

State of Bihar and others

Vs

Ramdeo Yadav and others

Civil Appeal No. 4283 of 1996

(K. Ramaswamy G.B. Pattanaik JJ)

26.02.1996

JUDGMENT

1. Leave granted.

2. We have heard the counsel on both sides.

3. The admitted facts are that Raghunadan Babulal Kanya Middle School, Sukhasan was taken over by the State Government on January 13, 1981 as a consequence of the recommendation made by the Committee constituted under Section 3 (4) of the Bihar Non-Government Primary School (Taking Over Control) Act. 1976 (for short, the 'Act'). As on that date there were seven persons who were teachers and other employees to whom grant-in-aid was given. Two candidates, namely, the respondents Ramdeo Yadav and Raj Narain Yadav were untrained teachers appointed after 1-1-1971. They filed the writ petition in the High Court for a direction to regularise their services of the premise that they had completed the training subsequently and that, therefore, they are entitled to be deemed Government servants from 1-1-1971. The High Court in CWJC No. 1963/95, dated July 27, 1993 (sic) allowed the writ petition following its earlier judgment holding that they must be deemed to have been appointed as on 1-1-1971 and by the date of their taking over, namely, January 13, 1981, they have already completed that training and that, therefore, they shall be regularised as Government servants. Calling that order in question, this appeal by special leave has been filed.

4. Shri B. B. Singh, the learned counsel for the appellant contended that though an appeal against the earlier order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this Court. We find force in this contention. In the similar circumstances, this Court in *State of Maharashtra v. Digambar*, (1995) 4 SCC 683 : (1995 AIR SCW 3116) and in *State of West Bengal v. Debdas Kumar*, (1991) Supp 1 SCC 138 : (1991 AIR SCW 704), had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law, the Court is entitled to go into the question.

5. It is then contended that Section 3 (2) and (3) make distinction between the employees covered by those provisions and the employees of the aided schools taken over under Section 3 (2). Until the taking over by operation of Section 3(4) recommendation is complete, they do not become the employees of the Government under Section 4 of the Act. The Government in exercise of the power under Section 8 constituted a committee and directed to enquire and recommend the feasibility to take over the schools. On the recommendation made by them, the Government have take decision on January 13, 1981 by which date the respondents were not duly appointed as the employees of the taken over institution. Therefore, the High Court cannot issue a mandamus directing the

Government to act in violation of law.

6. On the other hand, Shri Rudreshwar Singh, learned counsel for the respondents contended that though they were temporarily appointed after 1-1-1971, the respondent having been given training at the Government expense and completed training, they must be deemed to have been taken over and became the Government servants w. e. f. 1-1-1971. Section 4 of the Act does not make any distinction between employees regularly appointed or employees irregularly appointed and that, therefore, the view taken by the High Court is correct in law.

7. Having given due consideration to the respective contention, we find that there is force in the contention of Shri B. B. Singh. It is seen that by operation of Section 1 (3) read with Section 3 (2) and (3), the employees of the erstwhile schools managed by the district Board, Zilla Parishad, Municipal Boards, Patna Municipal Corporation became the Government employees w. e. f. 1-1-1971. Similarly, the schools managed by the public or private undertaking over by the State Government also became the Government servants w. e. f. the said date.

8. Under Section 3 (2) read with Section 3 (4), the operation over all the aided elementary schools by the private management committees and handed over voluntarily to the control of the Government would be operative only on the recommendation made by the committee constituted under sub-section (4) of Section 3. Consequentially, only on acceptance of recommendation by the Government, taking over of the school becomes complete and it becomes operative. It would be clear from the language that it is not incumbent upon the Government to either take over the school until it decided to do so, and Government is not bound to accept all the recommendations. As seen the Government exercising the power under Section 8 removing the difficulties have issued orders on May, 2, 1980 constituting the committees. In para 2 thereof, the composed person and in Paras 7, Clause (d) it says that "if any untrained teacher has been appointed in the said school after 1-1-1971, the services of such teachers will not be taken over. It would be the responsibility of the Secretary of the Managing Committee to terminate the services of such teacher prior to the said date". Consequentially, the operation of the Act, namely, Section 3(2) read with 3 (4) will be functional only after the report submitted by the Committee and accepted by the State Government. In terms of the aforesaid orders, any untrained teachers existing prior to the take over are not eligible tube taken over. Section 4 would operate only in respect of the employees qualified and working prior to the taking over. Consequently, the view of the High Court is clearly illegal.

9. It is equally settled law by decision of this Court in *J & K Public Service Commission v. Dr. Narinder Mohan*, (1994) 2 SCC 630 :(1994) 3 SCALE 597 : (1994 AIR SCW 1701), that no mandamus would be issued directing the Government to disobey the law.

10. In view of the above interpretation, the view of the High Court, therefore, is clearly illegal and cannot be implemented.

11. The appeal is accordingly allowed. The order of the High Court is set aside. Consequently, the writ petition stands dismissed. No costs. Appeal allowed.