

SUPREME COURT OF INDIA

Nand Kishore Ojha

Vs.

Anjani Kumar Singh

Contempt Petition (Civil) No. 297 of 2007

(Altamas Kabir and H.L. Dattu JJ.)

09.12.2009

ORDER

1. This contempt petition has a background of alleged breach of an undertaking given on 18th January, 2006 and the order passed on the basis thereof on 23rd January, 2006, by this Court in SLP(C)No.22882-22888 of 2004. The breach of such undertaking and disobedience of the subsequent order passed on the basis thereof resulted in the filing of Contempt Petition No.207 of 2006 which was disposed of by an order dated 19th March, 2 2007, on the basis of yet another undertaking that trained teachers would be given priority in appointment as teachers.

2. At this stage, it would, therefore, be necessary to look into the background facts which resulted in the aforesaid orders and the undertakings given on behalf of the State of Bihar.

3. A number of writ petitions were filed against the State of Bihar raising issues relating to recruitment of teachers in primary schools.

Apparently, the said issues had been resolved by this Court in its order dated 5th September, 1997 in *Ram Vijay Kumar & Ors. vs State of Bihar & Ors.*¹. The directions given therein do not, however, appear to have been implemented by the State of Bihar. In fact, it was subsequent to a judgment of the Patna High Court dated 26th September, 1996 in *Vinod Kumar & Ors. vs State of Bihar & Ors.*² 3 which was affirmed by this Court, that a specific direction was given by this Court to resume the recruitment process as directed by the High Court. As would be evident from the judgment of the Division Bench of the Patna High Court dated 1st July, 2004, the State of Bihar made a futile attempt to explain the reasons for not implementing the orders passed by the High Court and this Court relating to recruitment of teachers in primary schools all over Bihar. Upon considering the explanation given, the Division Bench of the High Court directed the respondent- State of Bihar and its authorities to follow the judgment and directions given by this Court in Ram Vijay Kumar's case (supra) and also the judgment of the High Court affirmed by this Court in Vinod Kumar's case (supra).

4. The subsequent advertisement issued by the State of Bihar dated 10th December, 2003, for recruitment of teachers was quashed, as were the 4 Bihar Elementary Teachers Appointment Rules, 2003. A positive direction was given that all trained teachers available were to be reckoned and considered for recruitment by selection or otherwise, to teach the elementary classes, even upon relaxation of age. The concessions granted by the National Council for Teachers' Education were also quashed and it was indicated that the State Government could, by taking into account the totality of the circumstances and after reckoning the viability of the trained teachers, consider the recruitment of untrained teachers who would thereafter be given in-service training, when such an occasion arose. All applications made pursuant to the advertisement dated 10th December, 2003, were also quashed.

5. From the various directions given by the Division Bench of the Patna High Court, it would be evident that it was the intention of the Court that for the execution of a public plan to 5 eradicate illiteracy and the larger interests of the children in the State, the plan for basic and primary education was required to be implemented without any further delay and if in the process the circumstances and the exigencies so required, untrained teachers could be selected who would be given in-service training so that the full strength of teachers was available when the recruitment process was finalized. It was also made clear that while recruiting all teachers whether trained or untrained, the State Government should keep in mind the Bihar Education Code, particularly Chapters 6 and 7 thereof.

6. While the Special Leave Petitions were pending disposal, an application was filed on behalf of the State of Bihar seeking leave to withdraw the Special Leave Petitions in view of the decision of the State Government to comply with the impugned judgment and order of the Patna 6 High Court. In the said application, the State of Bihar submitted that in its agenda for good governance, the Government had prepared a policy framework for education in the State. As regards school education, it was committed to recruit and fill in the vacant posts of teachers on top priority and to take other measures for teachers' training in order to enhance their capability and quality of teaching. The intention of the State of Bihar was more specifically indicated in paragraphs 5, 6 and 7 of the application, which read as follows :

"5. That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.

6. That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna 7 High Court, while making recruitment of teachers.

7. That it is respectfully submitted that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may not be necessary, and the

order of this Hon'ble Court and of the Patna High Court in this regard may be modified."

