
(1993) 03 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 2613 of 1992

Ravindra Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:

Citation : (1994) 2 BLJR 896

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—In this application the petitioners have sought for issuance of an appropriate writ for quashing an order dated 1st January, 1992 issued by the District Education Officer, Sitamarhi, whereby the Acting Headmistress of the Project Girls High School, Shivahar has directed recovery of alleged excess amount paid to the petitioner No. 1 from July, 1991 to October, 1991 and the petitioner No. 2 from May, 1991 to October, 1991.

2. Admittedly petitioners had been working in the Project Girls High School at Shivahar.

3. The State of Bihar took various decisions from time to time for opening up of Project Schools in every block.

4. However, only Girls Project School were established. The Project Girls High School at Shivahar was established in the year 1981-82. The petitioner No. 1 was appointed on the post of Science Teacher by the Managing Committee of the said school on 5-4-1982. He was Science Graduate. At the time of his appointment he had completed Teachers Training Course for the sessions 1978-80 in which examination were held in the year 1983 but the results thereof were published on 27-1-1984.

5. The petitioner No. 2 was appointed as Foudrer Teacher of the School on

7-10-1981, he having the qualification of M. A. B. Ed. The said school was taken over as a Project School on 3rd June, 1983. By a letter dated 12-10-1982 upon screening relating to eligibility of the petitioners the petitioner No. 1 was granted trained graduate scale of pay with effect from 27-1-1984, whereas the petitioner No. 2 was granted scale of trained graduate with effect from 1-1-1982 as per the policy decisions of the State of Bihar.

The orders to the aforementioned effect dated 29-3-1990 and 16-3-1990 are contained in Annexures 1 and 1/1 to the writ application.

6. The petitioners had admittedly been drawing their salaries in terras of the aforementioned orders but the District Education Officer by an order dated 16-1-1992 directed recovery of the alleged excess amount drawn by the petitioners by way of salary, etc. The said order is contained in Annexure-3 to the writ application.

7. According to the petitioners as they had been drawing their pay in terms of the Govt. orders and in terms of the resolutions of the State of Bihar adopted from time to time, the impugned order as contained in Annexure-3 must be held to be illegal and without jurisdiction.

8. In this case a counter-affidavit has been filed on behalf of the respondents wherein it has been contended that at the time of appointment the petitioners were untrained.

9. According to the respondents so far as the petitioner No. 1 is concerned, he being untrained, the scale of pay granted to the petitioner was modified by a memo dated 16-1-1992 issued by the District Education Officer, Sitamarhi whereby he was granted the scale of trained teacher with effect from 1-6-1986 in terms of the Govt. Circular bearing No. 405, dated 10th July, 1986.

10. Mr. Ganesh Prasad Singh, learned Counsel appearing on behalf of the petitioner has raised two contentions in support of this application.

The learned Counsel firstly submitted that so far as petitioner No. 2 is concerned he being an M. A. trained at the time of his appointment, the said Circular letter No. 405, dated 19th July, 1986 as contained in Annexure-A to the counter affidavit will have no application in the facts and circumstances of the case.

11. It was further submitted that from a perusal of the order dated 11-8-1986 as contained in Annexure-4 to the writ application, it would appear that grant of amount of Rs. 10 per day was not acted upon by the Director himself in his order dated 11-8-1986 which was passed pursuant to a direction of this Court in M. J. C. 711/85 arising out of CWJC No. 2281/84 and thus the impugned order must be held to be wholly illegal,

12. The learned Counsel has in this connection drawn our attention to Clause 10 of the Circular No. 705, dated 12-10-1982.

13. From a perusal of the Circular letter No. 705, dated 12-10-1982 it appears

that the teachers were to be appointed by the Managing Committee headed by the Regional Deputy Director of Education upon screening of their eligibility in the Govt. Service and they would be appointed from the date of their appointment in the school by the Managing Committee and/or with effect from 1-1-1982 whichever is latter.

14. Clause 13 of the said Circular letter provides that so far as untrained teachers who have completed their courses of training but whose results are not published are concerned, they shall be paid the stipend of Rs. 500 per month till the publication of their result but they shall be paid regular scale of pay upon publication of their result, but their appointment shall be considered to be permanent being only upon approval of the Vidyalaya Sewa Board.

15. It appears that the procedure for appointment of teachers in the project was again clarified by letter bearing (sic) to be paid their salary in terms of letter Nos. 705, dated 12-10-1982, No. 749, dated 19th November, 1982 and other circular letter.

16. However, the State had again issued a circular letter bearing No. 405, dated 19th July, 1986.

17. Clauses 1 and 2 of the said Circulars read as follows:

(1) Prabandh Samiti ki anusansha ke adhar par Zila Siksha Padhadhikari dwara Niyukat aise shikshak jinki niyuokti pahle prabandh samiti dwara ki gayee thee ki prasikshit snatak ke vetanman me vetan diya ja raha hai.

(2) Prabandh Samiti dwara niyukat aprashikshit harijan/adibasi/ mahila sikshko ko awame prashikshan prapt (jinka parikshaphal nirgat nahi hua hai) anaya sikshoko ko jinki niyukti pramndilya samiti ke anusansha par zila siksha padhadhikari dwara ke gaye hai ko 500 rupay pratimah ke dar se brtika de ja rahi hai.

18. It has been directed in the said circular letter that so far as other categories of the teachers are concerned they were to be paid their salary at the rate of Rs. 10 per day. It is in this context, the State Government appears to have taken a decision to fix the scales of pay according to the qualification of the teachers and directed that the salary in terms of the said scale of pay shall be payable with effect from 1-4-1986.

19. Clause (iv) of the said circular letter provides that all other circular letters issued in relation to payment of salary/pay shall stand superseded but other directions contained in all such circular letters which have been mentioned in Clause 1 thereof including circular letter No. 705, dated 12-2-1982 shall remain in force.

20. The question which arises for consideration in this writ application is the interpretation of the aforementioned letter bearing No. 405, dated 19th July, 1986.

21. In this case, it is not disputed that before passing of the impugned order as contained in Annexure-3 to the writ application no opportunity of hearing was given to the petitioners.

22. To us also it occurs that the circular letter No. 405, dated 19th July, 1986 are not very clear in so far as it has not been stated therein as what would happened to those teachers who had been paid salary and/or became entitled to be paid their salary in terms of letter No. 705, dated 12-10-1982.

23. In this situation, in our opinion, the matter requires consideration at the hands of the Director Secondary Education, Department of Human Resources Development, Patna, He is directed to consider the case of the petitioners in the light of the different Govt. Circulars as referred to hereinbefore as also other circular letter and/or resolution of the State of Bihar, if any.

24. The Director Secondary Education shall also give an opportunity of hearing to the petitioners in this regard In our opinion, the Director of Secondary Education should also consider as to whether if any right had vested in the petitioner in terms of circular bearing No. 705 dated 12-2-1982 and whether the same could have been taken away by reason of the subsequent circular bearing No. 405 dated 19th July, 1986.

25. However, we are not expressing any opinion in this regard at this stage inasmuch as the entire matter is being remitted to the Director Secondary Education for his consideration.

26. The Director, Secondary Education is hereby directed to pass a speaking order with utmost expedition and preferably within a period of two months from the date of the receipt of a copy of this judgment, but till any decision is given in relation thereto, no recovery shall be made from the salary of the petitioner pursuant to the impugned order.

27. This application is, therefore, allowed to the extent mentioned hereinbefore but without any order as to costs.