

(2016) 04 PAT CK 0075

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5232 of 2013

Ram Babu Das

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 210

Hon'ble Judges : Mr. Shivaji Pandey, J.

Bench : Single Bench

Advocate : Mr. Raghwendra Sharan Pandey, Advocate, for the Appellant; Mr. Sunil Kumar, AC to AAG 6, for the Respondent

Final Decision : Allowed

Judgement

Mr. Shivaji Pandey, J. (Oral) - Heard learned counsel for the petitioners and learned counsel for the State.

2. In the present writ petition, petitioners are challenging the order dated 15.12.2009 passed by the Director, Primary Education, Government of Bihar, Patna by which the claim of the petitioners for their payment of salary has been rejected.

3. From the record it appears that Nehru Shishu Middle School, Mirdaha Toli, Karnalganj, Gulzarbagh, Patna was established in the year 1962. As per claim of the petitioners, petitioner nos. 1 to 4 are teachers whereas petitioner no.5 is Peon appointed by the Managing Committee after observing due process of law. Petitioners have knocked the door of this Court on different occasions by filing writ petitions vide C.W.J.C. No. 1862 of 1977 and C.W.J.C. No. 9675 of 2000 and from initial stage they are claiming that School is a general School was given aid from the Government. It further appears that vide letter dated 23.9.1995 the District Superintendent of Education, Patna has written a letter to Deputy Director, Primary Education, Bihar, Patna for payment of salary to the petitioners

and in response thereto the Director, Primary Education has sought report but it was always elusive. It has been claimed that though the School in question is recognised which was established under the provisions of the State Government and teaching staffs were entitled for their salary and other benefit but always they are facing step motherly treatment.

4. Petitioners approached this Court vide C.J.C. No. No. 9675 of 2000 and this Court has disposed of the case whereby gave direction as follows:

"Accordingly respondent nos. 3 and 4 are directed to consider the claim of the petitioner in the light of Annexure-5 which is resolution no.841 dated 27.3.1981 as well as Annexure-8 and 9 to the writ application. Consideration of petitioners case by the concerned respondents be made immediately on receipt of the representation filed by the petitioners in this regard and payment should be made to them in the light of Annexure 5, 8 and 9.

Accordingly this application is disposed of."

5. The matter remained pending whereupon the petitioners approached under contempt jurisdiction. The Director, Primary Education, Government of Bihar, Patna by the impugned order rejected the claim of the petitioners on the ground that there is no material to show that the School in question had ever received any aid from the State of Bihar.

6. Learned counsel for the petitioners has submitted that stand taken by the State is completely wrong, belied from the fact that teachers and staffs of the School had received salary earlier as they were paid salary from December, 1976 to February, 1983 and the cheque was prepared for the period since March, 1983 to February, 1993 but later on the same was cancelled so much so he has also drawn the attention of this Court to the letter dated 2.12.2009 issued under R.T.I by the District Superintendent of Education to one Shri Shashi Bhushan Mishra, Secretary, Bal Jagrit Middle School, Kankarbagh, Patna attaching list of Schools, Minority/General School (approved by the State Government) which are getting aid from Government where the name of the School of the petitioners is standing at item no. 21 so much so letter dated 16.5.1979 shows that the then District Superintendent of Education dissolved the Managing Committee and new Managing Committee School was established.

7. These are supporting documents to show that School in question was Government aided School and Director, Primary Education Government of Bihar, Patna has not examined this aspect of the matter and wrongly arrived to a conclusion that petitioners claim is not proper as well as the school in question is not a Government aided School.

8. Learned counsel for the State has tried to justify the order passed by the Director, Primary Education, Government of Bihar, Patna but in the face of these unimpeachable documents it sufficiently indicates that the School in question is as Government aided General School.

9. In such view of the matter, the order dated 15.12.2009 suffers from non-application of mind and it appears that the Director, Primary Education, Government of Bihar while passing the order has not examined the relevant record and without examining the record he has passed the order.

10. Accordingly the impugned order dated 15.12.2009 is set aside and matter is remanded back to the Director, Primary Education, Government of Bihar, Patna to consider the case of the petitioners and take a positive decision.

11. For the convenience, petitioners are directed to file a fresh representation annexing all supporting materials including the copy of the present order before the Director, Primary Education, Government of Bihar, Patna who will decide the case of the petitioners and pass a reasoned order within a period of three months from the date of filing of the representation.

12. With the aforesaid observation and direction this writ petition is allowed.