
(2012) 05 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 8551 of 2012

Yashwant Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2012) 4 PLJR 841

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Vinod Kanth, Radha Mohan Pandey, Chandra Shekhar Verma and Ghanshyam Pandey, for the Appellant; Prahlad Kr. Bhagat, Raj Kumar Singh and Mr. Satyam Shivam Sundaram for the Commission, for the Respondent

Judgement

J.N. Singh, J.—Opening his arguments on behalf of the petitioners, Mr. Kanth, learned Senior Counsel for the petitioners, first of all gave some background facts. He submitted that vires of the Bihar Elementary Teachers Appointment Rules, 2003 fell for consideration before a Division Bench of this Court in C.W.J.C. No. 13246 of 2003 and other analogous cases, which, by judgment dated 1.7.2004 (Annexure-7), allowed the writ applications, held the said Rules ultra vires and quashed it and directed the State of Bihar to follow the judgment and directions of the Hon'ble Supreme Court in the case of Ram Vijay Kumar and Others Vs. State of Bihar and Others, and of this Court in Vinod Kumar & Ors. vs. State of Bihar & Ors. [C.W.J.C. No. 5765 of 1994 disposed of on 26.9.1996] and to consider all trained teachers available for recruitment in elementary schools taking into account relaxation of age and, keeping in mind Bihar Education Code, particularly, Chapters 6 and 7 thereof. This order was challenged by the State of Bihar before the Hon'ble Supreme Court in SLP(C) Nos. 22882-22888 of 2004. In the SLP, later on the State of Bihar filed an application on 18.1.2006 for its withdrawal (Annexure-8) with an undertaking to comply the order of the Division Bench dated 1.7.2004. The Hon'ble Supreme Court allowed the application by order dated 23.1.2006 (Annexure-9) and disposed of the SLP in terms of the said

application. However, the State of Bihar delayed in taking steps in terms of the Division Bench order and the said undertaking. Hence, Contempt Petition No. 207 of 2006 was filed before the Hon''ble Supreme Court in SLP(C) No. 22882 of 2004 in which the State of Bihar again filed a petition on 7.2.2007 (Annexure-10) giving fresh undertaking to implement the order of the Division Bench. Contempt Petition was therefore disposed of by the Hon''ble Supreme Court by order dated 19.3.2007 noticing the statements made by the State of Bihar in the petition. There was again delay by the State of Bihar in implementing the order. Hence, another contempt petition, namely, Contempt Petition (C) No. 297 of 2007 was filed in SLP(C) No. 22882 of 2004. In the contempt petition, Hon''ble Supreme Court passed orders on 9.12.2009 (Annexure-11) directing the State of Bihar to fill up the identified 34540 vacancies from amongst trained teachers, who were available in order of seniority and adjourned the matter for six weeks to enable the State of Bihar to implement the order and submit a report. The contempt petition was again taken up on 12.5.2010 and on that day further indulgence was granted to the State of Bihar for submission of compliance report (Annexure-12). State of Bihar, thereafter, framed a new Rule, namely, Bihar Special Primary Teachers Appointment Rules, 2010 (Annexure-13) for appointment of Primary Teachers in Elementary Schools and an advertisement, namely, Advertisement No. 210 of 2010 (Annexure-14) was published by the Bihar Staff Selection Commission inviting applications. Thereafter, Contempt Petition (C) No. 297 of 2007 was taken up by the Hon''ble Supreme Court on 19.1.2011 (Annexure-15) and the State of Bihar produced a list of applicants. In the list certain congruities were pointed out to Court. Hence, the State of Bihar was directed to bring out a fresh list within four weeks. However, in the fresh list filed by the State of Bihar also, Hon''ble Supreme Court found that the incongruities still remained. Hence, it allowed the petitioners and interveners to point out anomalies in the list and appointed Hon''ble Mr. Justice V.A. Mohta, a retired Chief Justice of Orissa High Court as Special Officer, in whose presence, it directed 2nd and 3rd stages of process to be completed in which objections were to be entertained and considered. However, later on, Hon''ble Mr. Justice V.A. Mohta showed his personal difficulty and recused himself from the responsibility. Hence, by order dated 24.2.2011 (Annexure-16) Hon''ble Supreme Court appointed Hon''ble Mr. Justice S.K. Chattopadhyaya, a retired Judge of Jharkhand High Court as a Special Officer in place of Hon''ble Mr. Justice V.A. Mohta. The Special Officer submitted his report on 8.7.2011 (Annexure-17) in a sealed cover in Contempt Petition (C) No. 297 of 2007, which included names of 94,205 candidates in merit out of total number of 1,23,149 applicants. Thereafter, Contempt Petition (C) No. 297 of 2007 was taken up on 13.10.2011 and Hon''ble Supreme Court disposed of the same (Annexure-18) alongwith all Interlocutory Applications by a speaking order directing original roster and the seniority list, produced before it in sealed cover by the Special Officer, to be sent to the Human Resources Development Department, Government of Bihar for implementing the orders. Hon''ble Supreme Court observed that, since roster as well as seniority list were

prepared in terms of its orders, "no Court shall entertain any other objections or applications with regard to the same". In the said order, the Hon''ble Supreme Court also gave its findings on certain issues raised by the parties.

