
(1982) 07 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 4559 of 1982

Tarkesawar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 35 BLJR 792

Hon'ble Judges : S.S. Sandhawalia, C.J;Ashwani Kumar Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—This writ case was initially heard by a Single Judge and by order, dated 5-7-1983 it was referred to a Division Bench.

2. The case involves interpretation of Section 4(2) of the Bihar Non-Government Elementary Schools (Taking over of Control) Act, 1976 (Act 30 of 1976) (.hereinafter referred to as the "Act) and the core question involved in the instant case is whether Section 4 (2) of the Act brings within its sweep untrained teachers and unconfirmed teachers as well or the word "teacher" in Section 4 (2) of the Act brings within its ambit all such teachers who are working in the school on the date of take over whether they fulfil the test of basic prescribed qualifications for the post or not whether they are trained or not, whether they are confirmed or not and whether they are duly appointed or not.

3. The learned Counsel for the petitioner has submitted that the appointment of untrained teachers was not ipso facto a nullity and has advocated the theory of ipso facto and automatic transfer of even untrained teachers of recognised schools to the State service on take over of the schools ; in other words the submission advanced was that even the services of untrained teachers who were unqualified and ineligible for the post in Government service would be automatically transferred to the State service ; again in other words, the

submission was that by operation of Section 4 (2) of the Act the petitioners got a statutory right to continue and be recognised as teachers in Government service with effect from the date of take over of the School.

4. The firm stand taken by the State of Bihar in paragraph-K) of the counter-affidavit was that the services of the petitioners were not recognised and taken over by the State of Bihar in view of the Act that their initial appointments were invalid as they were untrained.

5. Another firm stand taken by the State of Bihar, in the counter-affidavit was that the writ application was fit to be dismissed on the ground of inordinate delay itself. It was averred in paragraph-21 of the counter-affidavit that the petitioners' services having been terminated on 15-10-1973, the writ application filed on 11-11-1982 (after 9 years) was much too belated and hence fit to be dismissed.

Before I deal with the submission advanced by the learned Counsel for the petitioners, a few admitted facts need to be stated.

That the school, in question was taken over on 15-10-1973. That the petitioners were admittedly untrained teachers (matriculates). That the petitioners were unconfirmed teachers on the date of take over of the school. That the appointment letters in favour of the petitioners, issued by the Secretary, were not in pursuance of any resolution of the Managing Committee and the learned Counsel for the petitioners fairly conceded that there was no averment to this effect in the writ case nor to the effect that the appointments of the petitioners were confirmed by the Managing Committee before the taking over of the school. There is no whisper in the writ case that, on the date of take over of the school, the petitioners were shown in the approved list of teachers.

6. A few more facts need be stated. The petitioners were appointed as teachers of Bhanu Pratap Middle School in village Kaphen under Bocbaha Anchal in the District of Muzaffarpur, between January and April, 1973 by the Secretary of the School. The School was a private one but a recognised one. The school was taken over on 15-10-1973. According to the petitioners, they functioned as teachers of the said school till December, 1974 and thereafter were not allowed to work. The petitioners' services, thus, were not recognised in the State Service after the take over of the school. The learned Counsel for the petitioners, in support of his submission as indicated in paragraph-2 above, relied upon a Bench decision in the case of Anandi Kumari v. The State of Bihar and Ors. L. P. A. No. 64 of 1983. decided on 11-1-1985 and very fairly conceded that if the judgment in Anandi Kumari's case (just referred to above) was not applicable in the instant case then the petitioners had no case.

7. The certified copy of the judgment in Anandi Kumari's case was produced by the learned Counsel for the petitioners for perusal of the Court. I have carefully gone through the judgment. It is enough to say that the point involved in the instant case, as indicated in paragraph 2 above, was neither the point to be considered in that case nor has it been considered/ answered in that judgment.

In the judgment of Anandi Kumari's case (referred to above) it has nowhere been held that even untrained teachers and unconfirmed teachers had the statutory right to continue and be recognised as teachers in the State service with effect from the date of take over. It has also not been held in that case that even such teachers who do not satisfy even the test of basic prescribed qualifications (i. e eligibility) for the appointment to the post but having been appointed automatically and ipso facto become Government servant and their services stand transferred to the State Government.

