
(2004) 03 JH CK 0086
In the Jharkhand High Court
Case No : C.W.J.C. No. 835 of 1994 (R)

Raj Nath and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 241

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Rashmi Kumari, J.C. to S.C. II, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In the present writ application the petitioners have prayed for quashing the order as contained in Annexure 3, i.e., the letter dated 16.9.1993 issued by the Director, Primary Education, Bihar. Patna directing the District Superintendent of Education, Palamau to terminate the services of the writ petitioners of C.W.J.C, No. 2042 of 1992 (R) who were working as Orderly/ Maids and after paying the salary from 1.12.1990 till the date of their termination. Further prayer is for quashing the order dated 3.12.1993 as contained in Annexure 4 series whereby the District Superintendent of Education, Palamau passed an order of termination of the petitioners pursuant to the order of the order Director, Primary Education.

2. The petitioner No. 1 Rajnath Ram was appointed as Orderly/Peon on 18.12.1984 and he joined in Primary Girl's School, Haidar Nagar, Palamau. Petitioner No. 2 Harihar Ram was appointed as Orderly/Peon on 20.10.1984 and he joined in Government Middle School, Kandi, Palamau. Petitioner No. 3 Kaushalya Devi was appointed on 3.1.1985 as Maid (Dai) and she joined in Government Primary School (Urdu), Haider Nagar. Petitioner No. 4 Saraswati Devi was also appointed as Maid (Dai) on 16th January, 1985 and she joined in

Government Girls Primary School, Nagar Utari, Palamau. Petitioner No. 5 Champa Devi was also appointed as Maid (Dai) on 31.12.1985 and she joined Government Girl's Middle School, Bishrampur. Petitioner No. 6 Satyadeo Shukla was appointed as Orderly/Peon on 22.10.1984 and he joined Government Middle School, Silidag, Palamau and Petitioner No. 7 Paraspati Devi was appointed as Maid (Dai) on 3.1.1985 and she joined in Urdu Primary School, Kasab Mohalla, Daltonganj.

3. The petitioner No. 1 and others filed writ application being C.W.J.C. No. 2042 of 1992 (R) before the Ranchi Bench of the Patna High Court for payment of their salary which had been withheld from the month of December, 1990. This Court by order dated 6.4.1993 disposed of the writ application in view of the stand taken by the respondents that the appointment of the petitioners were illegal and further noticing the fact that the Director, Primary Education, Bihar, Patna by order dated 5th February, 1993 had directed the District Superintendent of Education to take steps for the termination of the services of the petitioners after issuance of notice to them. This Court directed the respondents to pay the salary to the petitioner from December, 1990 till their services were terminated in accordance with law. Thereafter, by Annexure 4 series the services of the petitioners were terminated by the District Superintendent of Education, Palamau by separate letters dated 3.12.1993 which are already under challenge in this writ application.

4. The case of the petitioners is that they were working in the respective posts which were already sanctioned but their services were wrongly terminated: on the ground that the posts against which they were holding had already been abolished and therefore, no appointment could have been made against the posts which are not existent.

5. Mr. Saurav Arun learned counsel for the petitioners has drawn my attention to the letter dated 12.11.1973 as contained in Annexure 5 to the writ application and submitted that respondents have terminated the petitioners from the service on the basis of the said very letter which is not applicable in the case of the petitioners. From perusal of the said very letter it appears that the Government had a decision that post of Orderly/Peon or the post of Maids (Dai) were only sanctioned in, those schools which were recognised prior to 1.4.1949 and after 31.3.1949 no post of Orderly/Peon or Maids (Dai) in the Government recognised schools were sanctioned and therefore, no payment can be made to Orderly/Peons or Maids (Dai) working in the school which was recognised after 1.4.1949 and therefore, no appointment be made on the post of Orderly/Peon or Maids (Dai) after the retirement of those incumbents who were working against the said post.

6. This Court by order dated 18.8.2003 directed the District Superintendent of Education, Palamau to file supplementary counter-affidavit stating the dates on which (1) Kanya Madhya Vidyalyaya, Nagar Untari, Palamau; (2) Urdu Prathmlk Vldyalaya Haider Nagar. Palamau; (3) Urdu Ballka Prathmik Vidyalyaya, Kasai

Muhalla. Daltonganj; (4) Kanya Madhya Vidyalaya, Bishrampur, Palamau; (5) Rajkiya Madhya Vidyalaya, Sllidag-1, Palamau; (6) Rajkiya Madhya. Vidyalaya Kanri, Palamau; (7) Kanya Prathmlk Vidyalaya, Haider Nagar, Palamau were recognised by the Government. Pursuant thereto supplementary affidavit has been filed duly sworn by the District Superintendent of Education, Palamau. In paragraph 4 it has been stated that except Urdu Balika Prathmik Vidyalaya, Kasai Muhalla, Daltonganj, the other six schools in question were recognised by the Government prior to 31.3.1949.

7. In view of the supplementary counter-affidavit filed on behalf of the District Superintendent of Education, it appears that the ground on which the services of the petitioner Nos. 1 to 6, namely, Rajnath Ram, Harihar Ram, Kaushalya Devi, Saraswati Devi, Champa Devi, Satyadeo Shukla were working in the school, which were recognised prior to 31.3.1949 was absolutely wrong because letter of the Government as contained in Annexure 5 specifically excluded the schools which were recognised by the Government prior to 1.4.1949. The posts of Orderly/Peon or Maid (Dai) were sanctioned in those schools which were recognised prior to 1.4.1949. It has not been disputed by the respondents that the petitioner Nos. 1 to 6, namely, Rajnath Ram. Harihar Ram, Kaushalya Devi. Saraswati Devi, Champa Devi, Satyadeo Shukla were working in the schools which was recognised prior to 1.4.1949, and therefore. I hold that the termination of the petitioner Nos. 1 to 6 was contrary to the letter of the Government as contained in Annexure 5.

8. Therefore, this application is allowed so far as the petitioner Nos. 1 to 6, namely. Rajnath Ram, Harihar Ram, Kaushalya Devi, Saraswati Devi, Champa Devi, Satyadeo Shukla are concerned, and order of termination of the petitioner Nos. 1 to 6 namely, Rajnath Ram, Harihar Ram, Kaushalya Devi, Saraswati Devi, Champa Devi, Satyadeo Shukla as contained in Annexures 4 to 4/5 are hereby quashed.

9. So far as the petitioner No. 7, namely, Paraspatti Devi is concerned, she joined at Government Middle School, Utari, Daltonganj which was not recognised prior to 31.3.1949 and therefore, the order of termination of the petitioner No. 7 as contained in Annexure 4/6 was in consonance with the Government letter as contained in Annexure 5 to the present writ application. Accordingly this writ application is dismissed so far the petitioner No. 7, namely, Paraspatti Devi is concerned.