

(2018) 10 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.3645, 4136 of 2013

Sr. Rita Mary Hansdak, Rita Mary Hansda @APPELLANT@Hash State Of Bihar

Date of Decision : 26-10-2018

Acts Referred:

Bihar Non-Government Secondary Education (Taking over of Management and Control) Act, 1981 — Section 18(3)

Citation : (2018) 10 PAT CK 0042

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : K.M.Joseph, Manoj Kr. Ambastha, K.M.Joseph, Prabhat Kumar Jha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. Petitioners are aggrieved by the order dated 16.10.2012, contained in Annexure-14, passed by the Director, Secondary Education. The Director,

Secondary Education placing reliance on the judgment of the Apex Court dated 27.11.1987 in All Bihar Christian Schools Association and Another

Vs. State of Bihar and Others in Civil Writ Petition No. 4588-4589 proceeded that the State Government has the power to issue direction in relation to

the appointment of teachers in minority schools and it shall be obligation of the minority institution to abide by the direction issued by the State

Government. The Director further proceeded that at the relevant time when the State Government issued direction not to make any appointment, the

appointment of the petitioners despite ban by the State Government was nullity. The other objection in the matter of grant of approval of the services

of the petitioners of CWJC No. 3645 of 2013 (Sr. Rita Mary Hansdak @ Rita Mary

Hansda another Vs. The State of Bihar & Ors.) was lack of advertisement.

3. Mr. K.M. Joseph, learned counsel appearing on behalf of the petitioners has drawn the attention of this Court to the letter of the State Government dated 10.5.1983, Annexure-3, whereby it was clarified by the then Deputy Director, Secondary Education that in the matter of appointment of brothers, sisters and father of the Catholic community, there is no requirement of publishing the advertisement for appointment as teachers in the school. He submits that in view of letter dated 10.5.1983 the reason for rejecting the claim of the petitioners of CWJC No. 3645 of 2013 on the ground of non-publication of advertisement is thoroughly misconceived as there is no necessity of publishing advertisement if the appointment is to be made from amongst the sisters, brothers and father in the Catholic community in the minority institution. Referring to the other objections for rejecting the claim of the petitioners that there was ban on appointment and as such appointment of the petitioners was not approved by the respondents, he submits that it does not merit any consideration for the reason that the minority community have right to establish educational institution of their own choice and it does imply the right to employ teachers. Mr. Joseph submits that after retirement of the solitary Science Teacher, the school was left with no option but to make appointment, otherwise, if appointment is not made, then the institution has to suffer adversely on account of lack of teacher for imparting instruction in science subject.

4. Mr. Manoj Kumar Ambastha, learned counsel appearing on behalf of the State would submit that in terms of Section 18(3) of the Bihar Non-Government Secondary Education (Taking over of Management and Control) Act, 1981, State has necessary power to issue direction and as such the State was competent to issue direction not to make any appointment and any appointment if made in teeth of the direction, is nullity. He next contended that at the relevant time when the State Government was making appointment on fixed remuneration, the minority institution were making appointment on regular scale basis and the State Government issued direction not to make appointment in the minority institution to avoid conflict and as such the State Government was justified in rejecting approval of services of the petitioners.

5. Considering the arguments advanced on behalf of the petitioners and the State, the Court is of the considered view that the right to establish educational institution does imply the right to appoint teachers for imparting instruction in the minority institution and that right cannot be regulated by the State Government except in the matter of prescribing qualification for excellence of the education in order to maintain the minimum standard. They have absolutely no jurisdiction to interfere in the affairs of the minority institution including in the matter of appointment of teachers in the minority institution. Once it is held that the post on which the appointments have been made were sanctioned post and the teachers appointed by the minority institution were holding the requisite qualification, the State was under obligation to grant approval of the services of such appointed teachers and rejecting the claim by the Director, Secondary Education on the ground that the appointments were made without advertisement does not appeal to reason to this Court in view of the letter dated 10.5.1983, Annexure-3 of the State Government. The Court also does not feel persuaded by the submissions of the State counsel that the State has necessary power to issue direction imposing ban on appointment. If the State cannot directly control the affairs of the minority institution, by necessary implication, it has no right to interfere in the affairs of the minority institution indirectly and accordingly the Court is of the view that the reason assigned for rejecting the claim of the petitioners vide Annexure-14 does not satisfy the test of reasonableness and rationality and as such the order as contained in Annexure-14 dated 16.10.2012 cannot sustain. It is accordingly quashed.

6. So far as the appellate order is concerned, from perusal of the same it would manifest that the appellate authority, namely, the Principal Secretary has not entered into the merit of the case and dismissed the appeal only on the ground of delay. In view of the above, the Court does not find any justification to uphold the appellate order dated 17.01.2013, Annexure-18. It is also accordingly quashed.

7. Since the original order passed by the Director, Secondary Education has been declared as nullity and has been set aside, the consequential steps would be void and inoperative.

8. The order of the Principal Secretary, Education Department will not in any manner create any impediment in the matter of granting the benefit of

approval of services and consequential benefits to the petitioners. The respondents are hereby directed to take appropriate decision in accordance with the observations made by this Court hereinabove within a maximum period of four months from the date of receipt/production of a copy of this order.

9. It is made clear that the respondents cannot maintain the stand that the appointment made without advertisement and made during the period when there was ban imposed by the State Government, while taking fresh decision as it has already been declared by this Court in the preceding paragraphs

that these two objections are unsustainable and cannot be the grounds to refuse approval of the services of the petitioners. Respondents are

accordingly directed to take fresh decision within the time frame as indicated above with all consequential benefits.