

(1996) 12 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 10357 of 1995

Kamta Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Citation : (1997) 1 PLJR 114

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Sunil Kr. Singh and Sanjay Kumar Singh, for the Appellant; Ranjan Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner has filed this writ petition for direction on the Respondent to pay salary in favour of the Petitioner with effect from 16th August, 1982, i.e. from the date, the school, in question, was granted permanent recognition and was taken over by the Respondents-State.

2. The brief facts of the case show that one Ram Pyari Balika High School, Darihat in the district of Rohtas, was a private school under a Managing Committee. The Petitioner was appointed in the said school as an Assistant Teacher on 25th May, 1978. His qualification was B.Sc but he was not trained. The school was granted permission to establish on 8th December, 1978, and after necessary inspection, was taken over with effect from 16th August, 1982. At the time of take over of the school, lists of teaching and non-teaching employees of the school were sent to the Respondents. However, no approval was granted in favour of the Petitioner and some other teachers for take over of their services. In this background, the Petitioner had to move before this Court in a writ petition, C.W.J.C. No. 944 of 1985 with prayer for such approval/take over of his service. The said writ petition was disposed of on 7th October, 1994 by directing the Respondents to consider the case of the Petitioner for such approval of his service. It is only thereafter the Respondents came out with the order,

contained in letter No. 923 dated 28th November, 1994, by which the service of the Petitioner was approved by the Respondents-State. The Petitioner has been paid salary with effect from 28th November, 1994 and not from the date of take over of the school. Hence the present writ petition.

3. A counter affidavit has been filed on behalf of the Respondents. In their counter affidavit, it has been stated that it is because of direction of this Court, the service of the Petitioner was approved by the letter dated 28th November, 1994, so the question of payment of salary from the date of take over (16.8.1982) does not arise.

The counsel for the Respondent-State further submits that the Petitioner was not a trained teacher on the date of take over of the school (16th August, 1982).

4. Having heard the parties, according to this Court, the submission as made on behalf of the Respondents-State are misconceived.

5. According to this Court, after take over of a private school, such school becomes a Government school. Though the assets and liabilities of such school are taken over by the State, it is not necessary that the services of all the teaching and non-teaching employees stand taken over. It is the Respondents-State, who in accordance with law and on the basis of staffing pattern and other criteria is to decide as to services of which employee is to be taken over. When such decision is taken, no order like "take over of service" of a person is being issued, but order is issued showing "approval" of service of such employees, which amounts to take over of such employee under the Respondents-State. The "approval of service" amounts, to approval of service of a person, who is already in service. This principle is not applicable with respect to a person who is not in service and is an outsider. The approval of service cannot and does not amount to a fresh appointment but amounts to take over of service of a person under the Respondents-State, who is already in service.

6. In the aforesaid circumstances, the continuity of service of such taken over employee is to be maintained and thereby, on approval, the date of take over of service of such employee will go back to the date of take over of the school.

7. In the present case, the moment the Respondents-State took over the service of the Petitioner by granting approval vide letter dated 28th November, 1994, in the eye of law, it is to be treated that the services of the Petitioner stood taken over with effect from 16th August, 1982 i.e. the date of take over of the school.

8. At this stage, it is to be taken into note that the counsel for the Respondents-State has given references of one Full Bench decision and Division Bench decision of this Court in their counter affidavit.

According to this Court, such decisions are not applicable in the present case. The Full Bench decision, referred to in the counter-affidavit, related to claim of a person for take over of his service under the State. In the present case, the Respondents-State has already taken over the services of the Petitioner by

granting approval. The only question arises in the present case, is whether date of such take over of service will go back to the date of take over of the school or not and, the answer goes in favour of the Petitioner.

9. For the reasons stated above, the Respondents are directed to pay the Petitioner his due salary with effect from 16th August, 1982 i.e. from the date, the school, in question, was taken over. If the Petitioner was not trained on the date of take over of the school, he will be entitled for untrained scale of pay, but he will be eligible for trained scale of pay from the date, the Petitioner became trained and/or the post in the trained scale of pay fell vacant, whichever is later. The pay of the Petitioner is to be fixed and arrears of salary is to be paid within a total period of three months from the date of receipt/production of a copy of this order.

10. The writ petition is allowed with the aforementioned observations and directions.