

(2015) 11 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 3052 and 10097 of 2012 and 329, 543, 546, 1264 and 1478 of 2013

Purnendu Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2016) 1 PLJR 789

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Kundan Kumar Sinha, for the Appellant; Ashok Kumar Keshri, AAG11, for the Respondent

Final Decision : Disposed Off

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. In the batch of the writ applications the issue raised is with regard to the validity of appointment on the post of Panchayat Teacher in Nawadaben Gram Panchayat in Bhojpur District.

3. The facts giving rise to all these writ applications lie in a narrow compass. Pursuant to an alleged selection process undertaken in the year 2008 appointment of eleven teachers were made on the post of Panchayat Teacher which were assailed by the petitioner Anita Kumari and the petitioner Renu Kumari before the District Teachers Employment Appellate Authority, Bhojpur (hereinafter referred to as "the Tribunal"). The Tribunal by its order dated 14.3.2012 in Case No. 37 and 37A both of the year 2011 had recorded findings that the entire set of appointments of eleven teachers was out and out illegal and had directed for independent inquiry to be conducted by the District Education Officer, Bhojpur. Nonetheless the Tribunal by the same order had rejected the cases of Anita Kumari and Renu Kumari for their own appointment.

4. Thereafter the same order of the Tribunal was assailed by the petitioner Anita

Kumari in C.W.J.C. No. 10097/2012, wherein though all the eleven teachers, who are also now petitioners in the batch of the writ petitions, were made party but the learned Single Judge on noticing apparent mass irregularity in the appointment of eleven persons on the post of Panchayat Teacher had found no necessity of issuing notice to eleven appointed teachers, who were made private respondents in C.W.J.C. No. 10097/2012 and had disposed of the same with a direction that the official respondents must act upon the finding given by the Tribunal, inasmuch as there was no need of fresh inquiry as directed by the Tribunal. The order of this Court dated 13.7.2012 reads as follows:

"Heard learned counsel for the petitioner and the State.

The petitioner approached the District Teachers Appointment Appellate Tribunal, Bhojpur in Appeal No. 37 of 2011 for cancelling the appointments of respondent Nos. 12 to 22 on the post of panchayat Teachers in the second phase of appointments in 2008 at Nawadaben Gram Panchayat. He contended that no proper notice for counseling was intimated to the candidates.

Learned counsel for the petitioner submits that the impugned order of the Tribunal is in two parts. The first part relates to any delay that may be attributable to the petitioner as held by the Tribunal. Without prejudice to the same on facts, in the second part of the order the Tribunal has arrived at a finding of large scale irregularities in the selection process and not individual illegal/irregular selections. If the entire selection process was vitiated, individuals are not relevant. The official respondents, in view of the findings of the Tribunal with regard to large scale irregularities cannot sit over the same only because the Tribunal may have opined that the application of the petitioner was belated.

Counsel for the State submits that the Tribunal has left it to the discretion of the authorities.

In a case of large scale irregularities in selection, if a finding has been arrived at by the Tribunal to that effect, the question of the respondents vacillating on further action merely because the Tribunal may have so opined giving them any element of discretion does not permit inaction. If the order of the Tribunal has attained finality the official respondents are required to act in accordance with law.

In the nature of the order passed, in a finding of large scale irregularities in the selection process, where no individual notices are necessary, mandamus be issued to comply the order of the Tribunal itself, it is not considered necessary to issue notice to the private respondents. If the enquiry was held once which was perused by the Tribunal also, the Court does not approve of the observations of the Tribunal for a fresh enquiry.

Let such consideration be done within a maximum period of three months from the date of receipt/production of a copy of this order.

The writ application stands disposed."

5. Pursuant to the aforementioned order the services of all eleven teachers were terminated by an order dated 30.11.2012, whereafter an appeal was filed by the aforesaid eleven teachers being L.P.A. No. 1716/2012. The Division Bench in its order dated 1.4.2013 had set aside the order of the learned Single Judge on the ground that eleven affected teachers being appellants in L.P.A. No. 1716/2012 were not given an opportunity to place their case and to that extent the order of the Division Bench dated 1.4.2013 reads as follows:

"Re: Interlocutory Application No. 7211 of 2012:

The delay of 55 days occurred in filing the Letters Patent Appeal is condoned.

Interlocutory Application stands disposed of.

Re: Letters Patent Appeal No. 1716 of 2012.

Feeling aggrieved by the order dated 13th July, 2012 made by the learned Single Judge in CWJC No. 10097 of 2012, the respondent Nos. 12 to 22 have preferred this appeal under Clause 10 of the Letters Patent.

It is the case of the appellants that pursuant to the impugned order the services of the appellants as Panchayat Teachers under the Gram Panchayat Nawadaben, Udwant Nagar, Bhojpur, Ara has been terminated in October 2012. It is the grievance of the appellants that the impugned order has been made ex-parte against the appellants.

It is indisputable that the impugned order has been made without notice to the appellants. The learned Single Judge has categorically held "it is not considered necessary to issue notice to the private respondents."

