

(1981) 07 PAT CK 0006
In the Patna High Court
Case No : Civil Writ Jur. Case No. 351 of 1981

Shashi Bhushan Prasad Singh and Others	APPELLANT
Vs	
State of Bihar and Another	RESPONDENT

Date of Decision : 30-07-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1982 Patna 55 : (1982) 30 BLJR 75 : (1982) PLJR 111

Hon'ble Judges : Shivanugrah Narain, J

Bench : Single Bench

Advocate : Baidyanath Prasad, for No. 2 and H.N. Sinha, for the Appellant; Tarkeshwar Dayal and Pashupati Nath Jha, (for No. 2), S.N. Jha, Standing Counsel No. 2 and Sudhakar Choudhary, Jr. Counsel to Standing Counsel No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Shivanugrah Narain, J.—These 192 petitioners were students of the Arajkiya Shikshak Pra-shikshan Vidyalaya (Non-Government Teachers' Training School) at Hajipur, herein-after called "the School", during the session 1971-73. The School was not recognised by the Government of Bihar or the Bihar School Examination Board, hereinafter called "the Board". Fifty-seven students of the same School for the same session filed a writ application in this Court which was numbered as C. W. J. C. No. 1097 of 1977 for a direction to the authorities of the State of Bihar and the Board to permit them to appear at the Teachers' Training School Examination to be held in the year 1977. The application was admitted and an ad interim order was passed by this Court directing the authorities to permit the petitioners of that case to appear at the aforesaid examination, subject to the condition that their result would not be published pending the final orders on the writ application. During the pendency of that application, these 192 petitioners and one Awadhesh Prasad Sinha, who also was a student of the said School during the same session, filed an application for being added as parties in C. W. J. C. No. 1097 of 1977. The application for addition of parties was ordered to be

put up at the time of the hearing of the main application. That application was disposed of by order of this Court dt. 31-1-1978, a copy whereof is Annexure "1" to the present writ application. By that order, this Court directed that the result of those of the petitioners of that case who had appeared at the 1977 Examination and had passed, may be declared. So far as these petitioners and the other person who had applied to be added as parties were concerned, this Court rejected their application for being added as parties with a direction that the departmental authorities "will consider their case in the light of the observations made above and redress their grievances, if legitimately, possible". The relevant observations would be stated later on.

2. After the aforesaid decision, the Principal of the School accepted fees and application forms of the present petitioners for permission to appear at the 1978 Examination and forwarded the same to the District Education Officer, Vaishali. The District Education Officer by his letter dt. 4-1-1978, a copy of which was forwarded to the Principal of the School and is Annexure "2" to this writ application, reported to the Board that he had examined the records of the School in the light of the judgment of this Court in C. W. J. C. No. 1097 of 1977 and found that the names of these students and other students numbering in all 250 had been duly entered in the Admission Register of the School between January 1971 and March 1971 and that all the students had undergone full training for two years and intimated that he had, therefore, countersigned the application forms for appearing at the examination and directed the Principal to forward the same to the Board, so that the students may be able to appear at the next training examination. Application forms along with fees were forwarded by the Principal to the Board. By letter No. 4085 dated 27-7-1970 Deputy Secretary of the Bihar School Examination Board (respondent No. 2) asked the Principal of the School to submit the application forms of the petitioners using the new forms which have been prescribed and not the old forms which had been utilised, In compliance with this direction, the Principal of the School re-sent the application forms of the petitioners on the new forms. Though the examination fees deposited were not returned, admit cards enabling the petitioners to appear at the examination were not issued and the petitioners were, therefore, unable to appear at the examination in that year. The petitioners made efforts to appear at the aforesaid examination held in the year 1979 and 1980 and the Principal forwarded their forms, but no admit cards were issued and the petitioners were unable to appear in the examinations of 1979 and 1980 also. The petitioners, thereafter, applied for permission to appear at the examination of 1981 and though the Principal recommended their case and sent the fees and forms to the Board, no reply was received from the Board and the petitioners on 12-2-1981 filed the present application in this Court for a direction to the respondents to allow the petitioners to sit at the 1981 Teachers Training School Examination.

3. According to the petitioners, though they have been denied permission to appear at the examination, Awadhesh Prasad Sinha who had also applied for along with these petitioners to be added as party petitioner in C. W. J. C. No.

