

NAND KISHORE OJHA

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v.

ANJANI KUMAR SINGH

(Contempt Petition (C) No.297 of 2007)

IN

Special Leave Petition (C) No.22882 of 2004

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MAY 12, 2010

[ALTAMAS KABIR AND H.L. DATTU, JJ.]

Contempt of Court:

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Breach of undertaking given before Court – Orders dated 23.1.2006 and 9.12.2009 passed by Supreme Court on the basis of undertaking given by State of Bihar to fill up the vacancies of Primary School Teachers by appointing trained teachers available in the State – Contempt petition filed alleging breach of the undertaking – Stand of the state that Rules have been framed to give effect to the undertaking given by the State and the orders passed by Supreme Court – Held: It was never the intention of the Court that the conditions of the advertisement itself, which had been struck down by the High Court, were to be followed by the State Government – The advertisement was referred to only for the purpose of determining the number of vacancies which would be required to be filled up from amongst the trained teachers – It was made clear that all the 34,450 posts were to be filled up with trained teachers who were waiting for appointment, in order of seniority – The question of keeping some of the posts vacant on account of non-availability of reserved candidates was never the criterion in the order passed by the Court on 9.12.2009 – What was intended was that, after the number of candidates from the reserved category had been accommodated, the rest of the posts were to be filled up from amongst the candidates from the general category – It is once again directed that the said 34,540 posts, which have been

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- A *created, be filled up from amongst the trained teachers in order of seniority after providing for appointment of candidates belonging to the reserved category as a one-time measure as indicated in earlier orders as also mentioned in the additional affidavit affirmed on behalf of the State Government – Matter adjourned for filing of compliance report – Bihar Special Elementary Teachers' Recruitment Rules, 2010 – Service Law – Appointment of Primary School Teachers.*

C CIVIL APPELLATE JURISDICTION : Contempt Petition (C) No. 297 of 2007.

IN

SLP (C) No. 22882 of 2004.

- D From the Judgment & Order dated 01.07.2004 of the High Court of Judicature at Patna in CWJC Nos. 13246, 6661 of 2003, 1533, 1788, 1789, 1861 & 5053 of 2004.

- E Paramjeet Singh Patwalia, Ramesh P. Bhatt, Rakesh Uttamchandra Upadhyay, Abhijeet Kakoti, Ankur Panda, Brij Bhusan, Sunil Kumar, Chandan Ramamurti, Dharam Bir Raj Vohra, K.N. Rai, D. Kishor, S.N. Roy, K.Kumar, Lakshmi Raman Singh, M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha, Syed Ali Ahmad, Syed Tanweer Ahmed, Mohd. Shahnawaz Hasan, S.S. Bandyopadhyay, Mohan Pandey, S.K. Sabharwal, F Shree Pal Singh, M.K. Michael, Amukesh Verma, Aftab Alam, Pawan Shukla, Yash Pal Dhingra, Revathy Raghavan, Ramjee Prasad, E.C. Vidya Sagar, D.K. Thakur, D. Jha, Debasis Misra, Barun Kr. Sinha, Pratibha Sinha, B.K. Satija, Prashant Chaudhary, Subhro Sanyal, Kumud Lata Das, Ambhoj Kumar G Sinha, Shekhar Prit Jha, Abhijit Sengupta, Kanhaiya Priyadarsi, Ajay Kumar, Sanjeev Kumar, Jitender Pandey, Venkateswara Rao Anumolu, P.V. Yogeswaran, Praneet Ranjan, Shashi Bhushan Kumar, Gaurav Agrawal Jitendra Kumar, Amit Pawan, Vikash Verma, Devashish Bharuka, Santosh Kumar, Milind H Kumar, Santosh Kumar Tripathi, Arup Banerjee, Rajeev Kumar,

R.K. Prasad, Abhishek Atrey, Mithilesh Kumar Singh, Dharmendra Kishor, Mohit Kumar Shah, Chandan Kumar, G.V. Rao, Ashok Kr. Upadhyay, P.N. Jha, Umesh Kumar, Imran Khan, Firasat Ali, Ram Swarup Sharma for the petitioner. A

