
(1985) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case no. 3922 of 1986.

Srat. Shyamlata Prasad

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 06-11-1985

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 3(1), 3(3), 4(2)

Citation : (1985) PLJR 368

Hon'ble Judges : S. K. Jha, J; B. P. Griyaghey, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh and Ramesh Chandra, for the Appellant; Manilul S. C . 4 and Shahjahan Ali J. C. S. C. 4, for the Respondent

Final Decision : Allowed

Judgement

S. K. Jha and B. P. Griyaghey, JJ.—All the parties are duly represented in this case. We are, therefore, deciding the case finally at this stage itself. The facts are not at all in controversy. The petitioner was the Headmistress of Khedan Badri Chouresia High School, Gauchhari, P. S. Gogri Jamalpur district Khagaria and was drawing the salary and emoluments in the pay scale of a headmistress. Her appointment was duly made by the managing committee of the school by a resolution on 9th August, 1978 which is borne out by a true copy of the resolution of the managing committee as incorporated in annexure 1 to the writ application. Pursuant there to she joined the school in that capacity on 21st August, 1978. She continued, without any break, in that capacity all along. The question of nationalisation of schools by the State Government was under contemplation for a pretty long time which, we presume, was well known to a large section of the people concerned with the education department. When finally the State Government decided to take over the schools some formalities had to be observed with regard to the nature of the schools, the teachers bonafide working there the proper shape of the library, the fitness of the building in which the schools were conducted and soon and so forth. In order to satisfy

itself that a particular school was fit to be nationalised a team of inspection was duly constituted by or under the orders of the State Government is the education department. Such a team admittedly inspected this particular school in question in the process of taking over or nationalising the institution. A true copy of the report of the team has been incorporated in annexure 2 to the writ application. Admittedly the school having been found fit for nationalisation it was taken over by the State Government on 21st February, 1983 which is borne out by annexure 3 to the writ application. In the Notification, which is under challenge, the petitioner was described merely as an acting headmistress and, *inter alia*, it was stated that she will continue to function as the acting headmistress so long as a fresh regular permanent and substantive appointment was not made by the competent authority. If the matter had ended at that, perhaps, the petitioner may have had to face some difficulty, but substantial civil right of the petitioner was jeopardised not merely by the nomenclature but by a positive direction contained in the impugned annexure that she will be drawing the salary only of an assistant teacher which admittedly is much less than that drawn by a regular headmistress/headmaster of the school. Shorn of all details these are the only relevant facts.

2. The question arises as to whether the respondents had any jurisdiction in law to so reduce the petitioner's status affecting her prejudicially and to her detriment. That at once brings us to the relevant provisions of law as contained in the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (Bihar Act 33 of 1982) (hereinafter to be referred to as the Act). The relevant provisions upon which such jurisdiction on the part of the respondent has to be adjudged depends upon a true construction of certain provisions contained in Chapter II of the Act which deals with "taking over of the management and control". Section 3(1) thereof reads as follows :-

3(1). All non-Government secondary schools other than the minority secondary schools based on religion or language declared as such by the State Government and Centrally sponsored, autonomous and proprietary secondary schools recognised by the State Government, recognised permanently, provisionally or partially by the Board of Secondary Education under the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second Amendment) Ordinance, 1980 (Bihar Ordinance no. 82 of 1980) shall, notwithstanding anything contained in the said Act or the said Ordinance, be deemed to have been taken over by the State Government with effect from the 2nd October, 1980.

