
(2000) 06 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No's. 8110 and 8903 of 1996

Smt. Indua Prakash and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Citation : (2000) 3 BLJR 1713 : (2000) 4 PLJR 316

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—Both the cases relate to Project School and as common impugned order dated 10th August, 1996 is under challenge, they were heard together and are being disposed of by this common judgment.

2. The petitioners Indu Prakash (of C.W.J.C. No. 8110/96) and Pratibha Singh (of C.W.J.C. No. 8903/96) were teachers in Shanti Raman Project Girls High School, Sadhwara, Saran. Their services were taken over/recognised and then, subsequently cancelled, vide impugned order dated 10th August, 1996. In the aforesaid circumstances, common impugned order dated 10th August, 1996 is under challenge in these cases.

3. As the cases can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one, as stated hereunder.

4. The petitioner Indu Prakash (of C.W.J.C. No. 8110/96) was appointed as an Assistant Teacher on 25th November, 1983 by the then Managing Committee of Shanti Raman Girls High School, Sadhwara, Saran. Such appointment was stated to have been made after due interview and selection as History Teacher. On the other hand, petitioner Pratibha Singh (of C.W.J.C. No. 8903/96), in pursuance of advertisement issued in 1983 and selection, was appointed as Assistant Teacher in the school, where she joined on 2nd December, 1983 and continued to function.

5. The school, in question, was taken over as a Project School by the State of Bihar, vide letter No. 108 dated 12th February, 1985.

6. In the Project report submitted by the school, followed by Checklist dated 24th June, 1989, the name of petitioners were shown as Teachers. Similar report was submitted by the R.D.D.E. to the Director on 26th July, 1989. Subsequently, in pursuance of general direction of the Court dated 17th December, 1990 passed in C.W.J.C. No. 7331 of 1990, the Screening Committee held meeting and selected both the petitioners for their take over/recognition as Teachers, vide their proceeding dated 4th April, 1991. Thereafter, formal order No. 836 dated 30th August, 1991 was issued taking over the services of the petitioners/absorbing them as Teachers of Project School with effect from 1-1-1989. The same was subsequently cancelled by impugned order dated 10th August, 1996.

7. From the pleading made by the parties and the impugned order dated 10th August, 1996, it appears that the petitioners were absent from duty/on leave for certain period. While petitioner Indu Prakash was on leave between 17th January, 1987 to 30th November, 1987, the other petitioner Pratibha Singh remained absent on leave from 22nd September, 1986 to 30th November, 1987. The leave was sanctioned by the managing committee, vide Resolution dated 10th December, 1987.

8. With respect to such leave, notices were given to petitioners and matter remained pending, whereinafter the impugned order of cancellation of take-over of their services was issued on 10th August, 1996.

9. The take-over of service of Smt. Indu Prakash has been doubted and cancelled merely on presumption that this petitioner was not present for the period from 17th January, 1987 to 30th November, 1987. However, it has not been made clear as to what was the illegality in the matter of take-over/recognition of her service, even if she remained unauthorised absent from duty.

Similar ground was taken in the matter of cancellation of order of take over/recognition of service of petitioner Pratibha Singh doubting the leave. This apart, further plea taken was that she obtained B. Ed. Degree in 1985 through she was appointed in 1983.

10. Admittedly, the school was taken over with effect from 10th February, 1985, but all steps taken to take control of the school since 1989. The Managing Committee continued to run the affairs of the school up to end of December, 1987.

11. It is always open to the competent authority to allow leave and/or to disallow the same. For unauthorised absent from duty, if it amounts to misconduct, a person can be removed from service and/or the salary of such period can be withheld for non-attending the institution. However, such ground cannot be taken for cancellation of take over of service of a person/recognition of service, which were required to be considered on take-over of the school as was allowed in

favour of petitioners.

12. This apart, I find that none of the petitioners were given any notice to the effect that the authorities were contemplating cancellation of take over of their services/recognition of their services and mere notice was given relating to absent from duty.

13. For the reasons aforesaid, the impugned order dated 10th August, 1996 cannot be sustained and is, accordingly, set aside. The petitioners stand reinstated to their posts with effect from 10th August, 1996 and they are allowed all consequential benefits, including arrears of salary.

14. I have taken into consideration that services of one or other person has been recognised against the posts held by petitioners, but on presumption that five posts of Teachers are sanctioned for such Project School. However, such recognition of one or other Teachers will not be affected in view of order/judgment passed in the present cases, as a Full Bench of this Court in the case of Project Uchcha Vidyalaya Shikshak Sangh and Ors. v. State of Bihar and Ors. and analogous cases (2000) P.L.J.R. 287, held that nine posts of Teachers, including Head Master/Head Mistress are deemed to be sanctioned for the Project Schools.

15. Accordingly, I allow the writ petitions with the afor.