

(2011) 05 PAT CK 0106
In the Patna High Court
Case No : C.W.J.C. No. 2897 of 2005

Minority Secondary Teachers Association and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 30(2)

Citation : (2012) 4 JCR 239

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh

1. A supplementary counter affidavit duly sworn by the Principal Secretary, Department of Human Resources Development has been filed. It says nothing new. It merely reproduces Annexure-6 as Annexure-A. It then states that when the State Government decided to grant interim relief by its Resolution dated 07.08.1998, there was no specific mention of Teachers of Government aided minority institutions. Thus, when State decided to grant interim relief pending pay revision to Government employees and Teachers from April 1994, the Teachers of Government aided minority institutions would not get the same. With reference to Annexure-A to the supplementary counter affidavit, which is Annexure-6 to the writ petition, it is stated that that Resolution of the Government dated 08.11.1990 does not sanction payment of teaching allowance to the Teachers of Government aided minority institution and, as such, payment on these accounts were wrongly made to the Teachers of the petitioners' institution which is a recognised minority institution receiving Government aid. By the impugned order, as contained in Annexure-1, it is rightly sought to be recovered. As pleadings are complete, with consent of parties, the writ petition has been heard for final disposal at this stage itself.

2. Petitioner No 1 is a registered and recognised Association of Minority Secondary Teachers" Association. Petitioners No 2 to 7 are Headmistress/ Headmasters of various Government aided recognised minority schools. Their grievance is primarily against Annexure-1, the letter of the Director Secondary Education dated 24.09.2004 wherein he has stated that the State government by its letter dated 08.11.1990 (Annexure-6 to the writ petition and Annexure-A to the supplementary counter affidavit) did not allow payment of interim relief or teaching allowance to the Teachers of Government aided minority educational institutions and, as such, the schools are directed to recover the same and account for it. Accordingly, payments of the aforesaid amount were stopped and recoveries being made. At one stage, it was stated that till proper enquiries are not conducted, the Teachers, like the petitioners of the Government aided minority schools, would not be paid the aforesaid amounts.

3. Be that as it may, the question, in sum and substance, is whether Teachers of Government aided minority institutions are entitled to the same or not. In my view, they are entitled and were rightly paid.

4. The recoveries are wrong and stoppage of those payments is also. I may first note that to straight questions to the learned State Counsel whether the Government has a policy to discriminate between Teachers of nationalised Government schools and Teachers of Government aided minority schools in matters of payment where payment is to be made from Government aid, the answer rightly was no. The position, thus, is that whether be it a Teacher in a Government nationalised school or a Teacher in a Government aided minority educational institution, they, having the same eligibility/criteria and the same qualification, have to be treated similarly. Similar is the import of the Resolution of the Government being Resolution No. 179 dated 22.11.1981, as contained in Annexure-4 to the writ petition. The decision of the State Government is to maintain absolute parity between the two sets of Teachers in the matter of remuneration. The same principle is again reiterated in Government Resolution No. 237 dated 20.02.1990 (Annexure-5). Thus, two Resolutions clearly show that the Government decision was to treat both of them at parity and there would be no discrimination between the two on ground of being Teachers in a recognised minority school. In my view, this is consistent with Article- 30(2) of the Constitution which prohibits any such discrimination. A reference to Annexure-4 would also show that Government was conscious that pending pay revision, interim relief is made payable. It was specifically decided that even interim relief would be payable to Teachers of Government aided minority schools just like other Government Teachers. All this is being upset on a curious interpretation of Annexure-6 which is Annexure-A. The stand of the State in the supplementary counter affidavit is that when in 1998 (Annexure-B to the supplementary counter affidavit), State decided to grant interim relief pending pay revision, it mentions that it would be available to all Government servants and Teachers as specifically there was no mention of Teachers of Government aided recognised minority institutions that it would not apply to them. In my view, that is a perverse

reading of the Government Resolution. As noticed above, the Government decision consistently was that a parity has to be maintained between the two classes of Teachers. There is no decision on record where this parity has been broken or Government has decided to forget this parity. If this parity is to be maintained then anything that became due and payable to Government Teachers of nationalised schools, that would automatically become payable to these Teachers as well. Thus, if Teachers of Government aided recognised minority institutions were to be deprived of the interim relief, that had to be specifically mentioned, otherwise automatically it would be carried to all Teachers as well.

5. Similarly, when we come to Annexure-A, which is Annexure-6 to the writ petition as well, it nowhere mentions that teaching allowance and interim relief shall not be paid to Teachers of Government aided recognised minority institution. In view of the Government policy, as noted above of maintaining parity, if these payments were started which were indeed started after 1990 then the circular of 08.11.1990 does not restrict its payment. Interim relief came to be granted in 1998, 8 years after this. How could anyone, with a sane mind, state that this circular of 1990 prohibited grant of interim relief to the petitioners when interim relief itself was born in 1998. Thus, I find that the stand of the State is not valid either in law or in fact. I, therefore, hold and direct that as per the decision of the Government itself to maintain complete parity in matters of paying pay scales and payments as between Teachers in Government nationalised schools and Teachers of Government aided minority institutions, anything that is paid to the Teachers of nationalised Government schools, would be payable to the Government aided recognised minority institution as well otherwise there would be chance of violation of Article 30(2) of the Constitution.

6. Thus, Annexure-1 and consequently Annexures-2 and 3, - based thereon, can not be sustained. They are quashed accordingly. State is directed to resume payments of teaching allowance and interim relief to the petitioners and their like till pay revisions were effected as in the case of other Teachers of nationalised Government schools. There shall be no recovery from the petitioners and their like. The writ application is allowed.