
(2008) 08 PAT CK 0050
In the Patna High Court
Case No : CWJC No. 3626 of 1993

Satya Narayan Yadav and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 309, 32

Citation : (2008) 4 PLJR 509

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Birendra Prasad Verma, Ganesh Prasad Singh, Bamdeo Pandey, Bijay Kumar Pandey, Dr. Mrityunjaya Kr. Gautam, Yogendra Kumar, R.N. Ray and Manish Kumar, for the Appellant; Rakesh Kumar Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—These writ applications are being taken up together as all the petitioners in the writ applications have challenged the decision of the State Government issued vide letter no. 362 dated 24.7.1992 to pay the petitioners Rs. 50/- as stipend for the period the petitioners were undergoing teachers training. Before dealing with the various letters and orders of the State Government from the Education Department brief facts with respect to the writ applications are being stated.

C.W.J.C. No. 3626 of 2008

The 48 petitioners except petitioner no. 7 are working as Assistant Teachers in Elementary Schools in the district of Madhepura. Petitioner No. 7 was working as a Headmaster at the time when the writ application was filed.

2. Petitioner No. 7 is/was working as a Headmaster of Middle School, Hanuman Nagar, Choura, in the district of Madhepura. Petitioners 10, 17, 29, 37, 46 and 48 were appointed by the Managing Committee of the School prior to 1.1.1971 and

were subsequently confirmed as Assistant Teachers and have been working in different schools in which they are/were posted without any break. All the petitioners have completed 20 years of service. A number of teachers remained untrained in the State of Bihar and as such the circulars and letters which will be discussed later were issued, for allowing the petitioners to undergo training.

C.W.J.C. No. 9612 of 1992

3. There are 35 petitioners in this writ application posted in different primary schools in various districts of Bihar. The petitioners were appointed on various dates which have been stated at paragraph 4 of the writ application. Suffice it to say that the petitioners were appointed sometime between the years 1977 to 1985. Thus all the petitioners in this writ application had more than five years of teaching experience on 8.1.1992.

C.W.J.C. No. 954 of 1993

4. There are 36 petitioners in this writ application. Petitioner No. 1 who was appointed in the year 1986, petitioner no. 3 in the year 1983, petitioner nos. 1, 2 and 4 were appointed in the year 1986. Petitioner Nos. 3 and 5 were appointed in the year 1983. Petitioner No. 6 was appointed in 1979 and petitioner no. 7 was also appointed in the year 1983. The other petitioners were appointed between the years 1976 to 1986 and thus all of these petitioners had more than five years of teaching experience and were eligible according to the Government Circular to be sent for training. These petitioners are also aggrieved by the Government's decision mentioned aforesaid.

C.W.J.C. No. 2079 of 1993

5. There are 13 writ petitioners claiming full salary for the period under which they were receiving teachers training. The 13 writ petitioners are teachers in the district of Siwan. They were appointed between the year 1976 to 1987 and had more than five years of teaching experience on the date they were chosen to undergo teachers training.

C.W.J.C. No. 418 of 1993

6. There are 38 writ petitioners who were posted in various Rajkiya Schools in the district of Darbhanga and were appointed between the years 1964 to 1988 except petitioner no. 38 who was appointed on 5.9.1991.

C.W.J.C. No. 6289 of 1993

7. The 28 writ petitioners are working as Assistant Teachers in different primary schools in the district of Patna. The petitioners have been appointed as Assistant Teachers by the Education Department between the years 1971 to 1988. All the petitioners had more than five years of teaching experience on the cut-off date.

C.W.J.C. No. 2080 of 1993

8. The nine Assistant Teachers are working in different primary schools in the

district of Siwan. They were appointed between the years 1968 to 1986. The schools in question where the petitioners are working were taken over on 1.1.1971.

9. Having stated the facts of the different writ petitions, I shall now consider the main question involved in this case as stated aforesaid the writ petitioners were aggrieved by the Governments decision to pay them Rs. 50/- as stipend during their training period. The training period was for one year. The basis on which the Government has taken this decision is a Rule framed under Article 309 of the Constitution dated 30.9.1991 which deals with the appointment of teachers in primary schools. Sub-clause da (?) of Rule 11 provides that during the period of training the teachers would be entitled to stipend fixed by the department. Rule da (?) also states that the teachers would not be entitled to receive their entire pay during the period of training. This notification of the State Government led to discontentment and the Assistant Teachers of the State went on strike. The strike ended in an agreement which is Annexure-2 of C.W.J.C. No. 3626 of 1993 whereby the Government amongst other points agreed to the following:-

