

Krishnandan Singh and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Sep-10-2008

Judge : Sheema Ali Khan, J.

Appellant : Krishnandan Singh and ors.

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Judgement :

Sheema Ali Khan, J.

1. The petitioners have challenged the order dated 21.12.1989/ 8.1.1990 passed by the Director, (Primary Education)-cum-Joint Secretary, Human Resources Development Department, Bihar, Patna contained in annexure-1.

By the said order dated 8.1.1990, the Director, Primary Education found that the persons named in the writ petition are not genuine teachers of Bihar National Academy School,(hereinafter referred to as 'the School') Mahendru, situated in the district of Patna.

2. Bihar National Academy School through Uday Krishana Narayan Tetarway had filed a writ application praying therein that the Government should take over the School alongwith four other Schools which are also in the district of Patna. This

Court by the order dated 27.7.1983 directed the respondents to take over the management and control of the petitioners' school namely, Bihar National Academy under the provisions of the Act and also stated that the consequences with respect to such take over in a terms of Section 4(2) of the Bihar Non-Government Elementary School (Taking Over of Management and Control) Act, 1976 (hereinafter referred to as 'the Act') will follow. For non-compliance of the order dated 27.7.1983 passed in C.W.J.C. No. 3171 of 1982 a contempt application bearing M.J.C. No. 745 of 1986 was filed.

3. The relevant part of the order is being quoted below: A competent authority from the office of the District Superintendent of Education, Patna shall go to the school in question on the 20th September 1999 at 11.00 A.M. to take over charge of all the assets (movable or immovable), or both, as the case may be) of the school in question.

On this assurance of the Counsel for the State the contempt application was disposed of.

4. The result was that the District Superintendent of Education in compliance of the orders of this Court and letter No. 6790 dated 20.9.1988 issued from the department went to inspect the school and noted down that 13 teachers and one class-IV employee was working in the said School and also noted that the services of the teachers shall be taken over under Section 4(2) of the Act.

5. Krishnanandan Singh and some others came to this Court claiming that inspite of the orders of this Court and even after the School had been taken over, the petitioners were not being paid their salaries, and as such, in the writ application being C.W.J.C. No. 1578 of 1989 they have made a prayer that they may be paid their salary since the date of taking over of the School.

6. On 3.10.1989(annexure-10) this Court after noticing the orders passed in the earlier writ application, observed as follows:

It is, indeed, not understandable why notwithstanding the taking over the schools alongwith the teachers as noticed in the order of the District Superintendent of

Education dated 20.9.1988 the teachers of the School have been deprived of their emoluments which must go to them as the consequences of the taking over of the school in accordance with the provisions of the taking over Act. If the claim of any of the petitioners was not genuine, respondents could have considered and then communicated to him why his claim was not accepted' and further observed 'We accordingly, allow the application and direct the respondents to consider the cases of the petitioners within two months from today and if their cases are found genuine, to forthwith issue necessary orders and pay to them their respective salary etc.

7. The petitioners then filed M.J.C. No. 20 of 1990 for compliance of the order dated 3.10.1989 and the order passed in M.J.C. No. 20 of 1990 is as follows:

In the show cause to the contempt application the respondents annexed the order passed by the Director on 21.12.1989 which was communicated on 8.1.1990, which is under challenge. If the petitioners are aggrieved with the order dated 21.12,1989 the remedy is elsewhere and not pursuing the contempt application.

8. The present writ application has thus been filed challenging the order dated 21.12.1989/8.1.1990.

The Director, Primary Education has examined the cases of the petitioners regarding the fact that whether the petitioners were teaching in the School in question at the time of taking over in 1982. The facts that emerge on examining the order dated 9.1.1990 are that the District Education Officer, Patna while making recommendation for taking over the School has found that 11 teachers were working in the School. The names of those 11 teachers except Sri Tetarway does not tally with the list of the teachers mentioned in letter No. 1345 dated 5.10.1988 issued by the District Education Officer (annexure-6). Stranger still is the fact that the school in question provided a list of teachers, at the time of filing the show cause in M.J.C. No. 745 of 1986, and the names of the teachers do not tally with the names of teachers which are mentioned in letter No. 1345 dated 5.10.1988 and in the letter by which the school was recommended in 1982 except for the name of Shri Teterway.

9. Out of 13 writ petitioners, the name of the petitioner Nos. 1 to 6 is mentioned in the list filed in the contempt application. The names of the petitioner Nos. 1 to 6 are also mentioned in the letter No. 1345 dated 5.10.1988.

10. The Director, Primary Education has cancelled the letter No. 1345 dated 5.10.1988 on the ground that only the Director had the power to approve the name of the teachers. However, since the taking over the school was in pursuance to the order of the court, I do not think that the Director-cum-Joint Secretary could have done so.

11. The claim of the petitioners is that by virtue of Section 4(2) of the Act, their services automatically would be taken over. This stand would be subject to the fact that the persons claiming to be working as teachers on the date of taking over of the school should be genuine teachers and not persons who somehow or the other have got their names included by the authorities in an illegal manner.

12. With respect to the list of teachers found on the date of recommendation of the School i.e., in the year 1982, it may justifiably be presumed that some of them may have left or may have found other jobs. In the list submitted one finds the name of Uday Krishna Narayan Tetarway, Sri Nawal Kishore Prasad Singh, Smt. Veena Kumari and Anandi Prasad Singh amongst those teachers whose names also find place in the list submitted by the School in M.J.C. No. 745 of 1986 and in list contained in letter No. 1345 dated 5.10.1988.

13. Apart from that, I find that this Court cannot ignore the names of teachers contained in letter No. 1345 dated 5.10.1988 and the list supplied by the school during the contempt proceedings, and as such, I hold that the petitioners Krishnandan Singh, Uday Krishna Narayan Tetarway, Sri Nawal Kishore Prasad Singh, Ram Nandan Singh, Smt. Veena Kumari, Anandi Prasad Singh and Ram Briksh Singh are genuine teachers working in Bihar National Academy School, Mahendru, Patna.

14. As such, I quash the order dated 21.12.1989/8.1.1990 to the extent mentioned aforesaid.

15. The teachers would be entitled to payment of their salary, as they have to be treated to be teachers of the school in question under Section 4(2) of the Act. The Director, Primary Education should pass orders in accordance to with the order of this Court within a period of four months from the date of production/receipt of this order. In the result, this writ application is allowed.

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