
(2004) 07 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 5575 of 1999

Shri Kant Jha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Citation : (2004) 2 BLJR 1491 : (2004) 3 PLJR 656

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : M.P. Shukla, for the Appellant; Kameshwar Kumar, JC to G.P. VII, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The three petitioners, who are assistant teachers, are before this Court with a prayer to direct the respondents to pay their salary with effect from 1.1.1991, when the State cabinet on 28.3.1991 (Annexure 1) approved the proposal of the Human Resources Development Department to take over High School in Lakhisarai district and to pay salaries etc to the teaching and non-teaching staff from the date they joined the school.

2. The short resume of the facts are that on 26.3.1991, the proposal in relation to the school, where the petitioners are imparting education, was included in the agenda and was placed before the cabinet in its meeting dated 28.3.1991. The cabinet was pleased to observe that a new High School be established in the area. The petitioners had already joined the services and were awaiting their regularisation/approval, of the services and were also awaiting payment of salary. The matter relating to approval of the services remained pending for long and as the salary was not paid to the petitioners, they moved this Court in CWJC No. 2213 of 1994. The said matter was finally disposed of on 31.7.1995. From the material available on the record, the Court observed that the school in

question, Hasanpur High School, Lakhisarai was established in the year 1964-65. The permission to establish the school was granted in 1977. In 1991, the State Government took a policy decision to establish one secondary school in non-tribal urban area and in pursuance to that decision, the school in question (School at Hasanpur) was taken under the aforesaid scheme. The Court also observed that Annexure 1, to the said writ application provided that the Headmaster of the said school will be appointed by the State Government and services of the teaching and non-teaching staff shall be regularised or approved by the Director, Secondary Education, Bihar, after concurrence of the Bihar School Service Board and the order of the State Government. The said decision is also annexed hereto as part of Annexure 1. The Court also observed that as on the date of judgment, services of the petitioners were not regularised. In the earlier petition, it was contended by the respondents that the petitioners of the said cases were teaching and non-teaching staff of Hasanpur High School and it was also admitted in Court that the school was selected in the year 1991 under the scheme of establishment of new secondary school. The State earlier submitted that amounts were sanctioned for post creation, payment of salary, etc. It was also observed by the Court that the period of establishment of the school was extended upto 1993 but payment could not be made to the teaching and non-teaching staff because the Headmaster had not been appointed by the State Government and no order was passed approving services of the said petitioners after concurrence of the Bihar School Seva Board.

3. Considering totality of the circumstances and the submissions made in the earlier counter affidavit, though the Court observed that it was clear from the affidavit of the State Government that salary of staff would be paid after the approval, the Court disposed of the writ application directing the Director, Secondary Education, Bihar, Patna to send required papers in respect of the Assistant teachers of the school in question to the Bihar School Seva Board. The Bihar School Seva Board was required to take final decision in the matter and to communicate its decision within three weeks from the submission of required papers by the Director, Secondary Education and the Director Secondary Education was required thereafter to take a final decision in accordance with law.

4. Even after disposal of CWJC No. 2213 of 1994, no steps were taken by the State Government. Therefore, MJC No. 332 of 1996 came to be filed in this Court which was withdrawn by the learned counsel for the said petitioners on 15.5.1997 because a statement was made in the Court in the form of an affidavit that fresh inspection of the school has been conducted and the relevant file is in the process of obtaining government's approval and final order would be passed. Thereafter, on 10.9.1996 Vidyalaya Seva Board, Bihar vide Annexure 11, referred its recommendation to the Director, Secondary Education and services of the present petitioners and one Ramanand Singh were approved. It was also referred in the order-cum-recommendation that it was in response to the Director's letter No. 621 dated 17.9.1994 and letter No.778 dated 20.8.1996. Thereafter, the matter came up before the Director who required the matter to be placed before

the cabinet. Accordingly, the Government approved the recommendation in relation to the present petitioners, but did not approve the service of Ramanand Singh. The order was passed by the State Government on 8.5.1997.

5. The petitioners submit that as they are working in the school since 1.1.1991, they are entitled to their salary with effect from 1.1.1991 and any procedural or administrative delay on the part of the State Government or the Director or the School Service Board in approving the services of the petitioner would not come adverse to the right of the petitioners. It is also submitted that if the school was taken over in the year 1991 and the petitioners were continuously working since 1.1.1991 then the State cannot be allowed to become dishonest and say that though the petitioners have worked but they would not be entitled to salary. It is also submitted that if the school was taken over in the year 1991, then the petitioners are entitled to an order of approval of their services from the date of their joining and not from the date when the order is passed by the Government.

