

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4680 OF 2000@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

State of Bihar and Ors. .. Appellants

Vs.

Jai Prakash Singh & Ors. .. Respondents

O\_R\_D\_E\_R@@  
AAAAAAAAA

The respondents were Assistant Teachers in a school which was taken over in the year 1982 under Section 3(2) of the Bihar Non-Government Elementary Schools(Taking over Management and Control) Act, 1976 (herein after referred to as the 'Act'). On the ground that the respondents had been appointed after 1.1.1971 and they are un-trained teachers, they were not absorbed in the services of the Government.

An order was issued under Section 8 of the said Act purporting to remove difficulties and anomalies arising under the Act by providing appropriate guide-lines for the purpose of examining the feasibility of taking over of such schools as required under Section 3 (4)(a) of the Act, to the effect that un-trained teachers who had been appointed after 1.1.1971 cannot be absorbed in service but their services will have to be removed by the concerned Secretary of the institution.

-2-

However, the High Court took the view, when the matter was challenged before it in a writ petition filed by the respondents on their being not absorbed in the services of the Government, that in a similar case - Rameshwar Pandey Vs. State of Bihar(1971 (1) PLJR 773) the matter was examined and the claim had been allowed in similar circumstances and,therefore, the relief was granted. The High Court allowed the writ petition and directed to treat the respondents as Assistant Teachers of the school in question which had already been taken over by the State from the date of the taken over and also to pay salary from the date of the take over. It is against this order that this appeal has been filed by Special leave.

Shri B.B. Singh, learned counsel appearing for the appellants submitted that in view of the scope of Section 3 (4)(a), it was certainly permissible for the Government to frame appropriate guide-lines stating therein in what circumstances the schools could be taken over and when a clear indication had been given thereto the Government could issue appropriate order under Section 8 for purposes of clarifying the matter and

removing the difficulties, if any, and that order will have application and effect.

-3-

The approach of the High Court in answer to this argument is inasmuch as under Section 4(2) of the Act the respondents had been working in the institution on the said date of take over and, therefore, they stood statutorily appointed by the effect of the provisions of the Act itself and in those circumstances it was not permissible to apply power to remove difficulties and pass an order to the effect that they were not qualified teachers and they could not be absorbed in the services.

Inasmuch as the High Court on the facts arising in the matter has decided the matter with reference to the circumstances therein, we do not think that this is a fit case for our interference under Article 136 of the Constitution and the appeal stands dismissed subject to reducing the back wages to 50% in the facts and circumstances of the case. Ordered accordingly.

.SP1

.....J@@  
AAAAAAAAAAAAAAAAAAAA  
[ S. RAJENDRA BABU ]@@  
AAAAAAAAAAAAAAAAAAAA

.....J@@  
AAAAAAAAAAAAAAAAAAAA  
[ RUMA PAL ]@@  
AA

New Delhi,@@  
AAAAAAAAAAAA  
January 23, 2002.

.PA

.....L.....I.....T.....T.....T.....T.....T.....T.....J.....  
ITEM NO.101 COURT NO.6 SECTION-XVII

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.4680/2000

State of Bihar & Ors. .. Appellants

Vs.

Jai Prakash Singh & Ors. .. Respondents  
(With appln(s) for exemption from filing O.T.)

DATE : 22.1.2002 : This/These matter (s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MRS.JUSTICE RUMA PAL

For Appellant (s) : Mr. B.B. Singh, Adv.  
Mr. Kumar Rajesh Singh, Adv.

For Respondent (s) : Mr. Aman Lekhi, Adv.  
Mr. Rajesh Pathak, Adv.  
Mr. Rajan Chourasia, Adv.  
Mr.S.R. Setia, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....J  
.SP2

Heard learned counsel for the parties from 10.50  
a.m. to 11.25 a.m.

The appeal stands dismissed in terms of the signed  
order.

.SP1

(Meenu Sethi)  
Court Master

(Om Prakash )  
Court Master

Signed order is placed on the file