

ASHOK KUMAR SINGH AND ORS.

v.

STATE OF BIHAR AND ORS.

NOVEMBER 22, 1991

[RANGANATH MISRA, CJ., G.N. RAY AND DR. A.S. ANAND, JJ.]

Contempt of Courts Act, 1971:

Court's order—Mis-interpretation of—Whether amounts to contempt of Court.

Bihar Non—Government Primary School (Taking over of Control) Ordinance, 1976: Para 1 & Para 2:

Primary school teachers—Appointment—Qualifications—Non-availability of trained teachers—Whether untrained candidates could be appointed.

The Bihar Non-Government Primary School (Taking over of Control) Ordinance, 1976 provided by Para 1 and Para 2 that while appointing teachers, I.Sc. trained will be appointed on the basis of I.Sc trained and only Matric with Science trained will be appointed on the basis of Matric trained, and where such candidates were not available the candidates having qualifications more than these would also be appointed.

The petitioners were untrained primary school teachers in the State of Bihar. Later on their services were terminated. They filed writ petitions before the High Court which held that their services had been terminated because of improper and illegal recruitment by the State for which they were not responsible, and that the termination orders were violative of principle of natural justice, but did not quash the orders of termination, and directed the State Government to recruit those dismissed teachers who satisfied the requirements, and to relax the age limit in case of those who meanwhile became overage.

On the special leave petitions filed by the petitioners this Court by its order dated 7.2.1991, directed the State Government to carry out the selection process to take back in the employment the teachers who were found qualified under the Rules in force at the time of

- A their initial appointment, and to give them full benefit of continued service irrespective of any break in service on account of the termination. In the special circumstances of the case arising out of closure of a number of schools for want of teachers, the Court held that in the event of non-availability of trained candidates even untrained candidates could be appointed, and gave time till 30.6.1991
- B to complete the selection process in accordance with the directions of the High Court.

- C Consequent there to the Commissioner-cum-Secretary, Human Resources Department, Government of Bihar made an order determining eligible categories for reappointment out of the dismissed teachers and hold that under the executive directions/regulations only trained teachers were eligible for appointment while untrained teachers, in exceptional circumstance could be appointed against the reserved categories of Scheduled Castes, Scheduled Tribes, Urdu and Sanskrit only, and held that those untrained teachers who did not belong to any of these categories were not eligible for appointment.
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- E The petitioners filed contempt petitions contending that the Commissioner gave a completely wrong interpretation to the relevant executive directions/regulations and had deliberately contravened this Court's order dated 7.2.1991. On behalf of the respondents it was contended that the Commissioner had correctly interpreted the executive orders/regulations and did not contravenes this court's order and, therefore, he committed no contempt.

Disposing of the contempt petitions, this Court,

- F HELD: 1. (1) The directions of the Court provided that even the untrained teachers were entitled to be selected and appointed not only in the reserved categories but also in the other categories, provided trained teachers were not available and the untrained teachers were otherwise qualified without putting the bar of age against them. [p. 421 D-E]

- G 1.2 The interpretation placed by the Commissioner, was not correct and if that interpretation be accepted, it would efface the very effect of the order of this Court dated 7.2.1991 and defeat the object of that order which was aimed at providing that all the schools must have teachers. The Commissioner's order was not in conformity with the directions given by this Court and the High Court.
- H [p. 421 B-D]

2. It appears to be a case of misinterpretation of the executive directions and order of this Court dated 7.2.1991 and was, therefore, not a fit case in which contempt proceedings need to proceed any further. It could not conclusively be said that the respondents wilfully or deliberately or contemptuously flouted or disobeyed the orders of this Court dated 7.2.1991. [p 421 E F]

3. The respondents should properly comply with the orders of this Court dated 7.2.1991 and select and appoint untrained teachers who are otherwise qualified for appointment in all categories without putting the condition of training or age bar against them where trained teachers are not available. The process of fresh selection must be concluded expeditiously and, in any case, not later than three months from the date of the order. [pp 421 G H; 422 A]

CIVIL APPELLATE JURISDICTION: Contempt Petition Nos.236-40/91 & 263/91.

IN

Special Leave Petition Nos. 11699, 11700, 11698, 11654, 10190/90 and 429 of 1988.

