application being C.W.J.C. No. 2455 of 1980 and the same was disposed of on 6-11-1980.

5. A learned single Judge of this Court in C.W.J.C. No. 2463 of 1980 held :

It may well be that on account of the lack of training the petitioners may rank junior to the teachers whose services have already been recognised earlier on account of they being trained the compassionate view that this Court has been taking in the matter of termination of the teachers already serving in the various schools and following the principle of judicial amity. I would direct Respondent Nos. 1 and 2 to provide requisite facilities to the petitioners to take admission in any recognised college as early as possible preferably in the next ensuing session. In view of the observations made above, the petitioners would continue on their posts. Let an appropriate writ be issued accordingly.

6. However in C.W.J.C. No. 2455 of 1980 the following order was passed :

In view of the policy contained in the above said letter learned Counsel for the petitioners therefore, suggests that the State Government may be directed to send the petitioners to undergo the training accordingly. Counsel for the State is agreeable to such a direction, I for myself also feel inclined that this contention of the learned Counsel for the petitioners, is however, fair and reasonable...I accordingly direct respondent No. 2 the Director of Secondary Education to send the petitioners for training purposes and preferably in the ensuing session and unless the petitioners refused to undergo the training, the vigour of the default clause will not be enforced against them.

The petition is accordingly dismissed of with the above direction.

7. Pursuant to the aforementioned direction the petitioners were admitted in the Government training College. The petitions Nos. 5 to 6 completed their trainings and their results were published on 16-7-1983 whereas results of petitioner No. 1 to 4 were published on 13-8-1985.

8. By reason of the orders dated 11th September, 1983 and 12th September, 1983 which are contained in Annexures 5 and 6 to the writ application, it was directed that the petitioners would be paid their salary from the date they joined the school after being relieved from the training college.

9. The petitioner filed the application before the respondents No. 2 that they should be paid their salary from the date of the recognition of the school and not from the date when they were relieved from the training college.

10. The District Education officer however by an order dated 5th August, 1987 allowed B. A. trained scale of pay to petitioner Nos. 1 to 4 and by another order dated 7th October, 1987 allowed the same scale of pay to the petitioner Nos. 5 and 6 from the date of passing of the training examination.

11. Allegedly the petitioner's grievances have not been met.

12. Mr. Rajendra Prasad Singh, learned Counsel appearing on behalf of the petitioner submitted that in terms of the provisions of Sections 57 and 58 of the Bihar Secondary Education Board Act, the District Education Officer is the

statutory authority to pay the salary and in the event the State-ad any objection to grant the salary from the date of the recognition of he said institution, they should have taken that objection in the earlier writ applications.

13. Mr. J. P. Karn, learned Standing Counsel No. 5 on the other hand, submitted that as the petitioners were untrained they must be held to have illegally been appointed by the Managing Committee in terms of the order of recognition passed in respect of the school in question.

14. Our attention has been further drawn to the fact that it was specifically directed that the petitioners would be paid their salary as untrained teachers and they would be paid their salary as trained teacher only upon production of the training certificate.

In this view of the matter, according to the learned Counsel the petitioners are not entitled to the reliefs prayed for.

15. From a perusal of Annexure--1 to the writ application it became evident that the recognition was granted by the Bihar School Secondary Education Board only on the condition that no untrained teachers should be kept in the school and if any untrained teachers had been working therein, he should immediately be removed as otherwise the recognition granted shall automatically be cancelled. The names of the petitioners also do not figure in the orders as contained in Annexure-1 to the writ application. Thus even the Board did not recognise the services of the petitioners and thus the question of payment of salary to them by the District Education Officer in terms of 1976 Act does not arise.

16. In the earlier writ petition, the contention of the petitioners was in view of a large number of circulars and order issued by the State Govern ment from time to time, a confusion was created and as the private training schools having been abolished, the petitioners could not receive training although they were prepared to undergo such training at once. The petitioners in that situation were directed to be granted the training facilities only on compassionate view.

17. In terms of the orders passed in C.W.J.C. No. 2455 of 1980 so far as the petitioner Nos. 5 and 6 are concerned even they were not allowed to hold their posts. C.W.J.C. No. 2463 of 1980 although the petitioners were allowed to continue on their posts, but in that case also the question of payment of any salary to them during the period they were undergoing training did not arise. By reason of such order in our opinion, the petitioners, did not become entitled to salary as they were permitted to continue in their posts only for the purpose of seniority and for no other purposes. It could not have been the intention of this Court that the petitioners would be entitled to be treated as full fledged teachers although they were not qualified therefor. They were also not entitled to any salary during the period they were undergoing training as such training was not to be impalted at the costs of the State. The services of the petitioners during the period were in a moribund state of affairs.

18. Admittedly the school in question has been taken over in terms of Section 3(I) of the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1980 with effect from 2-12-1980. The services of the petitioners were not taken over nor in law their services could be taken over as they were not trained teachers.

19. Further the petitioners were duly intimated that about payment of their salary as far back as on 1st September, 1983 and 12th September, 1983. The petitioners therefore, cannot be heard to complain at this stage that the said order was illegal inasmuch as this writ application has only been filed on 12-8-1992.

20. The decision of the learned Single Judge in the cases of the petitioners are also contrary to the decision of the Full Bench of this Court in Ham Ballabh Prasad Singh v. The State of Bihar, reported in 1986 BLJR 344 : 1986 PLJR 373. Thus even the equity is not in favour of the petitioner.

21. For the reasons aforementioned, this writ application is dismissed but without any order as to costs.