

(1994) 01 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 14084 of 1994

The State of Bihar and Others

APPELLANT

Vs

Laloo Prasad Yadav and Another

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 1(3), 3(1), 3(2), 3(3), 3(4)
Constitution of India, 1950 — Article 14, 16

Citation : (1998) 4 JT 445

Hon'ble Judges : K. Ramaswamy, J; B.L. Hansaria, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The Bihar Non-Government Elementary Schools (Take over) Act, 1976 for short, the Act was enacted with a view to take over Non-Government Elementary Schools under State control for better organisation and development of elementary education in the State of Bihar. By operation of Sub-section (3) of Section 1, the Act shall be deemed to have come into force w.e.f. the first day of January, 1971. u/s 3(1), the Elementary Schools managed by the District Board, Zilla Parishad, the Municipal Board and the Patna Municipal Corporation, stood transferred to the control of the Government. Under Sub-section (2) Aided Elementary Schools handed over voluntarily to the control of the Government by the Managing Committee stood taken over by the Government. Under Sub-section (3) the elementary schools administered by public or private undertakings, also equally stood transferred to the control of the government. Sub-section (4)(a) of Section 3 seeks to take over unaided Elementary Schools which are found to be feasible for being taken over, after inspection and recommendation by a Committee constituted in each District in that behalf, with a view to remove the difficulties in taking over the unaided schools. The

Government exercising of the power u/s 8 of the Act, issued instructions on May 2, 1980 to the Committee for recommendation. Therein Clause 7 relates to taking over the services of teachers of such schools. It specifies the admissibility of teachers and posts to be filled up with trained or untrained teachers who were appointed upto 1.1.1971. By sub-clause (a) teacher-student ratio was prescribed.

3. Accordingly a Committee was constituted to take over the Kosi Middle School, Sursana headed by District Education Officer. The committee's report mentioned that 5 existing teachers appointed as on 1.1.1971 were working and one teacher (Vaidyanath Mandal) was appointed on March 12, 1973, apart from one peon. Following the report, the Government had taken over the school with those 5 teachers appointed and working as on January 1, 1971.

4. Mr. Vaidyanath Mandal filed a writ petition in the High court challenging to refuse to recognize and take over his service. The High Court in C.W.J.C. No. 3239 of 1985 directed the Government to absorb him also. Following the heels of Vaidyanath, the first Respondent Laloo Prasad Yadav and a peon whose services were not taken over for absorption filed C.W.J.C. No. 5953 of 1985 and the High Court in the impugned judgment dated September 17, 1992 following the order in the writ petition of Vaidyanath, directed the Appellant to absorb them into the service. Thus this appeal by special leave.

5. Shri B.B. Singh, learned Counsel for the Appellant contended that under the scheme of the Act, such of those teachers appointed prior to January 1, 1971 in the unaided schools which were found feasible to be taken over, had been absorbed as government teachers. The teachers working therein as on that date alone are entitled to be absorbed, by operation of Section 4(2) of the Act. It is a condition for taking over the service of the teachers that they fulfilled the conditions enumerated in the instructions issued u/s 8 of the Act. Since the first Respondent had not been appointed nor was working as on 1.1.1971, he was not entitled to be deemed to have been taken over, by operation of Section 4(2) of the Act.

6. Shri Tripurari Ray, the learned Counsel for the first Respondent (contended that Sections 3(1) to (3) enumerate different classes of schools and given different dates for absorption of deemed Government servants. By operation of Section 4(3) of the Act, the teachers in unaided schools stand in the same footing as teachers absorbed under Sections 3(1) to (3) since all of them have been classified as Government teachers] There cannot be any further classification u/s 3(4)(a) giving different dates for entitlement to be deemed Government servants and fixation of the date as January 1, 1971 as arbitrary, unjust and unfair violating Articles 14 and 16 of the Constitution.

7. Diverse contentions give rise to the question whether the first Respondent should be deemed to be the teacher absorbed by operation of Section 4(2) of the Act, the scheme has already been seen. The Government with a view to provide better management and improve elementary education and to regulate the

service conditions of the Elementary Schools teachers by organizing and development of the elementary education, had taken over elementary schools in the State. Section 3(1) enumerated different classes of schools managed by local bodies and existence of teachers working therein are not difficult to identify. Sub-section (2) of Section 4 dealt with aided elementary schools relating to whom there exist preexisting record of the teachers for which posts grant in aid was admitted. So there would also be record available to verify the teachers appointed prior to the notified date as on 1.1.1971. As regards unaided schools with which we are concerned there would be no authentic and accepted record in the custody of the Government to verify and to accept whether the teachers were qualified and, if so, when were they appointed.

8. The teachers working in unaided schools thus constitute a separate class. Being unaided schools, manipulation and fabrication of records are common features. Therefore, the Legislature made a distinction between schools and teachers and prescribed phased dates under Sub-section (1) to (4) of Section 3 of the Act. A distinction between teachers working therein is, therefore, clearly discernible and the classification bears reasonable relation and nexus to the object of the Act. The rationale of January 1, 1971 as the cut off date is that it is the date on which the Act came into force. So it is not arbitrary nor unjust.

9. The Head Master of the School and Secretary on behalf of the management of the School have been invited to associate for ascertainment of the factual position. Admittedly, the committee submitted its report in the case at hand on May 18, 1980. Thereunder the names of five teachers appointed and who were working as on January 1, 1971 were mentioned. The Head Master and the secretary signed the report. The school was taken over on July 30, 1980. The report does; not indicate the name of the Respondent having been appointed and working as on 1.1.1971./ His own admitted case is that he was appointed on 13.8.1979 and he had taken charge on August 16, 1979. Thereby, it is clear that he was appointed long after January 1, 1971. Under these circumstances, though there is a direction issued by the High Court in the writ petition of Vaidyanath Mandal to absorb him as a teacher, which seems illegal, but as that order was allowed to become final, we need not go into its correctness. However, one illegality should not be the foundation to commit another illegality and be repeated. It would not be appropriate for the High Court to issue directions, in respect of every teacher appointed after the specified date but before taking over the school. The High Court, therefore, was not justified ' in directing to recognize the teachers appointed after 1.1.1971 as government teachers to give them the status and benefits of government teachers.

10. The peon, Jaldhari Yadav, was appointed and was working prior to 1.1.1971. Yet he was not taken over nor was given the status as a government servant. Shri B.B. Singh relied upon the instructions in which it is stated that only teachers appointed and approved by the Committee would be taken over. In other words, his stand is that Class IV employees cannot be taken over. We find no

force in the contention. The report itself says that the Peon was working as on 1.1.1971. Having taken over the school, the authorities are bound to take over Class IV employees working in the school. Accordingly, Jaldhari is also deemed to the government servant by operation of Section 4(2) of the Act.

11. The appeal is accordingly allowed in part and the direction that the first respondent is deemed to have been duly appointed and be treated as a teacher by operation of Section 4(2) is alone set aside. But in the circumstances, the parties are directed to bear their own costs.