P.K. Shahi, Gopal Singh, Manish Kumar, L. Nageshwar Rao, Santosh Kumar, Rajeev Katiyan, Sachida Nand Singh, Mushtaq Ahmad, R.K. Ranjan, Anilendra Pandey, Priya Kashyap, Dr. Kailash Chand, Prem Sunder Jha, S.K. Sinha, In-Person, Dhruv Kumar Jha, Bijan Kumar Ghosh, Shalini Chandra, Swati Chandra, Anil Kumar Tandale, Subramonium Prasad, Vishwajit Singh Ratan Kumar Choudhuri, Akshay Shukla, Dinesh Kr. Tiwari, C.P. Yadav, Syed Md. Rafi, V.S. Mishra, N.N. Jha, Monika Kalra, Ram Ekbal Roy, Rameshwar Prasad Goyal, T. Mahipal, Pratap Shanker, Swetank Shantanu, Aniruddha P. Mayee, M.M. Singh Dharmendra Kumar Sinha, Vishnu Sharma, Anupama Sharma, Amarjyoti Sharma, Prakash Kumar Singh, Sunil Kumar Verma, Yugul Kishor Prasad, Bipin Kumar Jha, B.S. Rajesh Agrajit, Sridhar Potaraju, D.Julius Riamei, Gaichangpau Gangmei, Abhay Kumar, Aruna Gupta, Rajiv Shankar Divedi for the Respondent. B C D

The Order of the Court was delivered by E

ORDER

ALTAMAS KABIR, J. 1. As indicated in our order dated 9th December, 2009, 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 in SLP(C)Nos.22882-22888 of 2004. The said undertaking related to the commitment made by the State of Bihar to recruit and fill in the vacant posts of teachers in Primary Schools with trained teachers. The undertaking given by the State of Bihar is in that context and reads as follows : F G

“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 H

A 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.

B 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 High Court, while making recruitment of teachers.

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

2. The said application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006 on the basis of the submissions made therein.
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3. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the petitioner herein, Nand Kishore Ojha, filed Contempt Petition 297 of 2006, which was
F 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
G direct the State of Bihar to implement the undertaking given by the State of 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."

H 4. Once again on the failure of the State Government to

appoint trained teachers as Assistant Teachers in the vacant sanctioned posts carrying a pay-scale, in breach of the undertaking and the assurances given by the Government, the present Contempt Petition was filed. Many applications were made in the Contempt Petition by the trained teachers similarly situated, for being impleaded as parties to the proceedings. 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 undertaking had been given and had become much more complex than was thought of at that point of time. Since no workable solution could be suggested which could satisfy the undertaking given by the State Government and, at the same time, to cause minimum amount of disruption in implementing the same, this Court took note of an advertisement for appointment of Primary Teachers, which was published in December, 2003 and had been struck down by the High Court, for the limited purpose of determining the total number of vacancies which were shown as 34,540. In order to put a quietus to the entire issue, we accepted the figure 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, this Court directed that the available 34,540 vacancies shown in the advertisement for appoint of Primary Teachers to be filled up with the said number of trained teachers as a one-time-measure to give effect to the undertaking which had been given on 18th January, 2006 and 23rd January, 2006. This Court also adjourned the Contempt Petition for implementation of the said order passed by us and for a report to be submitted on the next date as to the result of the discussions held between the petitioner and the concerned authorities.

5. Pursuant to the above directions, the matter was taken

A up on 6th May, 2010, when an Additional Affidavit affirmed by the Contemnor, Shri Anjani Kumar Singh, was shown to us. The deponent indicated that he was the Principal Secretary, Human Resource Development Department, Government of Bihar, and it was mentioned in paragraph 4 of the said Affidavit that 34,540
 B posts of Assistant Teachers had been created as a one-time-measure for appointment in Elementary Schools of the State of Bihar and to facilitate the process of recruitment, the Bihar Special Elementary Teachers' Recruitment Rules, 2010, had been prepared and had been approved by the State Cabinet
 C on 2nd February, 2010. On the said basis, it was averred that by creating 34,540 posts of Assistant Teachers, the State of Bihar had complied with the directions given by this Court on 9th December, 2009 as a one-time-measure.

