

(2006) 11 PAT CK 0159
In the Patna High Court
Case No : LPA No. 1211 of 2005

The State of Bihar and Others

APPELLANT

Vs

Bipin Prasad Singh

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21A, 226

Citation : (2007) 1 PLJR 351

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kr. Sinha, J

Bench : Division Bench

Advocate : Syed Arshad Alam, for the Appellant; Ganesh Prasad Singh, Pramod Kumar, Manish Kumar, M.P. Shukla, Dilip Kr. Tiwary, Bijay Kumar Pandey, Rajendra Pd. Singh, Tej Bahadur Singh, Rajeev Kumar Singh, Niranjan Kumar and Jay Shankar, for the Respondent

Judgement

Dr. J.N. Bhatt, C.J.—In this group of Letters Patent Appeals under clause 10 of the Letters Patent, at the instance of the State Government, common questions of law and fact are involved. Therefore, upon joint request of learned counsel for the parties, were heard, simultaneously, in a group and, now, they are being disposed of by this common judgment. Let at this stage first be a factual projection, so as to appreciate, examine and adjudicate upon the merits of all the Letters Patent Appeals and challenges against them.

2. Perhaps, the appellants State of Bihar keeping in view the constitutional scheme and mandate contained in Article 21A of the Constitution of India, took a policy decision, as imparting of education is one of the sovereign functions of the State and the State is obliged to impart education to the children of age group 6 to 14 which is, now, incorporated in Article 21A as a fundamental right of education.

3. The appellants State of Bihar evolved a scheme by a policy decision to establish Project High Schools. It had issued a circular bearing letter No. 1115 dated 27.5.1981 laying down a policy decision therein that for the remaining four

years of 6th Five Year Plan like that from 1981-82 to 1984-85 the State should achieve the target of establishing of at least four project high schools out of which one may be girls high school in every Block.

4. It is not a disputed question that a three Men Committee came to be constituted for the purposes of identification of the existing schools to implement the scheme. A circular dated 4.2.1989 came to be issued by the appellants State for appointment of competent and qualified working teaching and non-teaching staff of such schools. Such schools, obviously, and, indisputably, were not to be treated in the category of a nationalised school for management purposes and a formal notification was issued declaring the management of such schools by the Government. Before that, by virtue of a circular dated 21.2.1982 the mode and the manner of recommendation and regularisation of services of the teaching and non-teaching staff of project high schools were laid down. There is no dispute about the fact that in pursuance of the said scheme, some of the schools came to be established not to the extent envisaged. The respondents in this group of Letters Patent Appeals are the original writ petitioners and they are hereinafter referred to as such for the sake of convenience and brevity.

5. The petitioners came to be appointed as Assistant Teachers and non-teaching staff in such schools as a sequel to the implementation of the scheme. The Government of Bihar thus, had to set up minimum four Project High Schools in each Block of the State out of which at least one would be of Girls High School as per the policy decision of the State Government manifested in the aforesaid letter, dated 27.5.1981, which was issued by the Director of Secondary Education-cum-Special Secretary, Government of Bihar. It was circulated to all the District Education Officers and the Regional Deputy Directors of Education which means that the letter did mandate that there shall be at least four Project High Schools in each Block of the State of Bihar, out of which at least one should be a Girls High School within the remaining period of 6th Five Year Plan.

6. Of course, consequent to the policy decision taken as per letter, dated 27.5.1981, subsequent letters came to be issued by the Government to streamline the mechanism of the scheme. Schools were opened, schools were running and in some of the schools the petitioners came to be appointed as Assistant Teachers and non-teaching staff.

7. By virtue of the Government policy decision and instruction for the implementation of the scheme it was directed that the District Education Officers were to select the place with the sanction of the Regional Deputy Directors of Education and obtaining the approval of the Government. This is, how, some schools for girls came to be established in the State of Bihar. The petitioners are some of those persons who were appointed Assistant Teachers and non-teaching staff.

8. After the appointment of the petitioners in the schools known as Project High Schools a controversy came to be generated, perhaps, due to the decision taken

by the State Government while giving extension for such project schools subsequently for the Financial Year 2000-2001 with a condition that the sanction order for payment of salary shall be issued for, only, such employees whose appointment are found valid and legal.

9. On the direction of the" State Government for the verification of the appointment, thus, far made in the project schools for teaching, as well as, non-teaching staff, a Committee of three persons came to be constituted headed by the Regional Deputy Director. The reports came to be submitted. However, the Government took further decision to cross check and verify the reports of the committee through the District Magistrate of each District in the State of Bihar.

10. It is true, that the Committee of three Members first appointed for verification as to whether the appointments were regular or not found most of the petitioners eligible and regular. Presumably, because of that the State Government re-directed for cross check and verification by the District Magistrate. There was, also, a direction by the State Government to the District Education Officers to re-examine the validity of the appointments of each teachers and non-teaching staff who were appointed on stipend and daily wage basis and send a report with the recommendation of the Regional Deputy Director of Education who in turn had submitted reports for different Districts.

