

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4497 OF 2006

TEACHING & NON-TEACH.STAFF, T.V.M.S.&ANR. APPELLANT (S)

VERSUS

STATE OF BIHAR & ORS. RESPONDENT (S)

O R D E R

We have heard Mr. Amrendra Sharan, learned Senior Counsel appearing for the appellants and Mr. Manish Kumar, learned counsel appearing for the respondents-State.

The appellants are the teaching and non-teaching staff of Tulsi Vidya Mandir High School, Singathia, Gaya, Bihar (for short the 'School'). They filed a writ petition being C.W.J.C. No.6638 of 1999, seeking a writ of mandamus or any other appropriate writ directing the respondents-State of Bihar for taking over the school and payment of salaries etc., to the writ petitioners who are teaching and non-teaching staff of the school. By order dated 24.07.2003, the learned Single Judge of the High Court dismissed the said writ petition, on the ground inter alia that the school was never taken over under the provisions of Bihar Non-Government Secondary School (Management and taking over of Control) Act, 1981.

Further the representation filed by the writ petitioners before the respondent-State was also rejected. Aggrieved by the said order passed by the learned Single Judge, the writ petitioners preferred a Letters Patent Appeal No.786 of 2003, before the Division Bench of the High Court. By the impugned order dated 01.09.2003, the High Court also dismissed the said Letters Patent Appeal. For better appreciation, the relevant portion of the impugned order is extracted hereinbelow :

"From perusal of the counter affidavit, it appears that the School in question was established in 1962 and was granted partial recognition in 1965. The District Education Officer visited the school in 1969 and found that the school was closed. Again in 1982, the school was started in the same name and a prayer was made for permission to establish the school which was granted by the concerned authority on 15.02.1985. According to the learned counsel appearing for the State, the school was not in existence on the relevant dated i.e. 2<sup>nd</sup> October, 1980 and as such there was no question of its being taken over automatically.

As the school in question was not in existence on the relevant date i.e. on 2<sup>nd</sup> October, 1980, there was no question of its being taken over under section 3(1) of the Ordinance/Act and thus, there is no question of a direction for payment of salary etc., to the employees of the said school. Learned Single Judge rightly dismissed the writ application.

In the result, there is no merit in this appeal and the same is accordingly dismissed."

Aggrieved by the impugned order dated 01.09.2003 passed by the Patna High Court in L.P.A. No.786 of 2003, the appellants have preferred this appeal by special leave.

In the course of arguments, when we put a question to Mr. Amrendra Saran, learned Senior Counsel appearing for the appellants, as to whether the school management was made a party in the writ petition or in the Letters Patent Appeal, he has very fairly stated that the school management was not made party before the High Court. Curiously enough, how the writ petition or appeal was entertained by the High Court when the school management, who will be the ultimate affected person, was not made a party in the writ petition or appeal. On this ground alone, the order passed by the learned Single Judge as also the impugned order passed by the Division Bench of the High Court are liable to be set aside.

Consequently, we allow this appeal, set aside the impugned order passed by the Division Bench of the High Court as also the order of the learned Single Judge and the matter is remitted to the High Court by giving an opportunity to the appellants to implead the school management as party respondent in the array of the parties in the writ petition.

Needless to say that if the school management is impleaded as party respondent in the writ petition, the High Court shall consider the writ petition afresh and pass appropriate orders in accordance with law.

It is made clear that we have not expressed any opinion with regard to either the finding recorded in the impugned order or the existence of the school on the relevant date.

.....J  
[M. Y. EQBAL]

.....J  
[KURIAN JOSEPH]

NEW DELHI;  
AUGUST 13, 2015.

ITEM NO.109

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).4497/2006

TEACHING &amp; NON-TEACH.STAFF,T.V.M.S.&amp;ANR.

Appellant(s)

VERSUS

STATE OF BIHAR &amp; ORS.

Respondent(s)

(With interim relief and office report)

Date : 13/08/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL

HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Amrendra Sharan, Sr. Adv.  
Mr. Manu Shanker Mishra,Adv.For Respondent(s) Mr. Manish Kumar, Adv.  
Mr. Chandan Kumar, Adv.  
For Mr. Gopal Singh,Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Sanjay Kumar-II)  
Court Master(Indu Pokhriyal)  
Court Master

(Signed Order is placed on the file)