

(1996) 11 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 1998 of 1992

Ram Babu Yadav and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 01-11-1996

Acts Referred:

Citation : (1997) 1 PLJR 251

Hon'ble Judges : J.N. Dubey, J;I.P. Singh, J

Bench : Division Bench

Advocate : Bal Bhadra Pd. Singh and Ashok Kumar Sinha 3, in C.W.J.C. No. 1998 of 1992 and Chandra Shekhar and Tara Nath Jha, in C.W.J.C. No. 4372 of 1992, for the Appellant; B.N. Singh and Ram Priya Sharan Singh, for the Respondent

Final Decision : Allowed

Judgement

J.N. Dubey, J.—Petitioners have filed these writ petitions for issuing a writ of mandamus commanding the Respondents to treat them teachers of the State Government and pay them salary from the date of taking over of their schools under the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (for short "the Act").

2. The claim of the Petitioners in C.W.J.C. No. 1998 of 1992 is that they were appointed as Assistant Teachers in the Bindeshwari Prasad Yadav Middle School, Mangashihol, Marona, District Supaul (Saharsa) (for short "the school") by its Managing Committee on 21.11.1971 and 30.11.1972 respectively in the pay scale of untrained matric teachers. The school was taken over by the State Government u/s 3(2) of the Act on 12.1.1981. While five assistant untrained matric teachers of the school, who were appointed prior to 1.1.1971, were given regular pay scale of untrained teachers, the Petitioners were sent for training in the Primary Teachers Training College, Sakhasohan, Manhorra, Madhepura. After completing their training on 31.5.1983, they joined the school in the forenoon of 2.6.1983 and since then they have been continuously working there as assistant

teachers. The Headmaster of the school after accepting their joining report referred the matter to the District Superintendent of Education, Saharsa through the Deputy Inspector of Schools, Supaul for payment of their salary. In the meantime, the result of teacher training examination of the Petitioners was declared in April, 1984 in which both the Petitioners had succeeded. On 31.12.1988, the District Superintendent of Education, Saharsa informed the Petitioners that the matter of payment of their salary has been referred to the State Government for necessary instructions. However, no final decision was taken by the State Government in this regard, with the result the Petitioners are not getting any salary. The Petitioners made several representations to the District Superintendent of Education, Saharsa and other higher authorities of the Education Department, but with no result.

3. On the other hand, the claim of the Petitioners in C.W.J.C. No. 1372 of 1992 is that they have been working as Assistant Teachers in Shri Neelkanth Balika Madhya Vidyalaya, Chainpur, Saharsa (for short "the school") since 1970. They were appointed by the Managing Committee of the school against sanctioned posts strictly in accordance with law. They were found working in the school by various education authorities during their inspection. The names of the Petitioners also figured in the inspection reports dated 25.1.1978 of the Block Extension Officer and 13.9.1979 of the Sub-divisional Education Officer. On 21.8.1982, the Deputy Development Officer-cum-Chairman, Zila Shiksha Ayojan Samiti, Saharsa sent a letter to the Director, Primary Education, Bihar recommending the taking over of the school u/s 3(2) of the Act. The State Government accepted the recommendation and issued a notification u/s 3(2) of the Act to take over the school. Although, as stated above, the Petitioners have been continuously working as Assistant Teachers in the School since 1970 and their names figured in all the inspection reports made from time to time, they were not included in the list of teachers of the school in the notification issued on 16.3.1983. They made representation to the Education Commissioner-Cum-Secretary for including their names in the list of teachers of the school. On 1.6.1983, the Petitioners were sent for training treating them to be teachers of the school. However, it was further stated in the said notification that after training the Zila Shiksha Ayogan Samiti will consider the case of the Petitioners for appointment on the post of Assistant Teachers along with Ors. on the vacant posts. The Petitioners filed CWJC No. 2835 of 1983 in this Court, which was disposed of on 16.12.1991 with a direction to the Petitioners to file a representation to the Director, Primary Education, Bihar, which was rejected on 10.4.1992 on the ground that they were less than 18 years of age at the time of their appointments and as such, were not entitled for absorption in the government service. The Respondents have contested the writ petitions on the ground that the persons, who were appointed as Assistant Teachers in the pay scale of untrained Assistant Teachers after 1.1.1971 or were less than 18 years of age at the time of their appointment, were not, legally entitled for absorption in the government service.

4. Heard the learned Counsel for the parties and perused the record.

5. Learned Counsel for the Petitioners contended that the Petitioners were appointed as Assistant Teachers by the respective Managing Committees of the schools prior to the date of taking over of the schools by the State Government and as such, their services stood transferred to the State Government u/s 4(2) of the Act irrespective of the fact that they were less than 18 years of age at the time of their appointment or were appointed as matric untrained teachers after 1.1.1971. In order to appreciate this argument of the learned Counsel, Section 4(2) of the Act is reproduced below:

Section 4(2): Every Officer, teacher or other employee holding any office or post in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of the State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do so unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government.