1097 of 1977 had been allowed to appear and his result had also been published. Petitioner contended that in view of the judgment of this Court in C. W. J. C. No. 1097 of 1977 and the report of the District Education Officer, Vaishali, stating that the petitioners had completed their training and also in view of the fact that the Board had accepted the fees deposited by the petitioners, they had a right to appear at the examination. The petitioners further contend that their constitutional right to equality had been infringed inasmuch as while other students, specially Awadhesh Prasad Sinha, who belonged to the same session of the School as the petitioners, had been permitted to appear at the examination, permission to appear at the Examination had been denied to the petitioners who are similarly situate.

4. Cause has been shown on behalf of the respondents and a counter-affidavit has also been filed by the Board (respondent No. 2). According to the respondent, the petitioners being students of an unrecognised institution had no legal right to appear at the examination aforesaid; that the only relaxation made by the Board in compliance with the decision of the Government of Bihar was in respect of the students of the session 1970-72 of 25 institutions subject to the condition that those institutions would not admit any further students at any time nor their students would be eligible to appear at any further examination. According to the respondent, the full facts could not be placed before this Court at the time C. W. J. C. No. 1097 of 1977 was decided and, therefore, some students of the session 1971-73 had been permitted to appear at those examinations. The case of the respondent, further, is that even in terms of the order of this Court in the aforesaid writ case, the petitioners were not entitled to appear at the examination as the direction of this Court in the aforesaid case was to redress the grievance of the petitioners, if legitimately possible, and that it was not legitimately possible to permit them to appear at the examination because these petitioners had not undergone the prescribed practical training for teachers in a recognised institution which was necessary for enabling students to appear at the examination. According to the respondents, if the petitioners had any right to appear at the examination under the orders of this Court in C. W. J. C. No. 1097 of 1977, that right was taken away and the judgment of this Court conferring the said right was superseded by Bihar Ordinance No. 61 of 1978. The charge of discrimination is also controverted and it is stated that the fees deposited would be refunded, if not already refunded.

5. It cannot be denied that the prayer of the petitioners cannot be allowed unless the petitioners have a legal right to obtain permission and there is cast upon the Board a legal duty to grant permission to the petitioners to appear at the aforesaid examination. For the reasons given by me in C. W. J. C. No. 351 of 1980 (disposed of on 21-4-1981), it must be held that apart from the order of this Court in C. W. J. C. No. 1097 of 1977 the petitioners who are students of an unrecognised training school have no right to be permitted to appear at the said examination. Therefore, unless the order of this Court in C. W. J. C. No. 1097 of 1977 has conferred upon the petitioners the right to permission to appear at the

said examination, this application must fail. The petitioners contend that such a right was conferred and this plea is controverted on behalf of the respondents. It is, therefore, necessary to examine closely the judgment of this Court passed in C. W. J. C. No. 1097 of 1977, copy whereof is Annexure "1" to this writ application. I have already stated that these petitioners were not parties to that case and that their application to be added as parties was rejected by the judgment dated 3(31 ?)-1-1978 of this Court passed in that case "with the direction that the departmental authorities will consider their case in the light of the observations made above and redress their grievances, if legitimately possible". The observation of this Court in the said judgment which is relied upon by the petitioners run thus:--

"I would direct that the respondents concerned shall look into the legitimate grievance of the petitioners as well as of 193 candidates sought to be impleaded as parties and if factually they are found to have been borne on the register of the institution in question they ought to be given an opportunity of appearing at the first available examination after the communication of this order to them".

6. It is contended on behalf of the petitioners that the order of this Court read in the light of the aforesaid observation clearly amounts to a direction to the Board and the competent authorities to give an opportunity to the petitioners of appearing at first available examination, if factually the petitioners are found to have been borne on the register of the institution in question before 6th April, 1971. The report of the District Education Officer has been impugned on behalf of the respondents, but in my opinion, it is not necessary to go into that question, because in the facts and circumstances I am unable to construe the order of this Court as containing a direction to the Board and other competent authorities to permit the petitioners to appear at the next available examination if their names were found to be borne on the register of the School before 6th April, 1971. It must be remembered that the prayer of the petitioners to be added as parties had been rejected by this Court. Normally, no relief is granted to a person who is not a party to the litigation. Further, the operative portion of the order was to the effect that "the authorities will consider their case and redress their grievance if legitimately possible". The authorities were, therefore, given by this order a discretion in the matter of redressing their grievance and thus a discretion not to permit them to appear at the examination, if in the opinion of the authorities that was not legitimately possible, Merely because an earlier observation had been made that if factually they are found to have been borne on register of the institution they ought to be given an opportunity of appearing at the examination, I am unable to hold that his Lordship intended to confer upon these petitioners who were found to have been borne on the register of the institution on the relevant date an absolute right to appear at the examination even if they had not attended the minimum number of lectures and had not obtained the practical training, which it was incumbent upon them to obtain, in view of the regulations, as a pre-condition for appearing at the examination. By the order of this Court, the authorities had been given the

