

(1984) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2476 of 1981

Lakshman Ram and Gyanti Devi

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 4, 4(2), 8

Citation : (1984) PLJR 633

Hon'ble Judges : Ram Chandra Prasad Sinha, J

Bench : Single Bench

Advocate : Yaduvansh Giri and Bishambhar Tiwary, Rajendra Pd. Singh and Tej Bahadur Singh, for the Appellant; Mani Lal, Standing Counsel No. IV and Mr. R.C. Sinha, for the Respondent

Judgement

Ram Chandra Prasad Sinha, J.—In this writ application the petitioners have prayed for quashing the order contained in Memo No. 3577-3601 dated 13th July, 1981 issued under the signature of the District Superintendent of Education, Gopalganj (respondent No. 2) terminating the services of the petitioners as well as ordering them to deposit the entire amount of salaries received by them in Treasury, a true copy of which has been annexed as Annexure-4 to this writ application. The petitioners have challenged the validity of Annexure 4 mainly on two grounds; firstly, that Annexure 4 has not been passed by the competent authority, and, secondly that the order contained in Annexure 4 is penal in nature, but before passing the order, no opportunity either to explain or to show cause was given to them.

2. Petitioner No. 1 was appointed by the competent authority as an assistant teacher in the Primary school vide Memo No. 4096 dated 30th of April, 1966, a true copy of which has been annexed as Annexure 1 to this writ application. In pursuance of Annexure 1, petitioner No. 1 joined Uchhya Prathmik Vidyalaya, Nandpur, Anchal Basantpur, in Siwan district on 11.5.1976. At the time of initial appointment, he was only a Matriculate, but after his appointment, he passed the

Sahitya Bhusan Examination from Hindi Vidyapith, Deoghar, in the year 1970 as a private candidate, and thereafter in the year 1980, he passed Bachelor of Arts Examination from the Gopalgani College as a private candidates from the Bihar University. He also claimed to have received training under the UNISEF scheme from the Teachers Training College, Bangra Jalalpur. True copy of the certificate of the aforesaid training has been annexed as Annexure 2. Thereafter the petitioner No. 1 was transferred to several schools and at present he is posted in Harijan Prathmik Vidyalaya, Mirganj.

3. Petitioner No. 2 was appointed as Middle pass assistant teacher by the District Superintendent of Education, Saran vide Memo No. 20029 dated 31st October, 1970 and she was posted in Prathmik Vidyalaya, Nandpur, Anchal Basantpur, in the district of Siwan, where she joined on 16.12.1970, and since then she has been teaching and was transferred in different schools. Lastly, she was transferred in Harijan Prathmik Vidyalaya, Mirganj, and where she is still working. After her appointment, she claimed to have passed Uttar Madhyama examination from Kameshwar Singh Sanskrit University, Darbhanga, in the year 1971. While both the petitioners were working as assistant teachers in the aforesaid Harijan Prathmik Vidyalaya, Mirganj, the order contained in Annexure 4 was passed without giving them any opportunity of show cause/explanation.

4. Counter-affidavit has been filed on behalf of the respondents, in which, inter alia, it has been asserted that the impugned order has been passed after obtaining permission from the Chairman, Appointment Committee (District Magistrate) and the District Education Officer, Gopalganj, on the ground that the certificates of the petitioners were found to be forged. According to the allegation in the counter-affidavit, the petitioners were appointed on the basis of fake and forged certificates. It has further been alleged that since the appointments of the petitioners were by the District Superintendent of Education, he was competent to take disciplinary action with the approval of the Chairman of the Establishment Committee, which was done in this case.

5. Learned counsel appearing on behalf of the petitioners has submitted that since the school in which the petitioners were working as assistant teachers was taken over by the Government, they have become teachers and employees of the State Government by virtue of section 4 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (hereinafter to be referred to as the "Act") and they should not have been dismissed from service without giving an opportunity of showing cause/explanation as it has been done in this case.

6. The taking over of the school by the Government has not been disputed. Section 4 of the Act deals with the consequences of taking over. Sub-section (2) of section 4 of the Act, which is relevant in this case, is quoted herein below:

Every Officer, teacher or other employee holding any office or post 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 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.

By section 8 of the Act, the State Government has been empowered to issue Executive Instructions for the purpose of removing any difficulty, and the State Government issued Administrative Instructions u/s 8 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Ordinance, 1976, which preceded the aforesaid Act, contained in Government order No. 4557 dated 15-12-1976. The Administrative instructions contained in the aforesaid Government order No. 4557 dated 15.12.1976 have been adopted u/s 8 of the Act and some further instructions have been issued by the State Government under the aforesaid section by the Government Order No. 1897 dated 30.7.1977 as well as by other Government orders issued subsequently. In the case of *Rajeshwar Prasad v. District Superintendent of Education* (1979 B.B.C.J. 732), it has been held that it is open to the State Government to issue Administrative Instructions where there are no specific statutory rules and for all practical purposes these Instructions may provide the procedure for appointment, promotion, transfer etc.

7. Admittedly, no rules have been made u/s 7 of the aforesaid Act and hence the procedure for appointment, promotion, transfer, disciplinary proceedings etc. will be governed by the Administrative Instructions contained in the aforesaid Government Order No. 4557 dated 15.12.1976. Item 7 of the aforesaid Administrative Instructions deals with the procedure of initiation and disposal of disciplinary proceeding, including termination of service. Clause (kha) of the aforesaid item 7, specifically says that the Regional Deputy Director would be the competent authority to take action in regard to the termination of the service of teachers. Clause (Ga) of the said item says that the procedure and rules in connection with the disciplinary proceeding would be the same which have been prescribed for other Government employees.

8. In this case the impugned order has admittedly been passed by the respondent No. 2, and not by the Regional Deputy Director of Education. The stand of the State is that since the petitioners were appointed by the District Superintendent of Education, he was competent to pass the order of dismissal or termination of service of the petitioners after obtaining the approval of the Chairman of the District Establishment Committee. In view of the provisions contained in clause (kha) of item No. 7 of the aforesaid Administrative Instructions, the stand taken by the State Government has got no merit.

9. The second contention of the petitioners, as stated above, is that before passing the impugned order contained in Annexure 4, no opportunity to show cause/explanation was given to the petitioners. In the counter-affidavit filed on

behalf of the respondents, it has nowhere been specifically stated that before passing of the impugned order, the petitioners were given an opportunity either to explain or to show cause. The allegation made against them is that they were appointed on the basis of forged and faked certificates. From a perusal of the impugned order, it is clear that it is penal in nature and before passing the impugned order, the petitioners should have been given the opportunity to explain or to show cause. Clause (Ga) of item No. 7 of the aforesaid Administrative Instructions specifically lays down that for the disciplinary proceeding, the procedure and rules which are prescribed and applicable to other Government employees will be applicable to the cases of teachers also. There is nothing to show in this case that the same rules and procedure were adopted by respondents No. 2 in passing the impugned order.

10. From the facts and circumstances mentioned above, I am of the opinion that Annexure 4 is fit to be quashed. Accordingly, writ application is allowed and Annexure 4 is quashed. But it will be open to the State Government and the competent authority to take action against the petitioners in accordance with law. However, in the circumstances of the case, there will be no order as to costs.