7. The said application for withdrawal of the Special Leave Petitions was disposed of by this Court on 23rd January, 2006, on the basis of the submissions made therein.

8. Inasmuch as, the State of Bihar allegedly failed to abide by its commitments and assurances, the petitioner herein, Nand Kishore Ojha, filed Contempt Petition No.207 of 2006.

Once again, the State of Bihar provided various facts and figures, which had little bearing to the question of recruitment of trained teachers to fill up the vacant posts of primary teachers 8 in Bihar. It was also stated on affidavit that the State Government had given priority to appointment of trained teachers and only where trained teachers were not available in sufficient numbers, the cases of untrained teachers were considered by the concerned Panchayati Raj institution. However, on behalf of the State of Bihar, a fresh undertaking was given that priority would be given to trained teachers for appointment in keeping with its earlier stand, as indicated in its application for withdrawal of the Special Leave Petitions filed against the common judgment dated 1st July, 2007, passed by the Patna High Court. On the basis of such fresh assurance, the contempt petition was disposed of on 19th March, 2007, by the following order:

"In view of the categorical statement now made that the priority will be given to the trained teachers in appointment and also the clarification made in paragraphs 19 to 22 of the aforesaid affidavit dated 7.2.2007, we direct the State of Bihar to implement the undertaking given by the State of 9 Bihar earlier and also now by the present affidavit dated 7.2.2007 in letter and spirit by appointing the trained teachers on priority basis."

9. As indicated hereinabove, the present contempt petition arises out of the said order dated 19th March, 2007, and the earlier undertaking given on 18th January, 2006, as also the order dated 23rd January, 2006. On behalf of the petitioners it has been contended that no trained teacher had been appointed as Assistant Teacher against the vacant sanctioned posts carrying a pay scale, in gross breach of the assurance given by the Government in its affidavit dated 18th January, 2006. It was submitted that the fact that the direction given in the order of this Court dated 19th March, 2007, have been intentionally flouted stood admitted in the affidavit filed by the State Government before the Patna High Court wherein it was stated that 70,000 trained teachers had been appointed along with another 35,000 untrained teachers. It 10 was submitted by Mr. Ramesh P. Bhatt, learned senior counsel, that whatever steps had been taken by the State Government to appoint trained teachers along with untrained teachers, were not in keeping with the undertaking given on 18th March, 2007, as reflected in the order of this Court passed on 19th March, 2007, allowing the prayers of the State Government to withdraw its SLPs. Several decisions were cited by Mr. Bhatt in support of his submission that the State Government had deliberately and wilfully violated its undertaking given not only on the earlier occasion but also in its affidavit dated 7th February,

2007, affirmed at the time of passing of the order by this Court on 19th March, 2007, disposing of the earlier contempt application.

10. At this stage it may be mentioned that several applications for leave to intervene in the contempt proceedings were filed by candidates who were similarly affected as the petitioner in 11 the contempt petition. All the said applications were allowed on 23rd April, 2009, and we have heard Mr. L. Nageshwar Rao and Mr. Rakesh U. Upadhyay, learned counsel, in a representative capacity on their behalf.

11. Mr. Nageshwar Rao submitted that the appointments which had purportedly been made to fill up the vacancies, had been made on an ad hoc basis in departure from the undertakings given on behalf of the State of Bihar and on the basis thereof it was attempted to be shown that the undertakings had been complied with. It was submitted that even the challenge to the newly- adopted Rules had not been gone into in view of the submissions made on behalf of the Contemnors that they would not apply to those trained teachers who were covered by the undertakings. In addition, Mr. Upadhyay submitted that the vacancies in the post of Assistant Teachers in the primary schools were filled up by Shiksha 12 Mitras and not the trained teachers, as was contemplated in the undertakings given in the two affidavits dated 18th January, 2006 and 7th February, 2007.

12. Mr. Upadhyay submitted that the appointment of Shiksha Mitras was nothing but a ploy on behalf of the State Government to avoid the aforesaid undertakings given on its behalf.

