

(1992) 09 PAT CK 0049

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4299 of 1992

Ram Bishnu Prasad Maurya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 4(2)

Citation : (1993) 1 PLJR 216

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Bijay Kumar Pandey and Sanjay Kr. Singh, for the Appellant; D.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 18.9.1991 issued by the District Superintendent of Education, Patna, contained in Annexure-1 to the writ petition whereby and whereunder it was directed that all those persons who had been granted the I.Sc. or graduate trained scale of pay in between the period 1.2.91 to 17.9.91 would remain stayed till an enquiry is made in this regard. The fact of the matter lies in a very narrow compass.

2. The petitioner was appointed as a Teacher by the Patna Municipal Corporation on 20th November, 1958. He passed the I. A. examination in the year 1962 and given I.A. trained scale from 1.4.65. The petitioner obtained a degree of Sahitya Alankar in the year 1964. Allegedly, the petitioner was posted on the post of Headmaster and later on transferred to Babuagunj Middle School, Patna. The said promotion was given effect to and from 5th October, 1966 and he was granted the B. A. trained scale from the date of his said promotion.

3. The Patna Municipal Corporation, however, reduced the scale of pay of the petitioner from B. A. trained scale to I. A. trained scale by an order dated 1.11.69. The said decision was taken allegedly on the ground that the degree of

Sahitya Alankar is not equivalent to B. A.

4. All Middle Schools and Primary Schools belonging to the Corporation were thereafter taken over by the State Government with effect from 1.1.71.

5. The petitioner allegedly filed an application before the respondent no. 2 for giving effect to the judgment of this Court filed by one Bhagirath Prasad being C.W.J.C. No. 606 of 1973, wherein he allegedly prayed for a relief similar to that made in this application.

6. The petitioner passed B. Com. examination and as such he was given B. A. trained scale from 31.1.76.

7. Allegedly, by an order dated 6.6.91 the petitioner was allowed the graduate trained scale of pay with effect from 1.11.69. The petitioner was also granted Junior Selection Grade scale from 1.4.81 and Senior Selection Grade scale from 1.4.84. The said orders were passed by one Dr. Prem Shankar Srivastava, the then District Superintendent of Education, Patna.

8. Mr. Rajendra Prasad Singh, the Learned Counsel appearing on behalf of the petitioner has submitted that in the facts and circumstances of the case, the order as contained in Annexure-1 to the writ application can not be said to have any application so far as the petitioner is concerned. The Learned Counsel has placed before us the judgment of the Learned Single Judge in the case of Bhagirath Prasad vs. Patna Municipal Corporation in C.W.J.C. No. 606 of 1973 disposed of on 28th July, 1976, and submitted on the basis thereof that the petitioner is also entitled to the reliefs claimed for in this application. In the case of Bhagirath Prasad, he obtained a degree of Sahitya Alankar from Deoghar Vidyapith. In this case, the petitioner has not stated from which University/ Institution he received the degree of Sahitya Alankar nor the petitioner has annexed a copy of the said degree alongwith the writ application.

9. In this case, admittedly when the School was taken over, the petitioner was getting the salary of an I. A. trained teacher. The School was taken over in the year 1971. The petitioner's remedy at that point of time was as against the Patna Municipal Corporation against whom the aforementioned Bhagirath Prasad had also filed a writ application.

10. The petitioner admittedly is being paid B. A. trained scale of pay since 1976.

11. In our opinion, therefore, in view of the fact that the petitioner has not approached this Court earlier and as the remedy of the petitioner to question the order of reduction of scale of pay was as against the Patna Municipal Corporation only, he can not enforce his purported claim against the State of Bihar in terms of the provisions contained in Section 4 (2) of the Bihar Non-Government Elementary Secondary Education Act, 1976, with effect from the date when the School had been taken over. There is nothing on the records to show that the liability of the erstwhile Managing Committee of the School was taken over nor any provision in this regard was pointed out to us.

12. In this view of matter, in our opinion, apparently the order as contained in Annexure-2 to the writ application could not have been passed by the then District Superintendent of Education, Patna.

13. It is also not disputed that C.W.J.C. No. 8186/91 (Kishori Dusad vs. State of Bihar and others) analogous cases where similar orders had been passed by Dr. Prem Shankar Srivastava, the then District Superintendent of Education, Patna, came up for consideration before this Court wherein this Court upon taking into consideration the various decisions, refused to interfere with the said order and disposed of the matter with certain directions to the District Education Establishment Committee.

14. Following the aforementioned decision, we also direct the District Education Establishment Committee to consider as from which date, the petitioner will be entitled to Junior Selection Grade and Senior Selection Grade of pay together with the cases of other eligible candidates.

15. Before parting with this case, we may mention that we have not taken into consideration as whether the degree of Sahitya Alankar which the petitioner allegedly possesses is a degree recognised by the State or not nor have we taken into consideration the purpose for which such recognition, if any, has been granted. This application is dismissed with the aforementioned observations but without any order as to costs.

G.C. Bharuka, J.

I agree.