

(1983) 02 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2073 Of 1981

Yogendra Khan and Others

APPELLANT

Vs

The State Of Bihar and Others

RESPONDENT

Date of Decision : 08-02-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1983) PLJR 214

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh and Tara Nath Jha, for the Appellant; Rameshwar Prasad, G.P. 6 and Amrendra Kr. Sinha, J.C. to G.P. 6, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—This writ application is for issuance of an appropriate writ to restrain the respondents from interfering with the services of the petitioners and for an appropriate direction commanding the respondents to include the petitioner's name in the list of teachers of the school and not to disturb them save and except in accordance with law. In this case interpretation of Section 4(2) of the Bihar Non-Government Secondary Schools (Taking over of management and control) Act (hereinafter to be referred to as the taking-over sic) falls for consideration. Before I enter into the legal question involved in this writ application, I would like to state brief facts. In a public meeting of the villagers of village Parai and Chainpur it was decided that in order to develop and encourage female education a Girls High School should be established. Whereupon on 1.1.1977 a Girls High School named as "Balika Uchcha Vidyalaya, Parai Chainpuri" was founded. A managing committee of the school was also constituted to run the day to day administration of the school and three teachers were appointed by the managing committee for teaching the students. Petitioner no. 1 and Petitioner no. 2 were two such teacher, These teachers were Graduate and were examinees for the B.Ed. training course. After some time an

advertisement was brought out for regular appointment of teachers. The petitioners also applied, and they were interviewed. The Interview Sub Committee submitted its report recommending the name of the petitioners along with others for their appointment as Assistant teachers in the school. On 5.12.1977 petitioner nos. 1 and 2 were appointed vide resolution no. 9 of the Managing Committee dated 5.12.1977, a copy of which has been marked as Annexure-1 to this writ application. Petitioner nos. 3 and 4, who were also empanelled by the Interview Sub Committee, were appointed on 10.1.1978 by the Secretary of the Managing Committee which was subsequently approved by the resolution of the Managing Committee dated 20.1.1978, a copy of which has been annexed and marked as Annexure-2 to this writ application. Petitioner nos. 3 and 4 were also Graduate and they were, like petitioner nos. 1 and 2, examinees of the B Ed. training course. Petitioner no. 1, apart from being an Assistant teacher, was also Incharge Headmaster of the school. As regards the question of recommendation of the schools by the then Bihar Secondary Education Board, the District Inspectress of Schools made an enquiry on 7.7.1978 and she submitted her report to the Board and concurred in her recommendation for the establishment of the school, a copy of the report has been annexed and marked as Annexure-3 to this application. The report was forwarded to the Board and a copy of the report was sent to the Secretary of the school. In the said report the petitioners were shown as the teachers of the school. The report also noticed the qualifications, the dates of appointment of the petitioners and it further stated that the petitioners were examinees of the training course. There was subsequent inspection by the District Education Officer and the latter recommended for granting permission to establish the school, which is Annexure-4 to this writ petition. The permission for the establishment of the school was granted by the Board, which will be apparent from letter no. 24602--6 dated 26.12.1979.

2. It is said while the petitioners were working regularly and smoothly a notification was issued on 3.6.1981 under the signature of the Director, Secondary Education-Cum-Special Secretary to the Government of Bihar, Department of Education according permanent recognition to the school as well as taking over of the Management and control of the school. The said notification however, did not include the names of the petitioners even though the names of other teachers and employees, whose services stood transferred were indicated. The notification does not give any reason as to why the petitioners' names were excluded from the list of the teachers.

3. The petitioners being aggrieved by this order, which is Annexure-5 to the writ petitions have moved this Court for the reliefs, already indicated above.

4. It may be stated here that the petitioners have completed their training course and it is stated that they had also submitted their fees and forms for appearing in the B. Ed. examination but since the Government did not permit the training colleges to take the admission of the students, the petitioners could not appear

in the examination in spite of their completing all the formalities for the same. No counter affidavit has been filed on behalf of the respondents.

5. Mr. Rajendra Prasad Singh, the learned counsel appearing for the petitioners, contended that:

(1) The respondents have acted wholly without Jurisdiction in terminating the services of the petitioners. In view of the provisions of section 4(2) of the taking over Act the services of all teachers, who are in the employment of the school ipso facto, stand transferred to the State Government with effect from the date of the take over of the school and, thus, the petitioners have become the employees of the State Government by the force of the statute.

(ii) The impugned notification, Annexure-5, in effect cause termination of the petitioners' services without any show cause and, therefore, the notification is violative of the principles of natural justice.