The Appeal deserves to be allowed on the sole ground that the impugned order has been made ex-parte against the appellants.

For the aforesaid reason, the appeal is allowed. Impugned order dated 13th July, 2012 made by the learned Single Judge in CWJC No. 10097 of 2012 is set aside.

Interlocutory Application 7212 of 2012 stands disposed of.

Learned Advocate Mr. Kundan Kumar Sinha has appeared for the appellants. He assures that the appellants-respondents Nos. 12 to 22 in the writ petition shall file counter affidavit within one month from today.

Learned Advocate Mr. Kundan Kumar Sinha appearing for the appellants has submitted that pursuant to the impugned order the service of the appellants has been terminated in October, 2012. The orders are the subject matter of challenge in CWJC No. 543 of 2013.

Learned Advocate Mr. Arvind Kumar Sinha appears for the Gram Panchayat. He denies that the service of the appellants has been terminated as alleged.

Be that as it may, let the matters be sorted out before the learned Single Judge.

CWJC No. 10097 of 2012 is revived and remitted to the learned Single Judge according to the roster to be heard and decided on merits with the CWJC No. 543 of 2013."

6. Pursuant to the aforementioned order of the revival of the writ petition and the remand by the Division Bench not only the case of Anita Kumari, C.W.J.C. No. 10097/2012 has been placed before this Court but even other writ petitions involving the same issue relating to appointment of eleven Panchayat Teachers have been tagged together and they all have been heard by this Court on a number of dates and are now being disposed of by this common order.

7. Thus, as would be apparent from the facts noted above there are two competing claims, one being advanced by the petitioner Anita Kumari and Renu Kumari, who claim that the entire set of appointment of eleven Panchayat Teachers in Nawadahben Gram Panchayat was a sham transaction, inasmuch as according to them the provisions of Bihar Panchayat Teachers Appointment Rules, 2006 and specially the procedure laid down under Rule 9 were not at all followed and in fact no counseling as prescribed under Rule 9 was held as a result whereof more meritorious candidates like the petitioners Anita Kumari and Renu Kumari were left out and the persons having lesser marks in form of eleven persons were appointed on the post of Panchayat Teacher.

8. Learned counsel for the petitioners Anita Kumari and Renu Kumari in this regard has heavily relied on the earlier finding recorded by the Tribunal in its order dated 14.3.2012 in Case No. 37 and 37A of 2011 as also on the order of the learned Single Judge dated 13.7.2012 in C.W.J.C. No. 10097/2012. According to the learned counsel for the petitioners Anita Kumari and Renu Kumari these findings of the Tribunal and the learned Single Judge with regard to there being mass illegality in the appointment of eleven teachers were not even reversed by the Division Bench while remitting the matter only on the ground of there being not heard by the learned Single Judge while passing the order dated 13.7.2012.

9. Counter claim comes from Mr. Rajendra Prasad Singh, learned senior counsel representing those 11 persons being the other set of writ petitions appointed on the post of Panchayat Teacher that at no point of time these 11 teachers were heard either by the Tribunal or by the learned Single Judge and in fact when their order of termination was passed on 13.11.2012, the Division Bench, being impressed with only this aspect, had set aside the order of the learned Single Judge and had remitted the matter back on the appeal filed by them by an order dated 1.4.2013. Their further assertion by way of reply to the counter affidavit is that each and every procedure of Rule-9 was strictly followed in the appointment of the petitioners.

10. This court had an occasion to hear these cases on a number of dates. In fact, this Court had called for and also looked into the records for finding out as to whether Rule-9 was observed in letter and spirit in the appointment of eleven teachers. As noted above, Rule-9 lays down a detailed procedure and its main

object is to see that every candidate, who has filed an application for appointment on the post of Panchayat Teacher, gets fair treatment firstly at the stage of preparation of draft merit list and also consideration of objections on such draft merit list before finalizing the final merit list. It is only after the finalization of the merit list that the process of counseling has to be observed.

11. Somehow the authorities have been confused at this stage of the verification of the records, which is to be done at the stage of preparation of draft merit list with the concept of counseling. This court will not say anything further because it now wants the District Teacher Employment Appellate Authority, Bhojpur at Ara to examine the whole aspect afresh inasmuch as there eleven appointed teachers who had continued in service for a period of almost three years were also not heard by the Tribunal.

12. This Court, therefore, would remit the matter back to the Tribunal for fresh hearing. While doing so, the Tribunal shall not be in any way influenced by the earlier findings arrived in the order dated 14.3.2012 in the case filed by Anita Kumari. In other words, the Tribunal shall go into the validity of the appointment of all 11 teachers who were said to be appointed and whose appointments have been cancelled on 30.11.2012. For this purpose, the records which have been produced by the official respondents are being handed over in sealed cover to Mr. Raja Ahmed, learned AAG, and such sealed cover will be handed over by him to the District Education officer, Bhojpur for its being produced before the Tribunal in the sealed cover itself.