In Anandi Kumari's case primarily it was the order of transfer, passed by the District Superintendent of Education, transferring respondent No. 5 of that case as Headmaster of Shri Muneswar Ramrati Mala Balika Middle School, Gaya (where Anandi Kumari was already working as Headmistress of that school). It was this order of transfer which was under challenge.

Thus Anandi Kumari's case (in L. P. A. No. 64 of 1983) (referred to above), the point in issue in the instant case has not been dealt with at all and, in my opinion, reliance placed upon the judgment in the aforesaid L. P. A., filed by Anandi Kumari is under a total misconception. I hold that the point in issue in the instant case having not been decided in that case, the judgment in that case is not applicable in the present case.

Thus the submission advanced by the learned Counsel for the petitioners fails.

8. However, advertent to the point in issue, it is pertinent to quote Section 4 (2) of the Act:

Every Officer, teacher or other employee holding any office or post in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of the Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do so unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government.

9. In private institutions empirically managed by the proprietors or Managing Committees, the possibilities of favouritism and nepotism for appointment to the post of teachers were not only there but rampant within the State. One may not be satisfying even the test of basic prescribed qualifications yet appointed ; again one may be qualified at the time of initial appointment but never confirmed before the take over of the school are such persons to be automatically appointed on take over to become a permanent part of the educational set up of the State ? Did the framers of the Act intend by the word "teacher" in Section 4 (2) of the Act as such ? Obviously this is not the spirit of legislation in Section 4 (2) of the Act. In my opinion, Section 4 (2) of the Act takes within its sweep only such teachers who satisfy the test of basic prescribed qualifications (in other words who satisfy the test of eligibility) and such teachers who have been duly

confirmed before the taking over of the school ; in other words only such teachers who are duly appointed teachers. Duly appointed teachers are only such teachers who satisfy the test of eligibility and later also confirmed.

10. I may also refer to Section 4 (2) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. It is as follows:

The services 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 with such designation as the State Government may determine.

Though it is true that in case of Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others, . it has been held that the two Acts are not in pari materia with another yet it has been held that it is possible for a Section or provision of different statutes to be in pari materia. Section 4 (2) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 was considered in the Full Bench case of Ram Ballabh Pd. Singh v. The State of Bihar, (supra) and on full examination of that Act as a whole it was held that, in spirit of legislation, examination of qualification and suitability of a Headmaster was a pre-condition for appointment to Government service and there was no automatic transfer of the service of school personnel to the Government. It was further held in that case that a Headmaster was clearly a teacher as well and thus squarely within the ambit of later term.

11. Looking to Section 4 (2) of the Bihar Non-Government Elementary Schools (Taking over of Control) Act, 1976 (Act 30 of 1976) and Section 4 (2) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981, I hold that one is in pari materia with the other. In that view of the matter the point in issue in the instant case, in my opinion, is fully covered by the Full Bench decision in Ram Ballabh Pd. Singh v. The State of Bihar (supra). That Full Bench has duly approved the Bench decision in Om Prakash Choubey v. The Director (Secondary Education) cum Additional Secretary, Government of Bihar and Anr. 1985 P.L.J.R. 1110. The relevant extract of the Bench decision in Om Prakash Choubey v. The Director (Secondary Education) cum Additional Secretary Government of Bihar and Anr., (supra) has been given in para-40 of the aforesaid Full Bench decision in Ram Ballabh Pd, Singh's case which may be referred to from that judgment, if needed. In that case also the claim was by untrained teachers appointed by the sponsors of the school to get their services transferred to the nationalised schools on their previous service conditions. The Division Bench, though pressed with host of earlier judgments advocating the theory of automatic and ipso facto transfer of the service of the employees of unrecognised schools, refused to toe that line and held otherwise. I would like to quote only one line from the extract of the aforesaid Bench decision (already quoted in paragraph 40 of the aforesaid Full Bench case). The Division Bench, ultimately in Om Prakash Choubey's case (supra) held as follows:

It is plain and clear that the petitioners who are not trained graduates do not possess minimum qualifications for appointment as teachers.