(iii) The notification does not give any reason as to why the names of the petitioners were dropped even though they had been in continuous employment from the date of foundation of the school. If the cause be that the petitioners were untrained, there are various instances where the State Government has given opportunity to the untrained teachers to get themselves trained within the specified time, but no such similar opportunity was afforded to the petitioners and, therefore, the action is violative of Articles 14 and 16 of the Constitution of India.

6. Mr. Rameshwar Prasad, appearing for the respondents, contended that this writ petition should be rejected because even though it is for the issuance of a writ of mandamus the petitioners have rushed to the court without making any demand for justice. On merits, he contended that from section 3 of the Taking Over Act it is crystal clear that there are two stages of take over of the schools;

(i) those, which automatically stood transferred to the Government on commencement of the Ordinance from 2.10.1980, and (ii) those, which are subsequently taken over by notification as contemplated u/s 3(3) of the Taking Over Act. Take over of these second category of the schools are subject to terms and conditions as the Government may prescribe. Since the petitioners are untrained they did not fulfill the conditions imposed by the Government. This school was recognised on 2.10.1980 and, therefore, there is no question of its automatic take over u/s 3(1) of the Taking Over Act. He further contended that there is no violation of Articles 14 and 16 of the Constitution of India because there is a reasonable classification of the two categories referred to above.

7. I will first dispose of the preliminary objection taken on behalf of the State as to the maintainability of the writ petition. It is true that in an application for issuance of a writ of mandamus one has to comply with a well known rule of practice i.e. to call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable

time. See *State of Haryana and another v. Chananmal etc.* A.I.R. 1976 Sup 1654. In this case a supplementary affidavit has been filed that as far back as on 22.6.1981 before filing the writ petition, the petitioners asked the Director to redress their grievance and to include them as teachers of the school and their salaries be paid, but there having been no redressal of their grievances, they were constrained to come before this Court for the reliefs sought for. It is also averred that the petitioners had met several times respondent no. 2 for looking into their grievance but to no effect. I am, therefore, of the opinion that there is no substance in the preliminary point raised on behalf of the respondents and I hold that the writ petition is maintainable and fit to be considered by this Court.

8. Chapter II of the Taking Over Act has two sections, section 3 and 4. The heading of section 3 states "Taking over of the management and Control" and the heading of section 4 states "Consequences of Taking over of management and control." These headings, prefixed to these two sections, disclose the object of the said two sections. It is well established that these headings could be used for the purposes of interpreting the meaning, scope and intention of statute. (See *Janki Singh v. Jagarnath Dass*, AIR 1917 Pat 305 at 315; *Janki Singh Vs. Mahant Jagan Nath Das and Others*, ; *Dwarika Prosad and Others Vs. Dr. B.K. Roy Choudhury and Others*, . Even though it is true that these headings and sub-heading cannot control, restrict or extend the scope of the section where the language is free from ambiguity but they do help in clearing up obscurities when there is any ambiguity. It is profitable here to quote section 4 with its three sub-sections :

4. Consequences, of taking over management and control :--

(1) All the moveable and immovable assets and properties owned and possessed by Secondary Schools taken over by the State Government u/s 3 including land, building, documents, books and registers relating to the school, shall stand transferred to the State government and be deemed to have come into the possession and ownership of it.

(2) The services of every Headmaster, teacher or other employees of the school taken over by the State government shall be deemed to have been transferred to the State Government, with effect from the date of taking over of the school and become employees of the State Government with such designation as the State Government may determine.

(3) The age of superannuation of Headmasters, teachers and other employees of the schools taken over by the State Government shall be 58 years. The other terms and conditions of their services shall continue to be the same as it was before taking over the management and control of the school until any alteration is made therein by the State Government in the prescribed manner.

9. The learned counsel for the petitioners contends that section 3 says the State Government to take over the management and control whereas section 4 speaks about the consequence of such take over. He contends that no sooner there is a

notification u/s 3(3) of the Taking over Act the service of every Headmaster, teacher and other employee of the school automatically stands transferred to the State Government with effect from the date of the take over of the school and they become employee of the State Government with such designation as the State Government may determine. He further contends that no terms and conditions of the take over is discernible from the take over notification, Annexure-5. As a matter of fact, no terms and conditions have been imposed by the Government. Learned counsel for the respondents, on the other hand, contends that section 4(2) envisages that when the service of any headmaster, teacher or other employee is taken over by the State Government, then only they become the employees of the State Government otherwise not. In short, the argument of the learned counsel for the State boils down to this that it is left to the discretion of the State Government to take over the services of such teachers as it may deem fit and proper and those persons alone would be the employees of the State Government.