2. Later on one fresh contempt application was filed in 2012, namely, Contempt Petition (C) No. 31 of 2012 in Contempt Petition (C) No. 297 of 2007 before the Hon''ble Supreme Court, which was disposed of by order dated 6.2.2012 (Annexure-19). Hon''ble Supreme Court did not find any contempt made out as it found that the order dated 13.10.2011 was in respect of the undertaking which had been given on behalf of the State of Bihar before the Court in respect of identification of 34540 posts, which were directed to be filled up in terms of the list prepared by the Special Officer appointed by the Court and accepted by all the parties. However, it observed that if the petitioners or any other applicant had any grievance in any other matter outside the reach, they were at liberty to move the appropriate forum for such relief.

3. Mr. Kanth, thereafter, submitted that the seniority list which was produced by Hon''ble Mr. Justice S.K. Chattopadhyaya before the Hon''ble Supreme Court in a sealed cover was a list produced by the State of Bihar before him. He submitted that the list was never scrutinized for removal of incongruities and errors. When it was produced before the Hon''ble Supreme Court, at that time also, the same was not scrutinized and the Hon''ble Supreme Court simply directed it to be sent to the Human Resources Development Department of the State of Bihar for taking it into account for the purposes of implementation of its orders and orders of the sic is already exist in Source File He submitted that SLP was disposed of by the Hon''ble Supreme Court on the undertaking of the State of Bihar that it would implement the orders of the Division Bench. Hence it is always open to this Court to examine the actions of the Commission in finalizing the select list and direct it to correct the errors therein, if it is established that their action was not in consonance with the orders of the Hon''ble Supreme Court read with the judgment of the Division Bench. He submitted that the order of the Hon''ble Supreme Court passed in the SLP could be treated as a decree under Article 142 of the Constitution of India. Hence, the same was binding on the State of Bihar as well as this Court. As such it is always open to this Court to examine whether the said decree of the Hon''ble Supreme Court was being correctly implemented and enforced by all concerned or not. He submitted that, as against this, order dated 13.10.2011 passed by the Hon''ble Supreme Court, by which all Courts were restrained from entertaining any objection or application with regard to the seniority list or roster, was an order passed in a contempt proceeding. The contempt proceeding was neither under Article 141 nor Article 142 of the Constitution of India. He submitted that only two types of orders of the Hon''ble Supreme Court are binding on High Courts and lower courts all over the country, namely, law laid down by it under Article 141 of the Constitution of India and decrees and orders issued under Article 142 of the Constitution of India. He submitted that the restrain put by the Hon''ble Supreme Court by order dated 13.10.2011 was not binding on this Court and in appropriate cases it was open to

this Court to examine the correctness and validity of actions taken by the Commission as well as Department in the process of implementation of the orders of the Hon'ble Supreme Court as well as of the Division Bench of this Court.

4. On facts, Mr. Kanth submitted that in the present case petitioners have brought on record materials to establish that candidates with certificates of training from Nepal have been included in the seniority list and have been considered for their appointment. He submitted that candidates producing certificates of having obtained training in the year when they were minor have also been included in the list. He submitted that candidates having produced certificates of training of the year even prior to their claimed date of birth have also been included in the list. He submitted that large number of candidates having produced certificates from fake Institutions declared by the State of Bihar and as per order of the Hon'ble Supreme Court passed in SLP(C) No. 6421 of 1987 have also been included in the list. He submitted that the candidates having two years training of B.Ed., who are eligible for appointment as teachers in Middle and High Schools have been included in the list to the prejudice of the candidates with basic training like the petitioners, who are eligible for appointment as primary teachers only.

5. From the instances cited in the writ application, it cannot be ruled out that seniority list being taken into account by the Commission and the State Government for appointment against said 34540 vacancies contains many errors and mistakes. If the matters coming out before this Court are considered as some indicia, it cannot be ruled out that there may be errors galore in the seniority list. Submission of Mr. Kanth is also correct that the order dated 13.10.2011 passed by the Hon'ble Supreme Court in Contempt Petition (C) No. 297 of 2007 is not an order of the Hon'ble Supreme Court under Article 141 or Article 142 of the Constitution of India. But the Hon'ble Supreme Court by the said order has directed the seniority list and roster to be sent to the Human Resources Development Department of the Government of Bihar for implementation of its orders and orders of the Division Bench and held that since the same had been prepared on its orders, no Court shall entertain any objection or application against the same. Since this restrain is by the Hon'ble Supreme Court on all Courts, imposed under whatever jurisdiction, it will be judicial impropriety to entertain writ applications raising challenges to the correctness of the seniority list. In the circumstances, Mr. Kanth submitted that the petitioners will seek their remedy either before the Staff Selection Commission or before the Hon'ble Supreme Court, as they consider necessary, to ventilate their grievances. They have the liberty to do so Writ application is disposed of.