

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9530 of 2014

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1. Chandra Bhushan Tiwary , Son of – Late Raghunath Tiwary, Resident of Village – Tiwaripur, P.S. - Buxar, District – Buxar
 2. Ranjit Singh, Son of – Late Ram Pujan Singh, Resident of Village – Dalsagar, P.S. and District – Buxar
 3. Gulab Singh, Son of – Late Lal Bihari Singh, Resident of Village- Purana Bhojpur, P.S. - Dumrao, District – Buxar (since dead)
 4. Ramashish Ram, Son of Shiv Shankar Ram, Resident of Village – Dalsagar, P.S. and District - Buxar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Commissioner-cum-Secretary, Department of Human Resources, Bihar, Patna
3. Director, Primary Education, Bihar, Patna
4. District Superintendent of Education, Buxar
5. Musafir Singh, Son of- Sri Shivnath Singh Resident of – Purana Bhojpur, P.S. - Dumraon, District – Buxar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Adv. Mr. Radha Mohan Pathak, Advocate
For the Respondent/State:		Mr. Kamlesh Kishore, AC to SC 12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 31-07-2024

1. Heard Mr. Ganpati Trivedi, learned senior counsel for the petitioners and Mr. Kamlesh Kishore, learned A.C. to S.C.-12 appearing for the State.

2. No one appears on behalf of the respondent no. 5 despite valid service of notice.

3. Four petitioners filed the present case, however, the petitioner no. 3 died during pendency of the writ application and no substitution petition has been filed. The writ petition with



respect to the petitioner no. 3 stood abated.

4. The petitioners have made a prayer for quashing the Memo No. 1146 dated 13.08.2010 issued by the Principal Secretary, Department of Human Resources, Government of Bihar by which a direction was issued to the concerned Officer to comply the order contained in Memo No. 1005 dated 22.06.2001 issued by the Director, Primary Education and Memo No. 794 dated 05.07.2001 issued by the District Superintendent of Education, Buxar. The petitioners have prayed for consequential relief for setting aside the Memo No. 1005 dated 22.06.2001 by which order has been issued for recovery of the salary paid to the petitioners.

5. Brief facts giving rise to the present writ application is that the petitioners were appointed as Assistant Teacher by the Managing Committee of Adarsh Middle School, Paschim Tola, Mathiya, Purana Bhojpur [hereinafter referred to as the “School”]. Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 [hereinafter referred to as the “1976 Act”] was enacted where under it has been decided to take over the schools under the State control for better organization and development of elementary education in the State of Bihar.

6. The State Government decided to take over the



aforesaid School and held inspection thereof for the purpose of taking over. A report was submitted by the District Superintendent of Education, Bhojpur, Ara on 12.09.1980 bearing letter no. 755 before the Deputy Director of Education. In its report the District Superintendent of Education, Bhojpur recommended for taking over the School in question. The Special Secretary -cum- Director, Primary Education vide its order dated 01.10.1981 decided to take over control of the School in question and services of twelve teachers including the petitioners found working in the said School were absorbed as Assistant Teacher as a consequence of taking over in view of Section 4(2) of the 1976 Act.

7. One Musafir Singh filed Title Suit No. 185 of 1981 before the court of learned 1st Additional Munsif, Buxar challenging the taking over notification dated 01.10.1981 contained in letter no. 2181 with a further prayer to restrain the defendants to prepare any bills in favour of the teachers mentioned in the said notification.

8. Admittedly the petitioners, who were beneficiaries of the taking over notification were not made party defendants in the aforesaid Title Suit. The said Suit was decreed ex-parte vide judgment dated 20.12.1989 holding that the plaintiff along with



other eleven teachers were the actual teachers who had been working and were instrumental in the opening of the said School and were working at the time of the taking over notification dated 01.10.1981. The other names mentioned in the notification are illegal, malafide and motivated.

9. The defendant / State was permanently restrained from implementing the letter no. 2181 dated 01.10.1981 and was directed to prepare pay bills in favour of the plaintiff and eleven teachers from 01.10.1981.

10. Being aggrieved by the judgment rendered in the Title Suit, the State respondents preferred Title Appeal No. 04 of 1990 against the ex-parte judgment dated 20.12.1989. The Appeal was dismissed for default vide order dated 14.02.1991. Thereafter, the State filed Miscellaneous Case No. 18 of 1991 for restoration of Title Appeal, which also got dismissed for default on 23.01.1993. Thereafter, Miscellaneous Case No. 6 of 1993 was filed by the State for restoration of Miscellaneous Case No. 18 of 1991 which was dismissed vide order dated 26.11.1994.