10. I am unable to accept the contention of the learned counsel for the respondents. The argument overlooks the word "every" u/s 4(2). In my opinion, the words "taken over" will relate to "the school". This interpretation of mine finds support from the heading of section 4, namely, "Consequences of taking over of management and control". The obscurity, if any, is resolved by the heading of the section. Section 4 is a general provision, providing the consequences of take over both for the schools taken over on commencement of the Act i.e. 2.10.1980 and those taken over by a notification. If the argument of the learned counsel for the respondents is correct, then there would have been some provisions about the left over teachers of a taken over school but nothing is to be found in the whole of this Chapter. This would lead to an anomalous result. It is well settled, a contention which would lead to an anomalous result should not be accepted *Vidyacharan v. Khubchand*, AIR 1964 Sup 1099.

11. There is a statute in pari-materia which also throws considerable light to support the view taken by me. The said Act is known as Bihar Non Government Elementary Schools (Taking Over of Control) Act, 1976. Under this Act the Non-Government Elementary Schools were taken over and section 4 of the said Act have a similar prefix

Consequences of taking over". Section 4(1) and (2) of the Bihar Non-Government Elementary Schools (Taking over of Control) Act, 1976, reads as follows;--

4. Consequences of taking over :--(1) All the assets and properties whether moveable or immovable owned or possessed by the schools taken over by the State Government u/s 3 including lands, buildings, documents, books and registers relating to the schools shall stand transferred to and be deemed to have come into the possession and ownership of the State Government. (2) Every officer, teacher or other employee holding any office or post in the school taken over by the State Government shall be deemed to have been transferred to and

become an officer, teacher or employee of the State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do so unless and until such tenure remuneration, terms and conditions of service are duly altered by the State Government.

12. The two Acts are similar in scope and affect two classes of schools. The two Acts are so related as to form a system having the same purpose and object and, therefore, the two statutes may be called in *pari-materia*. It can safely be presumed that the new provision is enacted in accord with the legislative policy embodied in the Elementary Schools Taking over Act which is a proper statute. Section 4(2) of the Elementary Schools Taking over Act came to be considered by a Bench of this Court in the case of *Krishna Prasad v. State of Bihar* 1981 B.B.C.J. 387 and their Lordships held that since the petitioner in that case was factually holding a post of teacher and, therefore, he cannot be deprived of the statutory benefit of sub-section (2) of section 4 of becoming an employee of the State Government.

I think that in the instant case since the petitioners were admittedly holding the post of headmaster Incharge and Assistant Teachers at the time of take over, they cannot be deprived of the benefit of being employees of the State Government.

13. I am unable to accept the arguments of the learned counsel for the respondents that their services have not been taken over as the petitioners are untrained and it is open to the Government to lay down terms and conditions of take over. No terms and conditions whatsoever have been produced before me of the take over of the instant school. In absence of any terms and conditions either laid before me or is discernible from the notification, the arguments on behalf of the respondents is *sic* of any substance.

14. Learned counsel for the petitioners has brought to my notice two unreported judgments of this court in C.W.J.C. 579 of 1979 (R) decided on 18.5.1981 *Rabindra Nath Sahu v. State of Bihar*; and C.W.J.C. 2630 of 1980 decided on 17th of September 1981 *Bhrigunadan Prasad Singh Choudhary v. State of Bihar*; to show that the State Government has afforded opportunity to untrained teachers to get themselves trained within a specified period. The case of the petitioners stands on a better footing. It is submitted that they had already fulfilled all the requirements to appear in the B.Ed. examination but as the State Government could not hold the examination, they were unable to participate in the examination and pass the said examination. I think that the State Government having allowed similar opportunity to teachers to acquire the desired qualification it should have also afforded similar opportunity to the petitioners, if the cause of their services not being taken over, is because of their being untrained. The action of the State Government in this regard would be deemed to be discriminatory.

15. I also think there is considerable substance in the arguments of the learned counsel for the petitioners that they are unaware as to why they have been deprived of their services. As the notification affects them adversely, and they are visited with civil consequences, they are entitled to an opportunity of being heard in consequence with principles of natural justice before termination of their services. The impugned notification so far it affects the services of the petitioners is, therefore, void and illegal. In the result, the writ petition is allowed and the respondents are directed to treat the petitioners as employees of the State Government on and from the date of the take over, of the school and pay their salaries and other emoluments from the said date. If the State Government desires that the petitioners should be trained teachers for their continuance in the services, it should give at least one opportunity to the petitioners to appear in the B.Ed. examination and acquire the said qualification for their continuance in services. There will, however, be no order as to cost.