D 6. Mr. P.K. Shahi, learned Advocate General for the State of Bihar, took us to the Bihar Special Elementary Teachers' Recruitment Rules, 2010, hereinafter referred to as "the 2010 Rules", and pointed out that the same had been framed to give effect to the undertakings given by the State of Bihar and the orders passed by this Court from time to time. The learned
 E Advocate General, therefore, submitted that in view of such compliance, the contempt proceedings were liable to be dropped.

F 7. Appearing for the Petitioners in Contempt Petition No.297 of 2007, Mr. R.P. Bhatt, learned Senior Advocate, submitted that although apparently it would appear that by the creation of 34,540 posts, the undertakings given on behalf of the State of Bihar and the orders passed by this Court had been duly complied with, in real fact, the same did not reflect the true
 G state of affairs in view of the framing of the 2010 Rules which were in breach and not in compliance with the said undertakings. In particular, it was pointed out that Rule 4 of the said Rules provided that only those candidates who had passed training upto 1st December, 2003, could apply, which effectively debarred those trained teachers who passed training
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thereafter and were intended to be covered by the order of 6th May, 2010, for appointment as primary teachers. It was also submitted by Mr. Bhatt that teachers who had completed physical education training had not been included in the definition of the expression "training", as provided in Rule 2(iv), although they too were to be covered by the order passed on 6th May, 2010, and the earlier orders.

8. Mr. L. Nageshwar Rao, learned Advocate, who appeared for some of the Special Leave Petitioners, submitted that the provision for reservation in Rule 6 of the aforesaid Rules would also result in the exclusion of a large number of trained teachers from the general category, since it was not expected that the total number of posts reserved would be filled from amongst trained teachers belonging to the reserved category. Mr. Rao also pointed out that the provision of Rule 9 were also prejudicial to the Petitioners, who even after their appointment would not be paid their salaries unless their certificates were found to be correct. Mr. Rao Submitted that such a condition could result in an indefinite delay in paying the salaries of the persons appointed.

9. Some of the other learned Advocates appearing for the other Petitioners and those candidates who had been permitted to intervene in these proceedings on the basis of their various applications, echoed the submissions made by Mr. Bhatt and Mr. Rao. All of them in one voice have reiterated the submission that all the 34,540 posts which have been created would have to be filled up without leaving any vacancies on the plea of reservation, as had been undertaken by the learned Advocate General for the State of Bihar, Mr. Shahi.

10. We have carefully considered the submissions made on behalf of the respective parties with regard to the affidavit of compliance filed on behalf of the State of Bihar and have also considered the submissions of the learned Advocate General for the State of Bihar with regard to the 2010 Rules.

A 11. While we appreciate the fact that the number of posts shown in the advertisement published in 2003 amounting to 34,540 have been created to be filled up by trained teachers, it must be said that it was never our intention that the conditions of the advertisement itself, which had been struck down by the High Court, were to be followed by the Bihar State Government. We had made it very clear in our order that we had referred to the advertisement only for the purpose of determining the number of vacancies which would be required to be filled up from amongst the trained teachers. It was very clearly our intention that all the 34,540 posts were to be filled up with trained teachers who were waiting for appointment, in order of seniority. The question of keeping some of the posts vacant on account of non-availability of reserved candidates was never the criterion in the order passed by us on 9th December, 2009. We must add that we are not for a moment suggesting that candidates from the reserved category should not be accommodated as per the reservation policy. What we intended was that after the number of candidates from the reserved category had been accommodated, the rest of the posts were to be filled up from amongst the candidates from the general category.

F 12. Having regard to the above, we once again direct that the said 34,540 posts, which have been created, be filled up from amongst the trained teachers in order of seniority after providing for appointment of candidates belonging to the reserved category as a one-time measure as indicated in our earlier orders and as also mentioned in the additional affidavit affirmed on behalf of the State of Bihar.

G 13. We would like it to be appreciated by the State of Bihar that these directions should be complied with within 31st August, 2010, without further delay. Let this matter stand adjourned till 8th September, 2010 at 3.30 p.m. for filing of compliance report.

H R.P.

Matter adjourned.