11. Upon receipt of such reports, the entire matter was again scanned and scrutinised by the department and it was placed before the Government for necessary directions and orders and upon getting the direction and orders of the Government, the District Education Officers were directed by the Department that after due consideration services of the respondents were found not legal or regular and, therefore, direction was issued to take necessary steps for termination of their services.

12. Accordingly, after giving opportunity of hearing to the respondents, the original writ petitioners, their services came to be terminated which as such gave birth to various writ petitions under Article 226 of the Constitution of India. The writ petitioners remained successful before the learned Single Judge and hence, this group of Letters Patent Appeals at the instance of the State of Bihar.

13. We have been addressed at length by learned counsel for the parties in this group of Letters Patent Appeals on various and different dates. We have, carefully, and dispassionately scrutinised the factual profile, as well as, the relevant documentary evidence in form of circulars, tetter, orders, etc. We have, also, considered the law relied on, on behalf of learned counsel for the parties. Two decisions are material for the purpose of adjudication of the common issue involved in this group of Letters Patent Appeals:

(1) The decision rendered by the Hon"ble Apex Court (Constitution Bench judgment) in the Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

Learned counsel appearing for the State has placed reliance on this decision and has offered his criticism against the common judgment rendered by the learned Single Judge in different writ petitions. Whereas, learned counsel appearing for the original writ petitioners have supported the common judgment. We have given our anxious thoughts and consideration, dispassionately, to the proposition of law laid down in the aforesaid case.

(2) Reliance on behalf of the State is, also, placed upon a Division Bench decision of this Court rendered in the *The State of Bihar and Others Vs. Purendra Sulan Kit and Others etc. etc.*, to which one of us, Dr. J.N. Bhatt, C.J., was a party. In the light of the decision in *Secretary, State of Karnataka and Ors. (supra)* as many as 820 Letters Patent Appeals came to be disposed of by the said judgment in *State of Bihar & Ors. (supra)*.

Virtually, in the said matters similar issue of illegalities and irregularities in appointments was raised.

14. Learned counsel for the original writ petitioners have, strongly, submitted, repeatedly, that the appointments of the writ petitioners were regular, legal and in consonance with the Rule provision and they have been working for a long and some of them for more than twenty years and, therefore, the orders of termination are rightly, quashed by the learned Single Judge. Whereas, on behalf of the State of Bihar, learned counsel has countered it and has forcefully submitted that all such appointments cannot be said to be legal and valid or regular and, therefore, the termination orders are quite justified and in support thereof the aforesaid two decisions are relied upon.

15. The question as to whether the appointments of the original writ petitioners as teaching and non-teaching staff in the schools in various Blocks in the State of Bihar, are regular, legal and in accordance with Rules or not has been considered by the State Government. One Committee appointed by the Government found that the appointments were legal and valid. Whereas, the other Committee took a diametrically opposite view and found that their appointments were not legal, valid and in consonance with the provision of recruitment Rules. There are certain questions which require some factual probe.

16. Again, in *Secretary, State of Karnataka (supra)* though it is held that irrespective of length of period where initial appointment is not answering, the eligibility criteria or not in regular form or in consonance with the recruitment Rules, it shall not be regularised, the observations made in paragraphs 49 and 53 [: Paras 40 and 44, PLJR] will be relevant and material.

17. The observations made in paragraph 49 [: Para 40 of PLJR] of the aforesaid decision read hereunder as:

"It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have

indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees, Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the Constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it has any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution."

18. Whereas, the very pertinent observations are made in paragraph 53 [: Para 44, PLJR] of the said decision which read hereinunder as:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore and Another Vs. S.V. Narayanappa*, *R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

19. It could very well be seen from the aforesaid observations, as well, as the overall picture emerging from the entire factual and documentary collections coupled with the fact that there are some questions requiring investigation of facts to reach to a conclusion as to whether the appointments are legal, regular or not. It is in this context, we are inclined to give the following directions to the State of Bihar: (1) The Chief Secretary, Government of Bihar is directed to

constitute a Committee of three Secretaries within a period of one month from today to examine the manner and mode and the type of Modus Operandi whether the appointments are in consonance with the recruitment Rules, regular, legal or not.

(2) The Committee shall consider the individual case after giving an opportunity of hearing to the affected employees and reach to a decision as to the nature of their appointments whether legal or not and valid or not.

(3) The Committee shall, obviously, take the decision in the light of law laid down by the Constitution Bench in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and in particular, the observations of the Hon'ble Supreme Court which are quoted hereinabove, particularly, paragraph 53 [: Para 44, PLJR] of the said judgment.

(4) It shall also be remembered that the exercise of regularisation, if required, shall be one time measure for the whole department and no further such exercise shall be permissible.

(5) The exercise by the Committee is directed to be completed within six months and in the event of any necessity it will be open for the concerned party to seek extension of time from this Court.

(6) The State is directed to maintain the status quo.

In view of the above discussions and the foregoing grounds, these Letters patent Appeals shall stand disposed of. There shall be no order as to costs.