6. Contending contrary to what has been submitted by the learned counsel for the petitioners, learned counsel for the State submits that as the Government has issued orders on 8.5.1997 and services of the petitioners have been approved for the first time on 8.5.1997 the petitioner would not be entitled to any salary for the period prior to 8.5.1997.

7. Referring to paragraphs 3 and 12 of the counter affidavit, it is submitted that salary has been paid for the financial year 1998-99 and salary for the financial year 1997-98 though due but being under process would be paid to the petitioners. For the salary for the period from 1.1.1991 to 7.5.1997 (date of approval), the respondents categorically stated that the petitioners are not entitled to the salary for the same.

8. I have heard both the parties and perused the records.

9. From the earlier order passed in CWJC No. 2213 of 1994, it would clearly appear that the present petitioners are teaching staff of Hasanpur High School, Lakhisarai and the school was selected in 1991 under the scheme of establishment of secondary school. Even today, it is not the say of the respondent State that the school was not established in 1964-65 and was not taken over in the year 1991. If that be so, then any person who was engaged as teaching staff was entitled for consideration and his case should have been considered for approval from the , date he joined. The respondents received the recommendation long back. They have taken over the school in the year 1991. The recommendation attached to Annexure 1, would clearly show that recommending authority had clearly observed that it was approved to select the High School, Hasanpur, Lakhisarai, Munger and to sanction certain amount for meeting cost for payment of pay etc, office expenses and T.A. as in the enclosed statement during the year 1990-91. If the State authorities, who are alive to the situation and being concerned about the services in question were recommending that proper direction be issued, then State Government was

obliged to take up the matter immediately and pass order in relation to the regularisation of service. The delay in the corridors of the Secretariat or on the table of the cabinet or in the office of the Vidyalaya Seva Board are lapses on the part of the authority and cannot be used as sword against the petitioners to cut their head. The petitioners had been working since 1991. They had been imparting education under the Board hoping that their services would be approved and they would be paid their salary which is due. It is not the case of the State Government that even in this democratic set up, employees of the State are bonded labourers and have no right to salary or remuneration. Even if they impart education, they would not be paid anything. If this state of affairs exists, it would run contrary to the very basic foundation of the Constitution. The manner in which the petitioners are being sacrificed for six years or more, the State Government cannot say that it is a fair master. The State is not expected to contest litigations tooth and nail and say because services were approved after a long lapse of time, the right of the petitioners to get salary is defeated. The State should have shown grace of a fair master. It should have come out with a case that though the order of approval was passed on subsequent date but the teachers, who are doing their job would be entitled to their salary from the date they have joined.

10. It is also to be seen that the matter was approved in the year 1991. The Director referred the matter to the Vidyalaya Seva Board in the year 1994. Thereafter, every body went for a deep sleep. Neither Director was interested in passing orders in the matter, nor Vidyalaya Seva Board recommended the matter though they were required to make recommendations. They came into action only after the writ petition was filed and certain directions were issued. It is also unfortunate that despite disposal of the said writ petition on 31.7.1995, the Vidyalaya Seva Board passed its order on 10.9.1996 and Government issued directions on 8.5.1997. I am really shocked to see the manner in which the petitioners sacrificed their lives in the corridors of the Secretariat and in the office of the Vidyalaya Seva Board. The Vidyalaya Seva Board has not been constituted to give certain office to the nominated persons or blue eyed babies of the State. In fact it has been constituted so that the Board being alive to the service conditions, can take decision immediately and making its recommendation, require the Government to pass order.

11. The State Government in its counter affidavit has simply submitted that the petitioners would be entitled to their salary with effect from 8.5.1997 but they did not say as to why right from 1991 to 8.5.1997 the case of the petitioners could not be considered. The Vidyalaya Seva Board is also a creation of the State. If the State, its officers and instrumentalities go on causing delay in matters like present, the State cannot be allowed to take benefit of its own lapses. After all, we are in a State where rule of law governs every body.

12. Taking into consideration that there are no lapses on the part of the present petitioners and there are lapses on the part of the State Government and

Vidyalaya Seva Board, I must observe that the petitioners would be entitled to their salary with effect from 1.1.1991 upto the period they have not been paid. The petition is allowed. The State shall see that due salary is paid to the petitioners within a period of four months from the date of submission of a copy of this order.