10. The State Government thereafter issued letter no. 667 dated 24.9.1991 wherein it was stated that the training period would be for one year and that the teachers will be entitled to receive Rs. 50/- as stipend during the training period. This letter no. 667 was later amended by letter no. 407 dated 27.3.1992 wherein it has been stated that as per agreement between the State Government and the Bihar State Prarthmik Shikshak Sangh at column 12 of the agreement dated 8.1.1992 (quoted above), the State Government has decided to give teachers training to those male teachers who had five years of teaching experience on 8.1.1992, and training was also was to be imparted to those female teachers who had three years teaching experience on 8.1.1992. The privilege of being granted training would only be available till 31.12.1992 and as such Clause 3(?) (11) of letter no. 667 dated 24.9.1991 was amended.

11. The letter no. 407 dated 27.3.1992 was further amended by letter no. 362 dated 24.7.1992 which is contained in Annexure-5 of C.W.J.C. No. 3626 of 1993. This letter specifically states that:-

12. According to this letter it is apparent that the payment of salary to the teachers would be made only upto 31.12.1992 and from 1.1.1993 the teachers who were undergoing training were to be paid only Rs. 50/- per month as stipend.

13. The counsel appearing on behalf of the petitioners have challenged this decision issued through letter no. 362 dated 24.7.1992 as according to them it was in contravention to the agreement between the State Government and the Teachers" Sangh. They also challenged the said letter on the ground that there was no justification for the Education Department to grant stipend of Rs. 50/- during the period of training which was just a pittance and the State Government could not have deprived the petitioners of their salary as there was a relationship

of employer and employee between the teachers undergoing training and the State Government.

14. This question was considered on a different issue in the case of Surendra Paswan vs. The State of Bihar reported in 1994(2) P.L.J.R. 42. The main principle however, is explained in a judgment of the Supreme Court in All India Imam Organisation vs. Union of India reported in 1993(3) Supreme Court Cases 584 wherein the Imams" who were incharge of religious activities filed a petition under Article 32 of the Constitution for enforcement of their fundamental rights against their exploitation by the Waqf Board. While discussing this issue the Supreme Court observed as follows:-

Absence of any provision in the Act or the Rules providing for appointment of Imam or laying down condition of their service is probably because they are not considered as employees. At the same time it cannot be disputed that due to change in social and economic set-up they too need sustenance. Nature of their job is such that they may be required to be present in the mosque nearly for the whole day. There may be some who may perform the duty as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or, profession or service for their livelihood except doing duty as Imam. What should be their fate? Should they be paid any remuneration and if so how much and by whom? According to the Board they are appointed by the Mutawallis and, therefore, any payment by the Board was out of question. Prima facie it is not correct as the letter of appointments issued in some States are from Board. But assuming that they are appointed by the Mutawallis the Board cannot escape from its responsibilities as the Mutawallis too u/s 36 of the Act are under the supervision and control of the Board. In series of decisions rendered by this Court it has been held that right to life enshrined in Article 21 means right to live with human dignity. It is too late in the day, therefore, to claim or urge that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept but it has undergone a change and even in Muslim countries mosques are subsidized and the Imams are paid their remuneration. We are, therefore, not willing to accept the submission that in our set-up or in absence of any statutory provision in the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any co-relation between the two. Financial difficulties of the Institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

15. Applying the same principles to the facts of the present case wherein the petitioners were employees of the Education Department the decision of the respondents cannot be justified inasmuch as the petitioners could not have been doled out a sum of Rs. 50/- per month for their sustenance. There is also no justification for the decision that the petitioners or those persons who were able to enter the training programme within the specified time so that as to complete their training on 31.12.1992 would be paid full salary, whereas those who entered the training say in the month of July, 1992 would be paid their full salary for five months and be deprived of their salary for the next seven months of their training.

16. The State, obviously is a welfare State, and is bound to act in a fair manner and it cannot simply pay a paltry sum of Rs. 50/- as sustenance for the period under which the petitioners were undergoing training more so, in view of the fact that the petitioners were employees of the State Government and the relationship of employer and employee subsisted during the entire training period. Any such rule or division has to be struck down by this Court.

17. In a case where the State Government is providing the training and has decided to send the teachers for training after several years after their appointment there can be no justification for doling out of Rs. 50/- as stipend during the period of training.

18. For the reasons aforesaid I hold that the petitioners are entitled to their full pay for the period of training as Assistant Teachers. These writ applications are allowed for the reasons stated aforesaid.