11. The respondent no. 5 / Musafir Singh (decree holder) filed Execution Case No. 08 of 1996, which was dismissed by the executing court following which he preferred Civil Revision



before this Court against the order passed by the executing court in Civil Revision No. 1234 of 2003 which was allowed by this Court vide order dated 04.01.2005. The State Government preferred SLP bearing SLP (Civil) No. 22427 of 2005 against the order dated 04.01.2005 passed by this Court in Civil Revision.

12. The Hon'ble Supreme Court vide interim order dated 21.10.2005 stayed the order dated 04.01.2005 subject to deposit for payment of 50% of the due salary to the concerned teachers without prejudice to the claims involved. In compliance thereof the State Government deposited the amount of Rs. 33,35,612/- before the learned court of Additional Munsif 1st Buxar.

13. The SLP filed by the State was dismissed as withdrawn on 05.10.2012 upon the request made by the State of Bihar to withdraw the SLP because a Suit for setting aside the decree dated 20.12.1989 has been filed by the State. The State Government has preferred Title Suit bearing Title Suit No. 02 of 2003 before the learned court of Munsiff, Dumraon, Buxar challenging the judgment and decree dated 20.12.1989 passed in T.S. No. 185 of 1981.

14. A show cause vide letter no. 436 dated 22.08.2000 was served upon the petitioners requiring them to answer as to why



salary paid to them may not be recovered in the light of the judgment passed in Title Suit No. 185 of 1981.

15. Pursuant to the show-cause, the petitioners filed detailed reply dated 01.09.2000 before the District Superintendent of Education, Buxar. Thereafter, vide the impugned Memo No. 1005 dated 22.06.2001 issued by the Director, Primary Education, the services of the petitioners were terminated retrospectively from the date of absorption and it has been ordered to recover the amount paid to them as salary. Subsequent to this, the District Superintendent of Education, Buxar vide Memo No. 794 dated 05.07.2001 passed a consequential order directing the concerned officials to initiate the recovery proceedings against the petitioners.

16. Assailing the aforementioned order contained in Memo Nos. 1005 & 794 the petitioners approached this Court in CWJC No. 9955 of 2001 which was disposed off vide order dated 27.07.2007 with a direction to the Principal Secretary, Education Department to pass a fresh order after considering the show-cause reply submitted by the petitioners. In the meantime, operation of the impugned Memos was stayed. Pursuant to the same, the impugned order dated 13.08.2010 having Memo No. 1146 has been passed by the Principal Secretary directing the



concerned Officials to implement the order contained in memo no. 1005 dated 22.06.2001 & memo no. 794 dated 05.07.2001.

17. Mr. Ganpati Trivedi, learned senior counsel for the petitioners argued that pursuant to the inspection report for recognition of the School in question submitted by District Superintendent of Education, Bhojpur in 1980, the School in question was taken over and services of Assistant Teachers were absorbed vide Order No. 2131 dated 01.10.1981 under Section 4 of the 1976 Act. The services of the petitioners and other teachers were modified and restrictive service books were opened in their names and all of them were absorbed as untrained teachers. Under the direction of the Director (Research & Training), Bihar dated 25.08.1987 the petitioners were given the scale of trained teachers and continued to be given salary till the date of their illegal termination. Thus, it is evident that petitioners absorption as Assistant Teachers of the School in question was well within the knowledge of the State authorities.

18. One collusive Title Suit was filed by the respondent no. 5 namely, Musafir Singh challenging the notification of taking over dated 01.10.1981 by impleading only the State authorities as defendants with a prayer to declare that plaintiff



along with eleven other teachers were the actual teachers, who had been working since the opening of the school and at the time of notification of taking over dated 01.10.1981. Though the petitioners' names are mentioned in the notification dated 01.10.1981, yet they were not made party defendants in the Suit purposely. On 02.01.1982 a show- cause notice was issued in the Suit filed by the plaintiff. Ad-interim injunction was made absolute in Title Suit No. 185 of 1981 on 22.10.1982. Thus, in spite of ample opportunities given to the State authorities, no written statement was filed, hence the Suit proceeded ex-parte. On 30.11.1983 the Suit was taken up for hearing. No oral or documentary evidence was led by the State authorities. On 20.12.1989 Title Suit No. 185 of 1981 was decreed ex- parte by the learned Munsif 1st, Buxar. The notification dated 01.10.1981 was declared illegal. Musafir Singh (plaintiff) and other teachers were declared to be actual teachers and they were directed to be paid their salary along with the arrears.