discretion to determine if permission to appear could be legitimately granted to the petitioners and the enquiry into the question whether the permission to appear could be legitimately granted to the petitioners could not be reasonably restricted to the fact whether the petitioners were student of the School admitted before April 1971. The scope of the enquiry which by the aforesaid observation was specified as the determination of the date of admission to the School of the petitioners was clearly enlarged by the direction to redress grievances, if legitimately possible. I, therefore, hold that the petitioners did not by virtue of the order of this Court in C. W. J. C. No. 1097 of 1977, obtain any right to permission to appear at the first available examination. In view of the aforesaid conclusion it is not necessary to consider the argument on behalf of the respondent Board that the direction of this Court in C. W. J. C. No. 1097 of 1977 to admit the petitioners to the examination, if any, was superseded by Bihar Ordinance No. 61 of 1978.

7. As the petitioners had no legal right to permission to appear at the aforesaid examination, no order in the nature of mandamus compelling the Board to grant permission can be passed by this Court. In the facts and circumstances of this case, it cannot be held that the Board exercised its discretion of refusing to grant the permission prayed for by the petitioners without taking into account relevant considerations or on the basis of extraneous considerations. Indeed, it has not been argued that the permission was refused on extraneous consideration or without taking into account relevant consideration, if the petitioners had not acquired a right to appear at the examination on the basis of the order of this Court in the previous writ application along with the report of the District Education Officer.

8. The act of the Board in not granting permission to the petitioners to appear at the examination has also been assailed as impugning the fundamental right to equality of the petitioners guaranteed by Article 14 of the Constitution. It is asserted that the petitioners have been discriminated against by the Board vis-a-vis the other students of the School for the 1971-73 session who were petitioners in C. W. J. C. No. 1097 of 1977 and were permitted to appear at the examination by order of this Court passed in C. W. J. C. No. 1097 of 1977. This contention is plainly untenable because the petitioners in C. W. J. C. No. 1097 of 1977 and the petitioners in the present case are not similarly situate. In that case, there was an order of this Court granting permission to those persons for appearing at the examination and asking the Board to declare the result of those who had appeared at the aforesaid examination. As I have already said, no such direction in respect of the petitioners was issued by this Court.

9. It is also urged that the petitioners have been discriminated against vis-a-vis Awadhesh Prasad Sinha who was granted permission to appear at the examination. The discrimination alleged is not discrimination by legislative action but by executive action. It is well-settled that an executive act can be struck down as contravening Article 14 of the Constitution only if there has been

intentional or purposeful discrimination. In *Showden v. Hughes* (1943) 88 LEd 497) Stone, C. J. said ;

"The unlawful administration by State Officers of a State statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination".

The aforesaid observation of the Chief Justice of the Supreme Court of America was relied upon by S. R. Das, J., as he then was, speaking for the Supreme Court, in *Budhan Choudhry and Others Vs. The State of Bihar*, . It has not been established that the petitioners have been intentionally or purposefully discriminated. At best what has been established by the petitioners is that Awadhesh Prasad Sinha was granted permission to appear at the examination. But to use the words of Frankfurter, J. in *Showden v. Hughes*, in a passage quoted with approval by S. R. Das, J. in *Budhan Chowdhry's case* (supra) "The Constitution does not assure immunity from merely erroneous action, whether by the Courts or the executive agencies of a State". Merely because an executive authority has granted to some person a benefit to which he was not entitled does not entitle other persons also not entitled to that benefit, a right to the aforesaid benefit That rule of equality before the law or the equal protection of the laws under Article 14 cannot be invoked in such a case. See the decision of the Supreme Court in *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, .

10. In the result, the application is without merit and is, accordingly dismissed. But in the circumstances of the case, there will be no order as to costs.