And the writ petitioners were dismissed by the Division Bench, this Court, in the Full Bench case of Ram Ballabh Pd. Singh, (supra) agreed with the approach and conclusion of the aforesaid Division Bench.

12. For identical reasons as in the aforesaid Division Bench duly approved by the aforesaid Full Bench, I hold that such teachers who do not satisfy the test of basic prescribed qualifications (i. e. eligibility) for the post of teacher and teachers who have not been confirmed before the take over of school (in other words not duly appointed) cannot claim the statutory right to continue and be recognised as teachers in Government service from the date of take over. In others words the word "teacher" in Section 4 (2) of the Act brings within its sweep only such teachers who are duly appointed i. e. one who possesses the basic qualifications for appointment of a teacher and also confirmed before the take over of the school. This appears to be the intent of the provision u/s 4 (2) of the Act.

In the instant case admittedly the petitioners were untrained teachers and also unconfirmed teachers on the date of the take over of the school in question. Also admittedly there is nothing in the writ application which shows that the petitioners were appointed by the Secretary of the school in pursuance of any resolution of the Managing Committee; in other words, they were not duly appointed teachers and hence I hold that the petitioners had no statutory right to continue and be recognised as teachers in Government service with effect from the date of take over of the school in question.

13. The learned Counsel for the petitioners, however, tried to distinguish the Full Bench case in Ram Ballabh Pd. Singh v. The State of Bihar, (supra) and submitted that Section 4 (2) of the Act is not in part materia with Section 4 (2) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 and hence it was submitted that the ratio decided in the Full Bench case could not be applied in the instant case.

There is no force in this submission advanced by the learned Counsel for the petitioners. I hold that whether school is a recognised school or unrecognised school, it makes no distinction and hence the principles decided in the Full Bench case is fully applicable in the present case also.

14. The writ petitioners have also prayed for payment of their salary with effect from the date of take over of the school in question. The petitioners have averred that the salary has not been paid to them from October, 1973 to December, 1974 (till the date they were allowed to work).

As I have already held above that the petitioners were not duly appointed teachers, in my opinion, they are not entitled to have their salary for the period in question.

15. The learned Counsel for the petitioners also argued the point of discrimination. It is enough to say that if one untrained teacher was wrongly appointed and allowed to continue in one case or the other, it does not mean that the illegality should be allowed to perpetrate.

16. Then remains the stand of the State of Bihar to be considered-~ on the point of inordinate delay.

Though a counter-affidavit was filed on behalf of the State of Bihar, nobody appeared at the time of hearing before the Division Bench, none-the-less the counter-affidavit is there. The petitioners' services were terminated on 15-10-1973 and the writ application has been filed on 11-11-1982 L e. after nine years. The writ petitioners have in paragraphs 9 and 10 of the writ case, stated that repeated representations were filed by the petitioners (the last being, dated 1-11-1981) but to no effect and only thereafter they had filed the present writ case.

The petitioners' services were terminated on 15-10-1973 and for nearly nine years they kept on submitting one representation or the other and it was only on 11-11-1982 that they Sled the present writ case. The representations presented by the Petitioners to the Government were in the nature of mercy petitions and they should have realised that in pursuing a remedy which was not duly appointed under the law they were putting in peril a right of high value and significance. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts can not interfere in the matter after the passage of certain length of time but it is well settled that it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the court to put forward stale claims. It is also well settled that merely by filing repeated or delayed representations, the petitioners can not get over the obstacles which delay in approaching the Court creates. On the facts of the present case I hold that the claims made by the petitioners are also stale, and by their conduct they have disabled this Court from exercising its extra-ordinary power. The writ petition, thus, has got to fail on the ground of inordinate delay as well.

17. In the result, this writ application fails and is dismissed. However, there will be no order as to costs.

S.S. Sandhawlia, C.J.

18. I agree.