13. Appearing for the alleged contemnors, Mr. Kailash Vasdev, learned senior counsel, submitted that there had been substantial compliance with the undertakings given on behalf of the State of Bihar, since out of the total number of vacancies more than 60,000 trained teachers, who had applied, were appointed against the available vacancies. It was submitted that even according to the petitioner, the number of trained candidates was less than 70,000.

14. Mr. Vasdev also attempted to justify the action taken by the State of Bihar by contending that after the undertakings had been given and the SLPs had been withdrawn, the State of Bihar had framed the Bihar Elementary School Teachers Appointment Rules, 2006, hereinafter referred to as "the 2006 Rules", which came into effect on 1st July, 2006, and were amended from time to time.

“Mr. Vasdev submitted that under the said Rules the entire system relating to appointment of primary teachers had been altered. It was urged that the post of Assistant Teachers, which was previously filled in at the district level by the District Establishment Committee, had been discontinued and under the 2006 Rules, as modified, school teachers at the primary level were now being appointed by the Panchayati Raj Institutions. According to Mr. Vasdev, teachers appointed by the Panchayati Raj Institutions were permanent, on fixed scales of pay and entitled to continue in service until the age of 62 years.

Mr. Vasdev submitted that in view of the change in policy all appointments to school teachers at the elementary level after the framing of the 2006 Rules, had been made and would have to be made in future according to the 2006 Rules, as amended from time to time. Mr. Vasdev, however, acknowledged the fact that it is quite possible that some of the candidates from amongst the trained-teachers may have failed to secure appointment on account of having obtained a lower percentage of marks than those who had been appointed, or on account of non-availability of trained candidates in a particular category under the roster system. Mr. Vasdev submitted that it was also possible that some of the candidates from amongst the trained teachers did not have certificates from recognized institutions or that they had procured fake certificates alleged to have been issued by recognized institutions.”

15. Mr. Vasdev also submitted that the petitioner had been asked by the Court to submit a list of trained-teachers who are still unemployed so that their cases could be verified, but unfortunately such information had not been provided on behalf of the petitioner and as a consequence in the absence of particulars, it was not possible for the State of Bihar to effectively respond to the allegations made in this behalf.

16. Mr. Vasdev submitted that it had never been the intention of the State of Bihar to wilfully and/or deliberately depart from the undertakings given on its behalf. What it had done was merely to streamline the process of appointments at the elementary as well as the high school level, having regard to the 73rd Constitution Amendment by which the management of primary/elementary 16 education had been transferred to Panchayati Raj Institutions under Articles 243-B to 243-G of the Constitution, with effect from 24th April, 1993.

17. We have carefully considered the explanation given on behalf of the State of Bihar and its authorities for their departure from the undertakings given to appoint trained teachers against the existing vacancies, since the number of vacancies far- outstripped the number of trained teachers required to fill the vacancies. The first of the said two undertakings was given on 18th January, 2006, whereas as urged by Mr. Vasdev, in November 2005, with the change of Government in the State of Bihar, the policy relating to primary/elementary education was altered in view of the 73rd Constitution Amendment, whereunder the management of primary schools was transferred to 17 Panchayati Raj Institutions. In addition to the above, the National Council for Teachers' Education has given a mandate that appointment of teachers should be decentralized and made through the Panchayati Raj Institutions.

18. There appears to have been a change relating to appointment of primary teachers in primary schools with the advent of the new Government in Bihar in 2006 and the framing of the Bihar Elementary School Teachers Rules, 2006, which came into force on 1st July, 2006, and has been amended from time to time. We, however, see no justification in the defence taken on behalf of the State of Bihar that on account of such change in policy the trained teachers who were in place at the time when the undertakings were given could not be accommodated. When such undertakings were given, they were meant to be implemented.

“Having given successive undertakings to accommodate trained teachers in the vacant posts, without even taking recourse to the selection procedure, the State Government cannot resile from its earlier undertakings and profess a change of policy for not giving effect to such undertakings. Furthermore, as submitted by Mr. Upadhyay, the appointments given to trained teachers, who were eligible at the time when the undertakings were given, were as Shiksha Mitras, which appointments were allegedly ad hoc in nature and were not contemplated in terms of the said undertakings.”