19. In 1990 Title Appeal No. 4 of 1990 was filed by the State authorities challenging the judgment and decree passed in T.S. No. 185 of 1981. On 14.02.1991 Title Appeal No. 4 of 1990 was dismissed for default. On 23.03.1991 Miscellaneous Case No. 18 of 1991 was filed for restoration of Title Appeal No. 4 of



1990. On 23.01.1993 Miscellaneous Case No. 18 of 1991 filed for restoration of Title Appeal No. 4 of 1990 was dismissed for default. Miscellaneous Case No. 6 of 1993 was filed for restoration of Miscellaneous Case No. 18 of 1991. Miscellaneous Case No. 6 of 1993 was dismissed on 26.11.1994. In 1996 the decree holder - Musafir Singh filed Execution Case No. 08 of 1996 which was dismissed by the learned Munsif -I on the ground that the Suit was decreed for only one person, however, execution was levied for eleven persons, hence not maintainable.

20. The matter travelled up to the Hon'ble Supreme Court in SLP filed by the State, which was withdrawn by the respondent – State on the ground that State has preferred Title Suit No. 3 of 2003 challenging the decree & order dated 20.12.1989 passed in Title Suit No. 185 of 1981.

21. He further argued that the judgment passed in Title Suit No. 185 of 1981 cannot bind the petitioners inasmuch as even though the petitioners being a necessary party, they were not impleaded in the Suit nor any notice was ever served upon them and furthermore the Suit was decreed ex-parte.

22. The judgment passed in Title Suit No. 185 of 1981 was obtained by playing fraud upon the Court and by taking the



State authorities in collusion, who chose not to contest the Suit properly which would be evident from the facts of the case itself.

23. The plaintiff – Musafir Singh had misrepresented many facts before the learned court of Munsiff, for instance, he was not possessing the requisite qualification to be appointed as a Teacher as he passed the Matriculation Examination in the year 1979. Furthermore, in another Title Suit No. 144 of 1991 he claimed to be the Headmaster of M.P. Singh Balika Middle cum Uchachc Vidyalaya.

24. All the details regarding taking over of the said School as well as absorption of the petitioners were well within the knowledge of the State authorities, still they chose not to appear before the learned trial court following which ex-parte decree dated 20.12.1989 was passed.

25. On the other hand, learned counsel for the State submits that the State has filed Title Suit No. 3 of 2003 challenging the judgment and decree dated 20.12.1989 passed in Title Suit No. 185 of 1981 which is still pending before the learned Munsif, Dumraon, Buxar for hearing.

26. Upon hearing learned senior counsel for the petitioners and the State the following questions arise for



consideration in the present writ application:-

(A) Whether the respondent / State authorities having realized their mistakes have filed the Title Suit No. 03 of 2003 for setting aside the ex-parte decree dated 20.12.1989 passed in Title Suit No. 185 of 1981.

(B) Whether the respondent authorities can be permitted to take benefit of their own lapses in contesting the Title Suit No. 185 of 1981 and deliberately not prosecuting the Title Suit, Appeal and Miscellaneous Cases allowing the Suit to be decreed ex-parte and the Appeal and Miscellaneous Cases being dismissed for default.

(C) Whether in view of negligence on the part of the State authorities, they are justified in realizing the salary paid to the petitioners.

27. The fact that the names of the petitioners are mentioned in the taking over notification dated 01.10.1981 is not disputed. The respondent no. 5 while challenging the notification dated 01.10.1981 failed to implead the petitioners and other teachers who were absorbed pursuant to the same as defendants in the Title Suit. Insofar as the State respondents are concerned, though they were impleaded as defendants in the Suit and were having knowledge about the inspection report submitted before taking over the School in question and the name of the petitioners being recommended by the inspection



team / Committee, they failed to contest the Suit properly and allowed it to be decreed ex-parte.

28. Since the petitioners were not party defendants in the Suit, the decree is not binding upon them and the State respondents who negligently contested the Suit cannot take advantage of their own wrong in depriving the petitioners from their salary for the period they have already worked by terminating the services of the petitioners with retrospective effect starting from 01.10.1981. Moreover, the State has filed fresh Suit for setting aside the ex-parte decree having Title Suit No. 3 of 2003. As such, order realizing salary paid to the petitioners for the period they actually worked is not reasonable and is arbitrary.

29. It is not the case of the respondents that the petitioners are not holding the requisite qualification for absorption as Assistant Teacher. The respondents during the service period of the petitioners sent them for training and also paid trained scale to the petitioners.

30. Accordingly, the impugned orders bearing Memo Nos. 1005 dated 22.06.2001 & 794 dated 05.07.2001 directing for recovery of salary paid to the petitioners is not sustainable and the same is set aside.



31. Since fresh Title Suit is pending, as such, the order of termination of services of the petitioners, who have already attained the age of superannuation, shall be dependent upon the outcome of the Title Suit.

32. With the aforesaid observation and direction, the writ application is disposed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	28-06-2024
Uploading Date	31-07-2024
Transmission Date	NA

