

(2005) 07 PAT CK 0031

In the Patna High Court

Case No : CWJC No. 12302 of 2003 with CWJC No. 50 of 2005 with CWJC No. 16169 of 2004 with CWJC No. 16315 of 2004 with CWJC No. 701 of 2005 with CWJC No. 752 of 2005 with CWJC No. 846 of 2005 with CWJC No. 878 of 2005 with CWJC No. 959 of 2005 with CWJC No. 975 of

Ram Naresh Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Citation : (2005) 3 BLJR 1676

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shashank Kumar Singh, J.—All the 16 (sixteen) writ applications were heard together as the petitioners are teaching and/or non-teaching staff of project schools which were taken over and subsequently services of those teachers and non-teaching staff regularised, now were being terminated or already terminated.

2. Contention on behalf of the petitioners is that a decision was taken to terminate the services of all teaching staff in all such project schools though the non-teaching staff have been allowed to continue. The consequential orders in some of the cases have not been passed which according to learned counsel for the petitioners have now been passed though in the order of Director, Secondary Education, Bihar which have been appended a decision regarding removal of all of them have been taken.

3. Petitioners in this regard have relied on letter No. 1115 dated 27.5.1981 issued under the signature of Mr. Vijay Shankar Dubey, the then Director, Secondary Education cum Special Secretary, Bihar circulated to all the District Education Officers and the Regional Deputy Director of Education. The same relates to at least having four project high schools in each block of which at least

one school should be a girls school. The said letter goes to further show that as per the policy decision of the State Government within the remaining period of sixth five year, plan detailed number of schools to be opened in the block were given. The same relates to 50 schools. In subsequent paragraphs details of district in which number of schools were required to be opened were also there. Subsequently vide Government order issued in the Education Department contained in letter No. Wa-109 dated 15 March, 1982, sent to the Accountant General, Bihar at Ranchi relating to approval of the establishment of four schools including one girls high school in non-tribal area in each block, granted for establishment of the school. In subsequent paragraphs of the said order, description of the school in the said district which was taken over has been given at serial No. 4 relating to petitioners of CWJC No. 12302. Subsequently other names are there which relate to the schools in which petitioners of other writ applications are working.

4. Further reliance has been made on a letter No. 405 dated 19 July, 1986 sent by the Secretary, Education Department, Bihar to the Director, Secondary Education, Bihar, Patna regarding payment of salary to the teachers of project schools which were opened in view of policy decisions in 1981-82. The said letter gave in detail as what amount would be paid to the teachers appointed on the recommendation of the Divisional Establishment Committee by the District Education Officer and also regarding the teachers appointed by the Managing Committee who were trained teachers and the untrained teachers in the reserve category. The same was followed by a wireless message vide Memo No. 208/C/Edn. dated 14 April, 1987. The same is quoted hereinbelow :

Reference Education Department's circular No. 405 dated 19th July, 1986 regarding granting of regular scale of pay to untrained teachers appointed in project schools by Managing Committees with effect from 1 April, 1986. It is further clarified with the approval of the State Government now that there will be no restriction of giving this benefit of regular pay scale to such teachers irrespective of whether they belong to schedule castes or schedule tribes or are female teachers. All teachers who are appointed by Managing Committees in project schools started in 1981-82 in the State including the sub plan area will now be entitled to the benefit of regular pay scale without any restriction.

Please ensure payment according to the given scale to all such teachers with effect from 1 April, 1986, who have so far been denied of the benefit of regular pay. Chief Minister desires that the payment should be released immediately. Necessary Additional Funds may be asked for if required so that the same can be sanctioned expeditiously. All Regional Deputy Directors are directed to issue clear instructions to the respective District Education Officer for such payments out of available funds within one week at the latest. Regional Development Commissioner Ranchi is requested to kindly release funds to all districts in sub plan area forthwith before the visit of the Chief Minister. Matter most urgent.

5. The wireless message was modified further by issuing another wireless

message vide Memo No. 212/C/Edn. dated 14 April, 1987. The same is also quoted hereinbelow :

Kindly reference this office wireless No. 208/C Edn. dated fourteenth April, 1987 regarding payment salary to teachers of the project school sanctioned in this year 1981-82. The wireless will cover not only teachers appointed by the Managing Committee but also by the District Education Officer till the Thirteenth February, 1985 on daily wages or otherwise.

6. Plain reading of the aforesaid two wireless message goes to show that all the restrictions in giving benefit of regular pay scale to such teachers belong to scheduled caste or scheduled tribe or female teachers were removed. It was further clarified that all teachers who were appointed by the Managing Committee in the project school started in 1981-82 including sub plan area will now be entitled to benefit of regular pay scale without any restriction. Regular payment was directed to be made to all the teachers. Subsequently modification in wireless message is clear to the effect that the wireless as sent above is not covered only teachers appointed by the Managing Committee but also by the District Education Officer till the 13th February, 1985 meaning thereby that any teacher in the said school appointed earlier to 13th February, 1985 were treated in the same category and to be paid the same pay scale may be by the Managing Committee or District Education Officer.