19. In view of the submissions made by Mr. Nageshwar Rao and Mr. Upadhyay, that the appointment made to the post of Shiksha Mitras was not in accordance with the undertakings given on behalf of the State of Bihar and the submissions made by Mr. Vasdev that appointments 19 had been offered to the trained teachers who had not accepted the same, we had by our order dated 8th August, 2008, given liberty to the alleged contemnor to file a chart giving details of trained teachers who had been offered appointments but had not accepted the same. Such a chart was never filed on behalf of the State of Bihar and its authorities during the hearing of the Contempt Petition. The submissions made by Mr. Kailash Vasdev, therefore, remained uncorroborated.

20. Notwithstanding what has been stated hereinabove, except for making a general statement that the trained teachers, who were available at the time when the undertakings were given, had not been appointed in the manner contemplated in the undertakings given, no proper particulars were provided by the petitioner of the trained teachers who had not been given appointments in terms of the undertakings.

“Details have also not been provided as to which of the trained teachers were appointed as Shiksha Mitras without permanency of service and merely on an ad hoc basis. But, at the same time, several intervention applications have been filed on behalf of a large number of applicants, wherein it has been stated that the said applicants were also trained teachers who were similarly situated as the petitioner who had been appointed not on a permanent basis, but temporarily on a consolidated salary of Rs.5,000/- per month. It is, in fact, in view of the submissions made on behalf of the applicants, that we had allowed all the applications for intervention since the applicants were covered by the undertakings which had been given on 18th January, 2006 and 7th February, 2007.

Unfortunately, except for claiming that appointments had been made in terms of the undertakings given, though under changed circumstances, no explanation was offered by the 21 alleged contemnor with regard to the allegations made on behalf of the applicants in the intervention applications.”

21. The materials as disclosed before this Court and the submissions made on behalf of the alleged contemnors, leave little room for doubt that even if the State of Bihar had at one time intended to give appointment to the trained teachers then available in the State of Bihar when the undertakings were given, it has subsequently altered its position, with the result that the State of Bihar and its authorities have sought refuge in disinformation for not implementing

the undertakings given. Ultimately, the learned Attorney General appeared before us on 25th August, 2009 and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf, but that the situation had changed over the years since the 22 undertaking had been given and the situation had become much more complex than was thought at that time. The matter was, therefore, adjourned to enable him to consider how best the matter could be resolved. Ultimately, however, no positive solution could be suggested which could satisfy the undertaking and at the same time, cause the minimum amount of disruption in implementing the same.

22. In order to find a workable solution to the problem which has arisen on account of the failure of the Government authorities to abide by the undertakings given on its behalf, the advertisement for appointment of primary teachers which was published in December, 2003 and had been struck down by the High Court, was brought to our notice for the limited purpose of determining the total amount of vacancies which was shown as 34,540, whereas the estimated number of trained teachers yet to be accommodated was 23 far beyond the aforesaid figure. In order to put a quietus to the entire issue, we have decided to accept the figures relating to the vacancies to the posts shown in the advertisement, to meet the claims of the trained teachers who were at the relevant point of time available for being appointed on a regular basis. Accordingly, notwithstanding the number of trained teachers available, we direct that the said available vacancies of 34,540, shown in the advertisement for appointment of primary teachers, be filled up with the said number of trained teachers as a one-time measure to give effect to the undertakings which had been given on 18th January, 2006 and 23rd January, 2006.

23. Accordingly, without issuing a Rule of Contempt, we direct that the 34,540 vacancies shown as available in the advertisement published in December, 2003, be filled up from amongst the trained teachers who are available, in order of 24 seniority. As indicated above, this is to be done on a one-time basis and must not be taken as the regular practice to be followed.

24. Let the Contempt Petition be adjourned for a further period of six weeks to enable the State Government to implement this order and to submit a report on the next date as to the result of the discussions held between the petitioner and the concerned authorities.

¹(1998) 9 SCC 227

²(CWJC No.5765/94)