6. A plain reading of Section 4(2) would show that the services of all the teachers of the school taken over by the State Government shall stand automatically transferred to the State Government and as such, there is no scope for claiming that the teachers, who were less than 18 years of age at the time of their appointments as matric untrained teachers or were appointed after 1.1.1971, are not entitled for absorption in the Government service.

7. My this view finds support from a division Bench decision of this Court in C.W.J.C. No. 162 of 1985 (Ram Laxhan Choudhary and Ors. v. The Special Secretary, Department of Education and Ors.), which reads thus:

The aforesaid provision provides in unequivocal terms that the services of every teacher in the school taken over by the State Government shall be deemed to have been transferred, he shall automatically become a teacher under the State Government and hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and the same shall continue to do so unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government. The statute provides that the services of all such teachers working in the school shall stand transferred, whether temporary or permanent, trained or un-trained. The Act does not make any distinction so far trained or un-trained teachers are concerned. Likewise, the Act does not make any provision that services of only those teachers of schools taken over u/s 3(2) of the Act would stand transferred, who were appointed till 1.1.1971. In the absence of any specific provision in the Act, it was not permissible for the State to take a decision on 3rd July, 1980 to the effect that services of only those teachers, who

were appointed till 1.1.1971 shall stand transferred and the services of those teachers, who were appointed after 1.1.1971, shall, in effect and substance, stand terminated subject, however, to a right of re-employment after completion of training and passing training examination. Such a decision of the State Government on 3rd of July, 1989 was contrary to the provisions of the Act. The aforesaid decision of the State Government, in our view, cannot be said to have been taken by the State Government under purported exercise of powers of alteration of condition of service. Altering the service condition of an employee cannot mean terminating his service.

In view of foregoing discussions, we hold that the Petitioners' services as assistant teachers stood transferred to the State Government and they became assistant teachers under the State Government from the date of take over that is 17.1.1981 as required u/s 4(2) of the Act and from 17.1.1981 they are entitled to be paid salary at the same rate, which they were receiving prior to the date of take over till April, 1984, the date they passed the training examination and from May, 1984 up-to-date the Petitioners are entitled to payment of salary as matric trained teachers. It is not necessary to go into the question as to whether the Petitioners have worked or not after the date of take over as when they were sent for training there was no occasion for the Petitioners to take classes. After completion of training and passing of the examination if the Petitioners have not been allowed to work it was not their fault but the fault of the State Authority by illegally restraining them from working. Therefore, we are of the view that the Petitioners are entitled to payment of salary for the aforesaid period.

So far the Government decision dated 3rd of July, 1980, contained in Annexure-A, that all such untrained teachers should undergo training course and pass the examination is concerned, we are of the view that such a direction cannot be said to be invalid that is only supplemental to the provisions of Section 4(2) of the Act and not in conflict with the same. After the date of take over an un-trained teacher can be asked to undergo training and after completion of training and passing the examination, he may be put in the scale of a trained teacher. Even during the period of training an assistant teacher shall be deemed to be on duty for the purpose of payment of salary. Taking a contrary view would amount to reading something which is not there in Section 4(2) of the Act.

8. Similarly, in C.W.J.C. No. 7737 of 1991 (Viveka Singh Suman and Ors. v. State and Ors.) and analogous cases, a division Bench of this Court held as under:

6. In one of the writ applications, namely, C.W.J.C. No. 7549 of 1993 a counter affidavit has been filed wherein it has been stated that the Petitioner thereof was found to be below 18 years of age as on 1.1.1971. No counter affidavit has been filed by the State in other cases.

7. In the circumstances we have no other option but to direct the Respondents to pay all lawful dues payable to the Petitioners with utmost expedition and preferably within two months from the date of receipt of a copy of this order.

8. We may, however, observe that in these cases where the Petitioner(s) is/are found to be minor(s) on the date of appointment/nationalisation of the school the, said period may be subtracted from the date of their superannuation.

9. Learned State counsel failed to show that there was any bar for appointing a person of less than 18 years of age on the post of Assistant Teacher in a middle school. In absence of any such provision it cannot be legally chimed by the Respondents that the Petitioners, who were less than 18 years of age at the time of their appointments as Assistant Teachers, were not legally entitled for absorption in government service. Moreover, as stated above, u/s 4(2) of the Act services of all the teachers who were working in a particular school at the time of its taking over stands automatically transferred to the State Government and, therefore, the fact that some of the Petitioners were less than 18 years of age at the time of their appointment or were appointed after 1.1.1971 is of no legal consequence. More so, when the State Government has itself decided to send them for training treating them to be teachers of their respective schools and some of them have successfully completed the training.

10. In the result, both the writ petitions succeed and are allowed. The order dated 10.4.1992 of the Respondent No. 2, the Director, Primary Education, Bihar (Annexure-5 to C.W.J.C. No. 4372/92) is quashed and the Respondents are directed to treat the Petitioners as Assistant Teachers of the State Government with effect from the date of taking over of their respective schools and pay them salary in accordance with law. Future salary will be paid month to month and arrears of salary will be paid within six months from the date of production of a certified copy of this order on the Respondent No. 2.

11. No order as the costs.