7. One aspect which is also required to be recorded is that a letter No. 405 dated 19 July, 1986 sent by the State Government through the Education Secretary, in paragraph 4 thereof clarify shows that regarding salary and other emoluments all earlier directions issued by the State Government stands superseded and merged in the said order.

8. Now contention on behalf of the petitioners is that as the schools in question were taken over and services of teaching and non-teaching staff regularised and they in view of wireless message and directive of the State Government were being paid their regular salary. The indulgence of the Director, Secondary Education relying on some report of three men committee on non est ground directing the authorities to remove the petitioners and other such situated persons on the ground that they were not appointed through the procedure prescribed and have not come through the main door rather the petitioners were also given notice, only after a decision had been taken by him to remove them from service. These two aspects have been relied to show that the impugned annexure-6 and annexure-10 series in CWJC No. 50/2005 is bad and be quashed.

Mr. Udit Narayan Singh, G.P. 8, on the other hand relying on the instruction sent by the Director, Secondary Education, Bihar has contended that though it is a fact that the Government of Bihar decided to set up four high schools in each block of the State, one out of which would be a girls high school vide letter Nos. 30 dated 22.1.1980, 109 dated 15.3.1982 and 182 dated 15.3.1982. In the year 1981-82, a total of 150 such project schools were established in the undivided

State of Bihar, out of which only 39 such project schools are now in the present State of Bihar.

Learned counsel for the State has further contended that subsequently it was provided that till a permanent headmaster is appointed, the District Education Officers would make arrangement by appointing a suitable person as acting headmaster and with the prior consent of the Regional Deputy Director of Education concerned, ad hoc teachers should be appointed. Taking into consideration the delay in all in appointment of teachers, it has further been contended that in the aforesaid Government order it was further provided that the committee headed by the Regional Deputy Director would interview the teachers appointed by the previous Managing Committee of the school and all the District Education Officers of the division would be members of the committee and this committee would scrutinise the qualification and utility of the teachers appointed by the Managing Committee in relation to the syllabus and would appoint only such teachers who were found suitable for appointment in Government service on ad hoc basis. It has further been contended that their appointment after scrutiny on ad hoc basis their cases were required to be concurred by the Vidyalaya Sewa Board before they were appointed on regular basis. This direction was covered also the untrained scheduled caste, scheduled tribe and female teachers.

9. It has further been contended that a decision was taken vide Government letter No. 749 dated 19.11.1982 that the appointment letter was only required to be issued by the District Education Officer of the concerned district. Counsel for the State further contended that qualifications were also prescribed for consideration for appointment. The candidates were also required to have B.Ed, or equivalent qualification.

10. It has further been contended that in view of recommendation of the three men committee a decision was taken to remove all the teachers as such, they were asked to show cause and subsequently termination order passed.

11. This Court has gone into the comparative arguments made by the parties and looked into the records, though normal procedure of appointment has been shown and relied upon by counsel for the State to show that the said procedure was not adopted. The present case relates to project schools which were required to be opened, in each block for which a decision was taken by the State Government under the sixth five year plan. In this regard, the schools which were functioning from before were identified and taken over by the State Government. Teachers were already functioning in the said schools appointed by the Managing Committee. Other teachers appointed by the District Education Officer and the Regional Deputy Director of Education were also functioning. Initially daily wages were required to be paid to them. Subsequently the State by its decision superseding its earlier decision has sent a wireless message regarding payment of salary and mode of payment to the teachers having different qualifications. The same included all the teachers either appointed by

the Managing Committee or by the District Education Officer or otherwise. This was the circumstances which led to their entry into service and a decision of the State had been taken, now whether normal procedure was adopted or not was not required to be gone into, entire exercise which was gone into cannot be said to be a useless exercise, only aspect now required to be considered was as to whether they were working on the posts approved for the said school, had the minimum qualification was required to be gone into as they have already been continuing in: service for more than 20-25 years.

12. Another aspect which becomes relevant is that a three member committee was earlier appointed under the Chairmanship of Regional Deputy Director of Education having the District Education Officer and the District Inspector of Schools as member. Three members committee had recommended that all teachers were regularly appointed. If that was the report, the matter should have perhaps come to an end. It appears that the Director, Secondary Education got the same again examined at the level of the District Magistrate, came to the conclusion regarding their removal and once the decision has been taken to remove them, subsequent show cause/explanation was called. Is it not futile ?

13. Taking these aspects of the matter, the order of termination for the discussions as made above is bad. As such, this Court without going into the merit as to whether the Director, Secondary Education was required to look into their appointment as genuine or not, in view of discussions as made above, is satisfied that the present orders as contained in Annexure-6 and Annexure-10 in CWJC No. 450 of 2005 and similar order/orders appended as annexures in the analogous writ applications are also quashed.

14. These writ applications stand allowed to the extent indication above.

15. As petitioners have contended that for a short period i.e. few months in some of the earlier orders they have discharged their duties have not been paid salary, as such, this Court feels that to adjudicate the said matter records are required to be verified as during the aforesaid period, petitioners have discharged their duties or not. As such, petitioners are directed to make representation before the concerned District Education Officer in the district in which petitioners are posted and the said District Education Officers shall verify their claims and if the petitioners have discharged their duties during the aforesaid period, salary for the said period shall be released in favour of the petitioners.