From the Judgment and Order dated 11.8.1989 of the Patna High Court in C.W.J.C.Nos. 1014, 1013,227,1365 and 1363 of 1988.

Prashant Bhushan for the Petitioner.

P.D. Sharma for the Respondent.

The Judgment of the Court was delivered by

A.S. ANAND, J. Shorn of details the circumstances giving rise to the filing of these petitions seeking certain directions and initiation of contempt proceedings against the respondents are as follows:

The petitioners were at the relevant time working as primary school teachers in the State of Bihar. Services of some of the teachers were terminated. The orders of termination were questioned before the High Court of Patna and a Division Bench of that Court vide judgment dated 11.8.1989 accepted the position that the services of the teachers had been terminated on account of improper and illegal recruitment by the State. The High Court was, however, of the opinion that the petitioners were not in any way responsible for the improper recruitment. The Division Bench

A gave a direction to the State to screen appropriately the cases of the petitioners and to recruit those who satisfy the requirements. The Division Bench noticed as follows:

B “On the facts of this case, we observe that persons who are qualified for appointments deserve a consideration and appointment, accordingly on such posts for which they are qualified in preference to other candidates who may be qualified. We, accordingly, direct the respondents to proceed to take up the appointments of the teachers in the Elementary Schools of Santhal Pargana and Deoghar by inviting applications from the petitioners and other persons who have been removed because

C they were illegally recruited by the District Superintendent of education and selected if they satisfy the eligibility conditions and appoint them. In doing so the Respondent State must relax the age limit in case of any of the petitioners found to have become over age during the period of service on stipend and removal. The petitioners and/or any other candidate who may

D be appointed in the vacancy so created on account of removal of the petitioners and other persons appointed by the District Superintendent of Education shall however not claim any benefit of the appointment illegally given to them by the District Superintendent of Education but shall receive emoluments and other benefits by dint of their selection and appointment in

E accordance with law.”

The Court also found that the orders served on the petitioners were violative of principles of natural justice. However, the Court did not quash the orders of termination but directed that in future selections, preference would be given to the petitioners. The petitioners filed special leave petitions seeking quashing of the termination orders.

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In the special leave petitions certain directions came to be issued by this Court on 7.2.1991. The State of Bihar was directed that it should carry out the selection process for the retention of the services of those teachers who were qualified at the time of their appointment and that such

G of the teachers who were found qualified were to be taken back in the employment and were to be given full benefit of continued service irrespective of any break in service on account of the termination of the services. This court also noticed that the direction of the High Court to the State to hold fresh selections and the methodology to be adopted therefor had become final against the State in as much as the State had not called

H in question the order of the Division Bench and those directions of the

High Court did not require interference. The Court gave three months to the State for completion of the selection process in accordance with the directions of the High Court. The outside limit during which the process was required to be completed was fixed as 30th June, 1991. The Court observed:

“In considering the suitability for selection the Rules which were in force at the time the Teachers were recruited should be taken into account and disqualification shall not be imposed on the basis of any altered Rule. It will also be open to the State to consider the claim of Teachers who came after the altered Rules in terms of the Rules in force. The bar of age, we reiterate the direction of the High Court, shall not be used against the Teachers for their selection.

Those of the Teachers who have served in the past but there has been a break in service on account of termination shall have the credit of past service both in regard to the payment of salary as also seniority and other service benefits.”

It transpires that consequent upon the order of this Court dated 7.2.1991, the Commissioner-cum-Secretary, Human Resources Department, Government of Bihar, made an order on 28.6.1991 determining the categories out of the dismissed teachers, who were eligible for reappointment. The Commissioner took the view that under the executive directions/regulations only trained teachers were eligible for appointment in both the categories while the untrained teachers, in exceptional circumstances, could be appointed against the reserved categories of Scheduled Castes, Scheduled Tribes, Urdu and Sanskrit only. In other words, the Commissioner concluded that those untrained teachers who did not belong to any of the aforesaid four categories but belonged to the general category were not eligible for appointment. Thus, out of the untrained dismissed teachers numbering about two thousand, only about eighty-one teachers, it is alleged, were found to be qualified and their services were retained. The petitioners allege that the order of the Commissioner is completely contrary to the executive directions and is also in clear contravention of the order of this Court dated 7.2.1991.

