

(1994) 04 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3422 of 1993

Surendra Paswan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0055

Judgement

S.B. Sinha and R.N. Prasad, JJ.—Both. the cases have been heard together and are being disposed of by this common judgment.

2. The application is directed against the order dated 27.3.92 and 24.7.02 which are annexures 3 and 3/1 respectively to the writ applications, whereby and whereunder the salaries of the Petitioners were directed to be paid to the Petitioners from 1.1.93. The Petitioners have also prayed issuance of writ of or in the nature of mandamus directing the Respondents to pay salary for the period from 1.1.93 to 31.5.93.

3. The facts of the matter lie in a very (sic) compass. The Petitioners were appointed as assistant teachers in various elementary schools and have been working for the last 15-16 years. They were untrained. The State of Bihar held a policy decision that those untrained teachers of Government schools or taken over schools would be sent for training. However, they were being paid a stipend of Rs. 50/- per month not full salary during the period of training.

4. The teachers were sent for training, thereafter they raised objection and an agreement was entered into by and between the State of Bihar and the State Elementary Teacher Federation. The said agreement is contained in annexure "2" to the writ application. In terms of the said agreement it was agreed that all such teachers would receive the benefit of full salary and would be paid their salaries up to 31.5.03, but the said benefit would not be extended thereafter.

5. The contention of the Petitioners is that from a perusal of the circular dated 24.9.91 it would appear that the training was to being on 15.11.91, but from a

perusal of annexure "3" to the writ application it would appear that the session for the year 1992-93 was directed to begin from July, 1992.

6. Ms. Kamlesh Jain has raised a short question and submitted that it would be evident that the Respondents in principle agreed that the Petitioners would be getting their salaries for the entire period of training, as much as the training for the period 1992-93 was to expire on 31.12.02. According to learned Counsel there was thus absolutely no reason as to why the training of the Petitioners did not commence in the month of January, 1992 and why was the same extended up to July, 1992. According to learned Counsel the aforementioned action on the part of the Respondents-State is not only arbitrary but also mala fide. Learned Counsel, S.C. IV, however, submitted that the Petitioners are bound by the agreement entered into by and between the Federation and the State of Bihar.

7. In this case no counter affidavit has been filed. It is thus not disputed that the Petitioners were sent for training pursuant to the policy decision evolved by the State of Bihar itself. The Petitioners were, thus, not sent for training on their own request. It is submitted by Mr. Sinha that the agreement entered into between the parties should be given effect to, but such an agreement, in our opinion, has to be considered in the background of the events preceding the same. It is not in dispute that an agitation was launched by the teachers in protest against the grant of payment of a sum of Rs. 50/- per month by way of stipend and an agreement was entered into with a view to bring an end to the agitation. Even assuming that this Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not go beyond the terms of the conditions of the agreement, but it is beyond our comprehension as to how such a paltry sum of Rs. 50/- can be given by way of stipend when during the said period also the contract of service entered into between the parties had not come to an end. The Supreme Court recently in All India Imam Organization and others Vs. Union of India and others, observed as follows:

...Absence of any provision in the Act or the rules providing for appointment of Imam or laying down condition of their service is probably because they are not considered as employees. At the same time it cannot be disputed that due to change in social and economic set-up they too need sustenance. Nature of their job is such that they may be required to be present in the mosque nearly for the whole day. There may be some who may perform the duty as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or profession or service for their livelihood except doing duty as Imam. What should be their fate? Should they be paid any remuneration and if so how much and by whom? According to the Board they are appointed by the Mutawallis and, therefore, any payment by the Board was out of question. Prima facie it is not correct as the letter of appointments issued in some States are from Board. But assuming that they are appointed by the Mutawallis the Board cannot escape from its responsibilities as the Mutawallis too u/s 36 of the Act are under the

supervision and control of the Board. In series of decisions rendered by this Court it has been held that right to life enshrined in Article 21 means right to live with human dignity. It is too late in the day, therefore, to claim or urge that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept but it has undergone a change and even in Muslim countries mosques are subsidised and the Imams are paid their remuneration. We are, therefore, not willing to accept the submission that in our set-up or in absence of any statutory provision in the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the Institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

In the case before the Supreme Court, there did not exist any relationship of any employer and employee between the Board and the Imams, but despite the same the Supreme Court directed payment of adequate sum.

8. In this case as noticed hereinbefore even during the period obtaining, the relation ship of employer and employees between the State of Bihar and the Petitioners continues. The Petitioners were not at fault for the late starting of the session. In fact, the State of Bihar was itself to be blamed therefor. In our opinion, therefore, the Petitioners should not suffer for the acts of omissions and commissions on the part of the State, particularly in view of the fact that it was the decision of the State to send the Petitioners for training.

9. It is now well known that an instrument has to be construed keeping in view the intention of the parties. Further apart from the agreement, Petitioners, were also entitled to salary for a period of five months on equitable considerations inasmuch as keeping in view the present trend of the (sic) the Petitioners could not have been doled out a sum of Rs. 50/- per month for their sustenance. The State, in our opinion, being a welfare State, was bound to act in fair manner.

10. For the reasons aforesaid; we are of the view that interest of justice demands that the Respondents be directed to pay salary to the Petitioners for January, 1903 to May, 1993. The application is accordingly, disposed of. However, on the facts and in the circumstances there shall be no order as to costs.