13. Since all the 11 terminated teachers are already before this Court represented by their respective counsels, this Court would direct them as well as the complainant Anita Kumari and Renu Kumari to appear before the Tribunal on 14.12.2015. On that day, the Tribunal shall give opportunity to all the 11 teachers to submit their written statement of defence in of their appointment. The complainant Anita Kumari and Renu Kumari shall also have the same opportunity to file their written assertion pointing out the infirmity which, according to them, has vitiated the appointment of all the 11 persons.

14. The Tribunal having thus been given the complete picture both by the complainant Anita Kumari and a Renu Kumari as well as the 11 appointed teachers shall examine the whole process of appointment of eleven teachers with the help and scrutiny of the original records to be produced in sealed cover by the District Education Officer. If the Tribunal would find that the procedure laid down under Rule-9 was followed in letter and spirit and all the 11 teachers do meet the prescribed qualification as per rules and were the best candidates on merit in their respective category, it shall not disturb the appointment of 11 teachers but, on the other hand, if the Tribunal finds that the appointment of all the 11 persons or some of them is vitiated on account of non-compliance of any of the provision of Rule-9, it shall pass a fresh order recording its concurrence to the order of termination dated 30.11.2012. In other words, the validity of the order of termination of the eleven teachers dated 30.11.2012 shall remain

dependent on the ultimate findings to be arrived by the Tribunal.

15. It is made clear that till a final fresh decision is taken by the Tribunal the eleven teachers whose services have already been terminated on 30.11.2012 shall have no right to their post nor would be allowed to work on such post unless an until the Tribunal declares their appointment to be valid and legal. In this regard though a valiant effort was made by the counsel representing those eleven Panchayat Teachers that if the order of the learned Single Judge has been set aside by the Division bench in the appeal filed by them their order of termination dated 30.11.2012 shall automatically stand revoked.

16. This Court, however, is not impressed with such submissions inasmuch as even when the Division Bench was aware of the fact that the petitioners' services were terminated on 30.11.2012 it did not quash that order and had only remitted the matter back after quashing the order of the learned Single Judge. Thus, the eleven teachers whose services were terminated on 30.11.2012 shall be deemed to be out of service because that order dated 30.11.2012 has not been interfered by any authority or the Court.

17. That, however, shall not be the end of the matter so far it relates to the officials. This Court had the occasion to see that not only the records were kept in a most disorderly manner but, in fact, a lot can be said as a complete abdication of power and function not only by the Panchayat Secretary and Mukhia while exercising power under Rule 9 in making such appointment of eleven teachers but also the manner in which they have conducted even after 30.11.2012. Let it be noted that rightly or wrongly the order dated 30.11.2012, terminating the services of 11 teachers, had become final and was not stayed either by this Court or by the Tribunal.

18. In that view of the matter, no one in the world had a power to make payment of salary of any of the 11 teachers after 30.11.2012 unless there was an order of a superior court or authority. What has however transpired is that the same Panchayat Secretary, who was the signatory to the termination order dated 30.11.2012, has himself been made responsible in making payment of salary to three of the 11 terminated teachers.

19. What really shocks this Court is that the District Education Officer had already taken a decision to set aside the appointment of eleven teachers as per the observation of the Tribunal or of the learned Single Judge and had also got it acted upon by terminating the services of 11 teachers in form of the order dated 30.11.2012 passed and yet the District Programme Officer (Establishment), Bhojpur also became party to payment of salary to the three of the 11 teachers for the period after 30.11.2012.

20. The submission of Mr. S. Raza Ahmad, that the District Programme Officer, Bhojpur only had put his signature on the salary bills of those three terminated teachers also does not satisfy this court. The District Programme Officer, Bhojpur being the Drawing and Disbursing Officer, if the bills had gone to him in relation

to 3 out of 11 terminated teachers, it was his duty to safeguard the government revenue by not allowing such payment to be made unless there was an order of the superior court or authority. This aspect therefore which led to loss of Rs. 5,22,000/- and which will be very difficult to be recovered from the three terminated teachers even if their appointment is upheld or otherwise and will lead to counter claim of rest of the 8 teachers in case the amount is not recovered from them would by itself create a anomalous situation.

21. Thus, for this purpose the responsibility has to be fixed and whosoever whether Panchayat Secretary, Mukhia, Headmaster, the Block Education Officer or the District Programme Officer are found responsible for making such payment of Rs. 5,22,000/- to the three of the eleven terminated teachers must account for the same and that amount must be recovered from those persons of-course after holding of an enquiry which has to be conducted by the Director, Primary Education himself. This enquiry shall not be influenced by the outcome of the decision to be taken by the Tribunal in the matter of either approving the termination order dated 30.11.2012 or even on taking a contrary view of reinstating them back in service.

22. It is, however, made clear that the Tribunal must take its decision within a maximum period of four months from the date of appearance of all the parties before it. It also goes without saying that if any of the parties does not appear on 14.12.2015, he or she will have no right to be heard by the Tribunal.

23. With the aforementioned observation and direction, all these writ applications are disposed of.

24. The personal appearance of the officials, namely, Medo Das, District Education Officer, Ara and Ms. Kumari Sumitra Sinha, Block Education Officer, Udwant Nagar, Bhojpur is dispensed with.