Sub-section (3) of section 3 states that the State Government may by notification in the Official gazette take over the management and control of such schools and on such terms and conditions as the Government may deem proper, which have already received permission of establishment from the Bihar Secondary Education Board or of such schools imparting secondary education which have applied for permission of establishment to the said Board

immediately before the date of promulgation of this Ordinance which had preceded the Act, with which we are dealing, had provided that the utility of such school is proved in the eye of the Government and which fulfill within three years of the promulgation of the Ordinance, the conditions laid down by the State Government with regard to land, building furniture, equipments and enrolment. The qualification and suitability of teachers working against nine posts of the school, one clerk and two orderlies of such school before the promulgation of this Ordinance, shall be examined by a committee constituted by the State Government for the purpose and if found suitable for appointment in Government Service they shall be appointed in the Government service along with taking over the management and control of the school. Thereafter follows section 4 which deals with the consequences of taking over management and control of the school and states that the movable and immovable assets and properties owned and possessed by Secondary schools taken over by the State Government u/s 3 including land, building, documents, books and registers relating to the school shall stand transferred to the State Government and be deemed to have come into the possession and ownership of it. Sub-section (2) of section 4 which is more relevant and important provision to be construed runs in these terms :-

The service of every Headmaster, teacher or other employees of the school taken over by the State Government shall be deemed to have been transferred to the State Government, with effect from the date of taking over of the school and become employees of the State Government with such designation as the State Government may determine.

The language of this statutory provision is absolutely unequivocal. It talks of the consequences to follow after the schools have been taken over by the State Government. We are concerned with only the question of taking over of the school in question. As to what has preceded such a taking over is absolutely irrelevant and is, therefore, not to be found at least by us or has any such provision been brought to our notice by learned counsel for the State in the Act. What section 4(2) speaks of is that as a consequence of the taking over of the school the services of every headmaster, teacher or other employees of the school so taken over shall be deemed to have been transferred to the State Government effective from the date of the taking over and they shall become employees of the State Government ipso jure with such designation as the State Government may determine. On the date of the taking over the petitioner was admittedly a headmistress duly appointed. The question with regard to the excess in the number of teachers which at times has been brought to our notice by learned counsel for the State is of no consequence here. Even if that may have any bearing upon the issue which falls for our decision the result to us seems to be very clear that the petitioners' services by legal fiction has been transferred to the State Government with effect from the date of the taking over of the school. Mr. Mani Lai, learned counsel for the State invited our attention to the last part of section 4(2) of the Act which merely states "and become employees of the State Government with such designation as the State

Government may determine". The submission, rather half hearted, was that the State Government has reserved to itself the confirm^{nt} of the designation to every headmaster, teacher or other employees of the school taken over. The reservation of any such right to redesignate h s, to our mind, no relevance to the substance of the matter relating to the status and emoluments drawn by such a headmaster, teacher or employees of the school. For example a headmaster may be redesignated as ? Principle he may be redesignated as the teacher in chief without affecting the emoluments and the powers to be exercised by such a headmaster or teacher; As a matter of fact a r^{ference} in this connection is warranted to section 2 (g) of the Act to the definition of headmaster. It tuns thus:-

Headmaster "means the head of the teaching staff of a nationalised Secondary school by what ever name des^{gnated}" (The underlin^{ng} is our for the sake of emphasis).

This at once, at least to our mind, shows the hollowness of the submission of the learned State counsel with regard to the last part of section 4(2) referred to above. Incidentally, we may also refer to the meaning and definition of a "teacher"" and "non-teaching staff" in sub section (h) and (i) respectively of section 2 of the Act. In any event in so far as the present case is concerned we are not dealing with the case of any teacher or a member of the non-teaching staff. Before we come to the true construction of section 4(2) of the Act, we shall be failing in our duty not to take notice of the submission of the learned State counsel to subsection (3) of section 3 of the Act. That statutory provision states that the State Government may by notification in the official gazette take over the management and control of such schools on such terms and conditions as the Government may d^{em} proper which have received, inter alia, permission of the Bihar Secondary Education Board immediately before the date of promulgation of the Ordinance namely the Ordinance preceding the Act mutatis mutandis in the same language as a matter of fact ipsissim^s verbis. It has nothing to do and has absolutely no bearing on the question of the permission to be meeted out to the teaching and nonteaching staff after the school had once been taken over. It was the State counsel's argument that in the instant case the prior permission of the Board had not been taken. Be that as it may, that is a provision which may or may not be constructed to vest the Government to take over the mana gement and control of any school. Therefore unless the question crops up as to whether the school duly taken over by notification in thc official gazette has so been done by thc State Government without jurisdiction; this matter need not be gone into at all. It would bear rc petition to say that in the instant case we are concerned with a question arising out of thc consequence of the taking over of thc school in question by a notification in the official gazette. When we confronted the State counsel with the simple question as to whether it was his submission that the taking over of the management and control of this school by the State Government was without jurisdiction because one of the prior conditions, as he has submitted, had not been fulfilled, he could not question the