Shri Shanti Bhushan, learned Senior Advocate, appearing for the petitioners submitted that the Commissioner had given a completely wrong interpretation to the executive directions/regulations relating to the appointment of primary and middle school teachers in the State of Bihar and had deliberately contravened the orders of this Court dated 7.2.1991.

- A Shri B.B. Singh, learned counsel appearing for the State of Bihar, in reply submitted that there had been no contravention of the order of this Court dated 7.2.1991 and that the Commissioner had placed a correct interpretation on the executive directions/regulations and had construed the judgment of this Court in the light of that interpretation and, therefore, he had committed no contempt. Learned counsel submitted that the interpretation placed by the Commissioner deserved acceptance.
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- We have gone through the executive directions/regulations issued in the form of office letters/orders etc. concerning the working of The Bihar Non-Government Primary School (Taking over of control) Ordinance 1976 and, in particular, the directions relating to the "preparation of waiting-list and appointment of teachers" (para 1) and "the qualifications of candidate for appointment and waiting-list" (para 2). The directions, *inter alia*, provide that while appointing the teachers I.Sc. trained will be appointed on the basis of I.Sc. trained and only matric with science trained will be appointed on the basis of matric trained. Where candidates of the aforesaid qualifications are not available in required number, the candidates having qualifications more than those stated above may also be appointed. The names of the candidates, in each category, will be written yearwise in the following manner:-
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- "...first of all matric trained, then I.A., I.Sc. trained and thereafter graduate trained, on the basis of marks obtained in educational and training courses and their appointments will be made accordingly."
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Sub-clause (d) of Para 2, however, provides:

- "After the names of trained candidates the names of untrained candidates, of each category will be written in sequence of marks obtained and qualification."
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Sub-Clause (f) of Para 2 reads thus:

- "Untrained candidates of different educational qualification may be appointed in reserved category under special circumstances when trained candidates are not available."
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Sub-Clause (1) of Para 2 reads as follows:

- "Untrained candidates having the qualification of matric or more than it may be appointed in the preliminary pay scale Matric untrained (Middle-Trained)."
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A conjoint reading of the executive orders/directions shows that the untrained candidates are also capable of being appointed in each category but only when the trained teachers are not available in the particular category. The trained teachers in the order of sequence would indeed get preference over the untrained teachers.

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The interpretation placed by the Commissioner, therefore, is not correct and if that interpretation is accepted it would efface the very effect of the order of this Court dated 7.2.1991 and defeat the object of that order which was aimed at providing that all the schools must have teachers. The Court had taken note of the situation that there was an acute shortage of teachers in primary schools of Santhal Parganas of Bihar due to which most of the schools had been closed down and therefore to tide over the situation the directions extracted above, were given. The Court had reiterated the directions of the High Court that while making fresh selections the bar of age should not be used against the teachers. The order of the Court applied to untrained teachers for all the categories also. The Commissioner has made an order which, in our opinion, is not in conformity with the directions given by this Court and the Division Bench of the High Court. The directions of the Court, in the peculiar facts and circumstances of the case arising out of closure of a number of schools for want of teachers, provided *inter alia* that even the untrained teachers were entitled to be selected and appointed not only in the reserved categories but also in the other categories, provided trained teachers are not available and the untrained teachers are otherwise qualified, without putting the bar of age against them.

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From the material on record and after hearing learned counsel for the parties, we are not satisfied that it is a case in which it can conclusively be said that the respondents have wilfully or deliberately or contemptuously flouted or disobeyed the orders of this Court dated 7.2.1991. It appears to us to be a case of misinterpretation of the executive directions and order of this Court dated 7.2.1991 and is, therefore, not a fit case in which contempt proceedings need to proceed any further. We, accordingly, drop the contempt proceedings and discharge the Rule issued against the respondents.

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Since the Court has found entitlement of the untrained teachers in all the categories to appointment provided they are otherwise qualified and trained teachers are not available, we direct the respondents to properly comply with the orders of this Court dated 7.2.1991 and select and appoint untrained teachers who are otherwise qualified for appointment in all categories without putting the condition of training or age bar against

A them where trained teachers are not available. The State must conclude the process of fresh selection in the light of the observations made in this order expeditiously and, in any case, not later than three months from today.

The petitions are disposed of accordingly.

R.P.

Petitions disposed of.