

(1996) 04 PAT CK 0027

In the Patna High Court

Case No : Letters Patent Appeal No. 152 of 1988

Mst. Krishna Mani Kaur and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1996

Acts Referred:

Citation : (1996) 2 BLJR 1223

Hon'ble Judges : D.P. Wadhwa, C.J;S.J. Mukhopadhyaya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhyaya, J.—Appellant Nos. 2 to 5 and one Umeshwar Mishra were Respondent Nos. 6 to 10 in the writ petition (C.W.J.C. No. 4579 of 1986. The said writ-petition was filed by the Respondent-Managing Committee of Shri Vishnudutta Mishra Sanskrit High School along with others. One order which was passed by Respondent-Chairman of Bihar Sanskrit Shiksha Board (for short the "Board"), contained in letter No. 16 dated 3rd May, 1983 (Annexure-12 to the writ-petition) was under challenge in the said writ petition. The order which was passed by the appellate authority with respect to appeal against the aforesaid order (Annexure-1 to the writ-petition), the same was also under challenge.

The learned Single Judge by the impugned order dated 28th September, 1986 allowed the said writ petition (C.W.J.C. No. 4579/86), set aside the appellate order (Annexure-1 to the writ-petition) and also set aside the order, contained in letter No. 16 dated 3rd May, 1983 (Annexure-12 to the writ petition), so far as it relates to the appellants (Respondent Nos. 6 to 10 of the writ petition in effect, the appellants 2 to 5 and original appellant Umeshwar Mishra have been thrown out of service.

It is for the said reason, the present appeal has been preferred by the appellants.

2. At this stage, it is to be taken into note that the original Appellant No. 1, Umeshwar Mishra died during the pendency of the present appeal and his heir

(widow) has been substituted in his place, who has prayed for consequential benefit.

3. The brief facts of the case are, as follows : A school was established in Village Baruhi in the district of Bhojpur by public vide their meeting dated 1st March, 1977 which was named as Pandit Vishnudutta Mishra Sanskrit Ucha Vidyalaya, Baruhi. The school at Baruhi started functioning since 15th March, 1977. The original Appellant No. 1, Umeshwar Mishra was appointed as Head Master in the said school, Subsequently, the rest of the appellants 2 to 4 were appointed as Assistant Teachers in the said school at Baruhi. The appellant No. 5 was appointed as clerk in the school at Baruhi.

It is admitted by the authorities that the school at Baruhi was granted recognition by Board on 27th March, 1978 and services of certain teaching and non-teaching employees were also approved, including the services of the appellants by one order No. 2789 dated 28th March, 1978. The appellants continued to function in the school at Baruhi.

The dispute started thereafter.

According to the appellants, the Managing Committee of the School at Baruhi, which was granted recognition by the Board, the said Managing Committee decided to shift the school in its own land, which was in the other village at Bajaria. It is stated that 21 decimals of land in the village Bajaria was donated by Baruhi Panchayat for construction of the school building therein, as the school at Baruhi was continuing in the Danoaja of a private person, namely, Pandit Vishnudutta Mishra. Further, according to the appellants, the school, in question, which was at Baruhi was shifted to its new building in the village Bajaria, Thereafter the appellants continued to function as teacher and non-teaching employees of the school in the said village Bajaria.

It has been alleged by the appellants that some of the teachers, whose services were not approved and/or who were earlier terminated from the services of the school, they opened a new school in the name of the old school, i.e. Pandit Vishnudutta Mishra Sanskrit Ucha Vidyalaya, at the old place i.e. at the Danvaja of a private person, by the help of a new Managing Committee, and thereby they started running a parallel school. It has been contended on behalf of the appellants that the said new Managing Committee which started functioning as Managing Committee in the name of the school at old place at Barahi after the original school shifted to village Bajaria, was not a valid Managing Committee, as it was never approved by the Board.

4. The dispute thereafter continued. One Managing Committee claims that their school is the original one, which has been shifted to their own land and building in the village Bajaria, The other Managing Committee, on the other hand, claimed that their school is the original school which is still being run in the village Baruhi. According to them, the school from Baruhi was never shifted to Bajaria and the Managing Committee of the so called at Bajaria is a parallel

school opened by other persons. This dispute was also brought to the notice of this Court by original appellant-Umeshwar Mishra by filing a writ petition (C.W.J.C. No. 262/83) This Court by its judgment dated 18th June, 1984 held that two schools were functioning with the same name; one at Baruhi and another at Bajaria. The number of students in both the schools are almost equal and thereby ordered the authorities of the Board to consider whether both the schools at different localities are necessary or not and whether any recognition is to be granted to the school at Bajaria. It is only thereafter, the Chairman of the Board by the impugned letter No. 16, dated 3rd May, 1983, decided, the issue after hearing both the parties. The Board decided that the school in the name of Pandit Bishnudutta Mishra at Baruhi which was granted recognition will continue. It further decided that the teaching and non-teaching staff of the said original school Baruhi, who were granted approval by the Board, they should continue to the teaching and non-teaching employees of the school. With respect to such approved teaching and non-teaching employees like the appellants, who have already joined the school at Bajaria, they were ordered to revert back to the original school at Baruhi. The again the. aforesaid decision dated 3rd May, 1983, the other Managing Committee moved before the appellate authority, i.e. the Special director (Sanskrit), who has rejected the appeal by the impugned order dated 20th June, 1986 (Annexure-1 to the writ petition).