validity of the taking over by the State Government as indeed he was representing the interest and the action of the State Government itself. On the contrary he submitted that the action of taking over was absolutely justified and could in no way be challenged. Having so submitted he tried to shift his stand by saying that the taking over of the management and control by the State Government by a notification could be made on such terms and conditions as the State Government may deem proper. It has not been brought to our notice as to on which terms and conditions has this school been taken over departing from which the petitioner is unable to seek a remedy from this court. The least that we can say is that the submission of the learned counsel for the State was an argument in desperation and need not be taken serious note of.

3. Having so dealt with and disposed of the contention of learned counsel for the respondents we again revert to the provision of section 4 (2) of the Act. It would again be repeating, but in our opinion not fruitlessly to state that the particular provisions" of section 4(2) of the Act is limited or hedged in by no limitation or qualification whatsoever, The provisions of section 3(3) of the Act, have in our opinion no bearing upon a true construction of section 4(2) although we were reminded again and again by learned counsel for the State on the well settled principle of the construction of the statute that the whole of the statute has to be read together so as to harmonise the different provisions thereof. In the instant case we do not find any provisions to be harmonised. The wellknown principle of construction referred to¹ can apply only where some statutory provisions if constructed in their proper perspective may render the meaning of one or the other provision contrary to each other or make any of them unintelligible and as of no consequence. None of these conditions induce us to be reminded of such a simple and well settled provision of construction of statutes. The well settled principle of canon of construction *ut res magis valeat quam pereat* is the principle from which no departure can be made in the instant case, "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected. which will introduce uncertainty, friction or confusion into the working of the system." Refer to *Shannons Realities Ltd v. Ville de St. Michel* 1924 Appeal Cases 185 at Pages 192 and 193 per Lord Shaw, "If, said Lord Greene M. R., "there is one rule of construction for statutes and other documents, it is, that you must not imply anything in them which is inconsistent with the words expressly used" *Re. A Debtor* (1948) 2 All. E. R. 533 at 536. If language is clear and explicit, the court must give effect to it, "for in that case the words of the statute speak the intention of the Legislature" *c.f. Warburton v. Love Land* (1832) 2 D. & Cl. 480 per Tridal C. J. at page 489. and in so doing it must bear in mind that its function is *fus dicere*, not *jus dare*; the words of statute must not be overruled by the judges but reform of the law must be left in the hands of parliament. See *Cheney T. Conn.* (1968) 1 W. L. R. 242.

4. The provisions of section 4(2) have not been shown to us as contrary to any

other provision of the Act. We have no option but to hold that ipso jure the petitioner became the headmistress of the school on and from the date of the taking over of the school in question by the State Government. She has not been sought to be redesignated. To say the least she has been demoted or reduced in rank. It is absolutely unwarranted by the provisions referred to by us above. In the circumstances we are constrained to hold" that the petitioner must succeed and that part of the notification of taking over must be struck down which has described the petitioner as an acting headmistress and assigned her to the status of an assistant teacher by prejudicing her with lesser pay and emoluments and so on. Her civil rights could not so have been affected without due sanction of law and we find ourselves in complete disagreement with learned counsel for the State that there is any provision in the Act which can limit the operation of section 4(2) of the Act. This application is accordingly allowed and the operation of the notification aforementioned is quashed. It is directed that the petitioner shall now put to her original position and status as the headmistress of the said school ever from 21st of February, 1983 which is the date of taking over. Her emoluments shall not, in the circumstances, be, in any way, prejudicially effected to her detriment.