
(2003) 02 PAT CK 0044
In the Patna High Court
Case No : L.P.A. No. 1738 of 1995

Raj Narayan Ray and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Citation : (2003) 51 BLJR 567 : (2003) 3 PLJR 70

Hon'ble Judges : Ravi S. Dhawan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Uday Chand Prasad, for the Appellant;
Dilip Kumar, JC to GP V, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhawan, C.J. and R.N. Prasad, J.—The most significant aspect of the case is best noticed in a paragraph of the order of the learned Judge, which this Court reproduces :

"Counsel for the petitioners placed reliance on the minutes of the Minister Incharge and the Chief Minister as contained in Annexure-6. It was pointed out that the Minister has suggested that the services of the petitioners may be recognised from the date they attained the age of 18 years which was accepted by the Chief Minister."

2. It is not understood why the petitioners filed the writ petition as they had rested and bided their peace. Perhaps, they would have been above to get away with a regularised appointment. But, temptation to add two and half year so far as one petitioner is concerned and six months in so far as the other is concerned, let them into a trap which the serenity of law did not let them get away with. Bad situations and bad practices do not make good law.

3. The facts in the case are glaring but simple. Petitioner No. 1 (Raj Narayan Ray) was appointed on 26th December, 1969. In pursuance of this appointment he joined the school on 2 January, 1970. His date of birth is 15 December, 1954.

Thus, he was about 15 years of age when he was appointed as a teacher. Not only this, he joined the school for one day on 2 January, 1970. Thereafter, he proceeded on study leave. The first question is, is a sabbatical permitted to a primary school teacher? This petitioner did his intermediate science in 1972 and B.Sc. in 1974 and he was supposed to join the school in 1974. Clearly, he was absent from the school for four years. Such a long leave of absence warrants dismissal not an appointment. The contention is that he had taken leave. The another question is how he was appointed in 15 years. The next petitioner (Ram Chandra Prasad) was appointed on 15 December, 1970. He joined the school on 1 January, 1971. This petitioner was born on 18 May, 1953. On the date of appointment he was 17 years and some months.

4. Both the petitioners were not even 18 years of age when they were appointed.

5. The arguments before the Court have been that the cut-off date may not be reckoned from the date as on 1 January, 1971 but some date in 1983 when the school of these petitioners was recognised. The Court is not going into the question whether the cut-off date is 1 January, 1971 or 1981 or 1983.

6. Education is basically a public function. The fact that a school may be taken over by the State enjoins a public accountability. After all, such those teachers who belong to a taken over school virtually enter the Government service. Such schools receive State aid. Teachers at such taken over of schools receive a pay-scale.

7. The circumstances should not come out to such a ridiculous situation that any body could enter into service through the back door as a minor by showing that he is on the staff roil of the school at the time of its taking over. These petitioners are/ were minors at the time of their appointments. One did not even teach for four years after he was appointed. ,

8. In so far as a situation of over age is concerned, there may be an aspect that some authorities would have a discretion to relax the age. But, if a person is under age, the defect is inherent and this illegality cannot be cured.

9. In the circumstances, both equity and law are against the petitioners. The Court can hardly certify that the learned judge had committed any error in not granting relief on the petition. In case the relief were granted/the petitioners truly have entered service iIllegally and such appointment cannot be regularised.

10. In the circumstances, the Court is not inclined to interfere in this case. The Court cannot help with a parting remark that the petitioners did succeed in politics when they obtained dispensation and concession for regularisation of their service by the Minister incharge and that had the endorsement of the Hon"ble Chief Minister, whoever he was at that time. The petitioners should have been satisfied in getting away with that irregularity or illegality. They made a mistake to come to the High Court and gave an occasion for all these to be noticed.

11. Dismissed.