In the aforesaid background, the other Managing Committee moved-before this Court by filling C.W.J.C. No. 4579 of 1986. The learned Single Judge by impugned judgment set aside the. appellate order and modified I the impugned letter No. 16 dated 3rd May, 1983 (Annexure-12 to the writ petition). The portion of the order contained in letter No. 16, dated 3rd May, 1983, by which the appellants were directed to revert back and join their school at Baruhi, the same has been cancelled. The effect is that the appellants are no longer remained as teaching and non-teaching employees of the recognized school at Baruhi, and thereby they have been thrown out of service. It is for the said reason, the present appeal has been filed by the appellants.

5. The Counsel for the appellants, while placing all the relevant facts, tried to impress that the original school shifted to Bajaria. Further, according to the appellants, it is the Managing Committee of the original school at Baruhi along with the appellants, who were recognized by the Board. It was submitted that the said Managing Committee having not filed the writ petition, the writ petition itself was not maintainable. It was further submitted on behalf of the appellants that the approval of the appellants having been granted by the Board, when it was originally established and said approval having not yet been cancelled the appellants cannot be thrown out of the school, not any person can be approved in their place.

6. On the other hand, according to the counsel for the Respondents (the Managing Committee who was the petitioner), the appellants having left the school of their own and having joined the school at Bajaria, they ceased to be

the teaching and non-teaching employees of the school at Baruhi. It was submitted that there was no question of reverting them back to the school at Baruhi, and for the said reason, the learned Single Judge rightly set aside the said portion of the impugned letter dated 3rd May, 1983, by which they were ordered to revert back to the school at Baruhi.

7. It will be evident from the pleadings made by the parties that certain facts are not in dispute. The school was opened at Baruhi, the original Managing Committee was approved by the Board. The said Board also approved the teaching and non-teaching employees of the schools at Baruhi by their letter dated 28th March, 1978. The original appellant's (Umeshwar Mishra) service was approved as Head Master of the school and the appellant Nos. 2 to 4 were approved as Assistant Teachers of the school. Appellant No.5 was approved as a clerk of the school. Appellant No. 5 as approved as a clerk of the school. Subsequently, it was taken into note by the State of Bihar that certain teaching and non-teaching employees have joined at the instance of the original Managing Committee at the school Bajaria, By one letter No. 1027 dated 10th November, 1982, the Respondent State ordered that the approval of the school at Baruhi will continue. It further ordered that the teaching and non-teaching employees who were approved by the Board, i.e. appellants, their services will stand approved.

8. Taking into note that aforesaid order of the State Government dated 10th November, 1982, another order was issued by the Board, vide order No. 85D dated 1st July, 1983. The Board also reiterated that the school at Baruhi will continue to be the recognized school and the teaching and non-teaching employees, of the school will remain as approved teaching and non-teaching employees of the said school at Baruhi. It was ordered that the arrears of salary with regard to original appellant (Umeshwar Mishra) be released.

The aforesaid letters which were issued by the Respondent-State on 10th November, 1982 and the order which was issued by the Board on 1st July, 1983 they were never challenged by the writ petitioner-Managing Committee.

9. Such being the position, the aforesaid orders contained in letter dated 10th November, 1982 and order dated 1st July, 1983 still hold the field. According to me, such a decision having already been given by the Respondent-State as well as by the Board and having never been challenged by the writ petitions-Managing Committee, if such decision was subsequently reiterated by impugned letter No. 16 dated 3rd May, 1983, it was not open to them to challenge the same either before the appellate authority or before this Court.

Apart from the same, it is evident and clear from the facts narrated above, that the dispute continued to remain as to whether the original school shifted to Bajaria or not. The matter was settled in the year 1982-83. During the aforesaid period, if one or other teaching and non-teaching employees like the appellants, on good faith, at the instance of the original Managing Committee, has/have performed duty in the other school, their approval which was granted by the

Board in their favour, will not cease automatically. Further, no separate order of termination having been issued and approved by the Board, such teaching and non-teaching employees like the appellants will not cease to be the employees of the original school. Thereby, I find no illegality in the order contained in letter No. 16 dated 3rd May, 1983, by which the appellants were directed to rejoin their school at Baruhi.

10. For the reasons stated above, I hold that the decision given by the learned single Judge does not hold good, being based on erroneous facts.

11. Accordingly, the impugned judgment is set aside. In effect, the appeal is allowed and the writ petition (C.W.J.C. No. 4579 of 1986) stands dismissed. The Respondents are directed to release arrears of salary in favour of the appellant Nos. 2 to 5. So far as the substituted heir of original appellant (Umeshwar Mishra) is concerned, it is ordered to provide her with the arrears of salary which was due to the original appellant (Umeshwar Mishra) for the earlier period, till he died.

12. This order is to be complied by Respondents within a period of four months from the date of receipt/production of a copy of this order.

13. The letters Patent Appeal is allowed with the aforementioned observations and directions. There will be no order, as to costs.

D.P. WADHWA, C.J.

I agree.