

(2008) 01 PAT CK 0166
In the Patna High Court
Case No : LPA No. 670 of 1999

Trigun Chand Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2008) 2 PLJR 718

Hon'ble Judges : S.K. Katriar, J; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Tej Bahadur Singh and S.S. Mishra, Vikas Kumar and Girijesh Kumar, for the Appellant; Anil Kumar Jha, Uday Bhan Singh and Mr. Purushottam Jha for Respondent Nos. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar and Kishore K. Mandal, JJ.—Heard Mr. Vikas Kumar for the appellant, Mr. Anil Kumar Jha, G.A. 2, for respondents 1 & 2, Mr. Tej Bahadur Singh, Sr. Advocate, for respondents 3 & 4 (Bihar Sanskrit Shiksha Board), and Mr. Purushottam Jha for respondents 6 & 7 (Managing Committee). This appeal has been preferred in terms of Clause 10 of the Letters Patent of the Patna High Court. The appellant is aggrieved by the order dated 29.4.1999, passed in CWJC No. 941 of 1998 (Trigun Chandra Thakur vs. The State of Bihar & Ors.), whereby it has been held that in view of the law laid down in the case of Chandra Nath Thakur and Others Vs. The Bihar Sanskrit Shiksha Board and Others, , the writ petition is not maintainable,.

2. The appellant was appointed as a Sanskrit Teacher in Brij Mohan Sanskrit Prathmik-sah-Madhyamik Vidyalaya, Dabhra, P.S. Tarabari, District Araria. In view of certain allegations against him he was dismissed from service leading to CWJC No. 10698 of 1994 (Trigun Chandra Thakur vs. The State of Bihar & Ors.) which was disposed of by order dated 31.8.1995, whereby with the consent of the parties, the appellant was permitted to raise his grievance before the

Chairman of the Bihar Sanskrit Shiksha Board. The appellant's representation before the Chairman was allowed by order dated 13.8.1996, whereby the order of dismissal was set aside.

2.1 Aggrieved by the same, the Managing Committee of the School preferred an appeal before the Bihar Government which was allowed by order dated 13.12.1997, passed by the Special Secretary, Secondary Education,- Primary & Adult Education, Bihar, the order of the Chairman was set aside and the matter was remitted back to him for a fresh consideration in accordance with law. It was further observed therein that the grievances raised in the memorandum of appeal may be Specifically considered by the Chairman. Aggrieved by this order, the appellant preferred the present writ petition, which has been dismissed on the ground that the appellant was a School teacher in a privately managed school and, therefore, on the strength of the aforesaid judgment in Chandra Nath Thakur (supra) has been held to be not maintainable.

4. During the pendency of the writ proceedings, the remand order was carried out and the Chairman passed a fresh order on 16.10.1998, whereby he upheld the order of dismissal. He has also noticed the submission that in view of the said judgment in Chandra Nath Thakur (supra), the order of the Managing Committee can be tested in a suit only.

5. The appellant filed an application in this Court seeking amendment of the pleadings and permission to challenge the order dated 16.10.1998. Permission has been accorded by this Court on 26.11.1998.

6. Learned counsel for the appellant submits in support of this appeal that the judgment of this court in Chandra Nath Thakur (supra) is inapplicable to the facts and circumstances of the case. He next submits that the order of remand dated 13.8.1996 does not assign reasons and is, therefore, bad in law. In such circumstances, the subsequent order of 16.10.1998 also has to be set aside. He also submits that the writ petition is not maintainable and the learned Single Judge ought to have examined the matter on merits. He relies on the following reported judgments:

- (i) State of Haryana and Others Vs. AGM Management Services Ltd., ,
- (ii) U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, ,
- (iii) Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, .

He has taken us through these judgments in an effort to satisfy us that the impugned action is arbitrary and ought to be examined on merits.

7. Learned counsel for respondents 1 & 2 has relied upon the judgment of the Supreme Court in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, , and submits that the writ petition is not maintainable.

8. Learned counsel for respondent Nos. 3 & 4, as well as 6 & 7, have advanced separate sets of submissions and have, in substance, submitted that the writ petition is not maintainable in view of the judgment of a learned Single Judge of this Court in Chandra Nath Thakur v. The Bihar Sanskrit Shiksha Board & Ors., 1988 PLJR 866, which was upheld by a Division Bench and reported in Chandra Nath Thakur and Others Vs. The Bihar Sanskrit Shiksha Board and Others, . They have further submitted that there is no denying the position that the appellant was a school teacher in a privately managed school governed by its Managing Committee and, therefore, the State Government or its functionaries or the Bihar Sanskrit Shiksha Board have no jurisdiction over their disciplinary matters. It has very limited jurisdiction of ensuring that qualified persons are appointed as School teachers. They have also submitted on the strength of the aforesaid judgment that a suit alone is maintainable to test the correctness of the order of dismissal. They have lastly submitted that the consent order passed by this court in CWJC No. 10698 of 1994 cannot confer jurisdiction on this court.

9. We have perused materials on the record and considered the submissions of learned counsel for the parties. Learned counsel for respondents 3 & 4, as well as 6 & 7, are right in their submission that it has been held in Chandra Nath Thakur (supra) that the State Government or its functionaries or the Bihar Sanskrit Shiksha Board have no jurisdiction at all over the disciplinary matters of school teachers of a privately managed school governed by its Managing Committee. The said order passed by them can be tested in a suit alone. They are further right in their submission that the consent order passed by this court in CWJC No. 10698 of 1994, cannot confer jurisdiction on this court and does not make the Managing Committee "State" within the meaning of Article 12 of the Constitution of India.

10. In that view of the matter, we agree with the impugned order passed by the learned writ court. In the result, the appeal is dismissed. There shall be no order as to costs.