

(2011) 03 PAT CK 0098
In the Patna High Court
Case No : L.P.A. No. 1818 of 2010

The State of Bihar and Others

APPELLANT

Vs

Nagendra Prasad Arya

RESPONDENT

Date of Decision : 26-03-2011

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 11(3), 156

Citation : (2011) 59 BLJR 3391 : (2011) 3 PLJR 46

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—The State of Bihar has preferred this appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, and raises a grievance with respect to the order dated 27.4.2010, passed by a learned Single Judge of this Court in C.W.J.C. No. 6120 of 2010 (Nagendra Prasad Arya and Ors. v. The State of Bihar and Ors.), whereby the writ petition has been allowed, and Appellant No. 5 herein has been directed to issue appointment letters to the Respondents herein as primary school teachers in the district of Gopalganj.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. The State Government had issued advertisement for appointment of primary school teachers in different districts of the State of Bihar. We are at present concerned with such appointments in the district of Gopalganj. The Bihar Public Service Commission conducted the selection process and forwarded its recommendations to the State Government in February, 1999. The Respondents herein (writ Petitioners) found their way in the merit list recommended for appointment. Appellant No. 5 entertained certain doubts about the correctness of the caste position of the Respondents leading to enquiry at his level. In view of the inordinate delay or inaction taking place in the matter, the Respondents had preferred C.W.J.C. No. 9176 of 2000, which was disposed of by this Court directing the authorities to take a final decision within a period of three months

which was not carried out leading to contempt proceedings bearing M.J.C. No. 1197 of 2009.

2.1. During pendency of the contempt application, Appellant No. 3 herein issued direction to Appellant No. 5 to issue appointment letters to persons as per the recommendations of the Commission for appointment on the post of panchayat teachers. Appellant No. 5 accordingly issued letters to the Respondents herein seeking their consent for appointment as panchayat teachers on the ground that, after promulgation of Bihar Primary Panchayat Teachers (Appointment and Service Condition) Rules, 2006, all posts of primary teachers of the State Government have been converted to those of panchayat teachers. The Respondents did not agree to the same leading to the present writ petition which has been allowed by a learned Single Judge of this Court, and Respondent No. 5 has been directed to issue appointment letters to the Respondents herein as regular assistant teachers in regular pay scale in the State Government. Aggrieved by the order of the learned Single Judge, the State of Bihar and its functionaries have preferred this appeal.

3. We have perused the materials on record and considered the submissions of the Learned Counsel for the parties. It is evident on the face of it that the Commission had made recommendations way back in February 1999. In case Appellant No. 5 entertained doubts about issues relating to the caste of the Respondents, he was free to proceed and make necessary enquiries which ought to have been done within a reasonable period. We suppose the same should not have taken more than six months. It is further evident from the materials on record that the enquiry as to the caste position was in favour of the Respondents.

4. The second aspect of the matter is inordinate and unexplained delay taking place in the appointments and the Pendente Lite development of promulgation of the Bihar Primary Panchayat Teachers (Appointment and Service Condition) Rules, 2006. The recommendations were made in February 1999, and the Rules were promulgated in 2006. The Rules cannot evidently affect the vacancies of 1999.

5. It also raises another vital aspect of the matter. Part-IX of the Constitution of India is headed "The Panchayats". Formation of panchayats throughout the country is now a constitutional mandate, and has to be dutifully carried by all concerned in this country. In pursuance of the constitutional mandate, the Bihar Legislature has enacted the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act"). Sub-Section 3 of Section 11 of the Act is relevant in the present context, and is reproduced hereinbelow:

11(3) Every Gram Panchayat shall be a body corporate by the name of its Gram Panchayat and shall have perpetual succession and a common seal and subject to such restrictions as are imposed by or under this Act or any other enactment, shall be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property, movable or immovable, whether

without or within the limits of the area over which it has authority, or entering into contracts and of doing all things necessary, proper and expedient for the purpose for which it is constituted.

5.1. It is evident from this provision of law that every Panchayat is a body corporate, shall have perpetual succession and a common seal, and can sue or be sued in its own capacity. Every Panchayat is a separate legal entity. The State Government should be mindful of the position that the State Government is a separate and distinct entity from the Panchayat. The State Government and its functionaries should desist from imposing its will on the panchayats which has its own powers, duties, and functions prescribed by the Constitution and the Act. Section 156 of the Act affords limited powers to the State Government to interfere with the affairs of the Panchayat. The same is reproduced herein below:

156. Directions from Government-(1) Notwithstanding anything contained in this Act, it shall be lawful for the Government to issue directions to any Panchayat in matters relating to State and national policies, Government programmes and any other matter of public importance and such directions shall be binding on the Panchayat.

(2) The Government may

(a) call for any record or register or other document in possession or under the control of any Panchayat;

(b) require any Panchayat to furnish any return, plan, estimate, statement, account or statistics, and,

(c) require any Panchayat to furnish any information or report on any matter related/connected with such Panchayat.

6. In that view of the matter, we do not see any justification for the direction for appointment of the Respondents as panchayat teachers. It cannot impose its own candidates on the gram panchayat. The latter shall conduct its own selection process and shall make appointments accordingly. The position is particularly clear in the present case because the direction to appoint the Respondents puts a premium on the inefficiency and inaction of the Appellants to the devastating prejudice of the Respondents. The Respondents are entitled to be appointed as primary teachers in the Bihar Government alongwith the pay scale, status, and post-retirement benefits of that post, whereas panchayat teachers are entitled to a consolidated salary.

7. Learned Counsel for the Respondents has rightly relied on the order dated 22.2.2011, passed by a Division Bench of this Court in L.P.A. No. 324 of 2011 (The State of Bihar and Ors. v. Sanjay Kumar and Ors.), and the analogous C.W.J.C. No. 5786 of 2010*, which upheld an identical order passed by a learned Single Judge of this Court.

8. The next question which arises for consideration is the relief to which the

Respondents are entitled. Learned Counsel for the Respondents has rightly submitted before us that the Respondents should not be made to suffer for the gross negligence and inaction on the part of the Appellants, in a situation where recommendations were made in February, 1999 for the appointments. The Government arbitrariness apparent on the face of the records to the great prejudice of the Respondents cannot go unchecked. We are mindful of the position that the writ Petitioners have not preferred an appeal before this Court, and we are reminded by the learned Standing Counsel of the well known principle of law that the Appellants cannot be worse off than the impugned order. We regret our inability to accede to the submission for the reason that the same may not be applicable to the discretionary, prerogative jurisdiction where interest of justice is paramount. The Appellants by their extremely negligent and callous approach have subjected the Respondents to the line of litigations and utter harassment. The Respondents are entitled to the relief of appointment with consequential benefits.

9. In the result, this appeal is dismissed. Appellant No. 5 is directed to issue appointment letters to the Respondents as Assistant Teachers in the regular pay scale with effect from 1st January, 2000, with replacement pay scales, and shall be entitled to arrears of salary and consequential benefits as well as seniority due to them. The Respondents will be entitled to interest at the rate of 6% with effect from 1.1.2000 on all arrears of money benefits till the date of payment.

10. Let a copy of this order be handed over to Mr. Ajay Bihari Sinha, learned Standing Counsel No. 19, for onward transmission to the Chief Secretary, and the Secretary of the Department of Panchayat Raj, for the needful, with particular reference to paragraph-5 hereinabove.