

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17998 of 2016

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President, Parivartankari Prarambhik Shikhsak Sangh, Banshi Dhar Brajwasi S/o
Nand Kishor Sahni At+P.O.- Raksa, P.S. Karja, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Dept. Government of Bihar, Patna.
3. The Secretary Rural Development Dept. Bihar, Patna.
4. The Secretary, Education Department, Govt. of Bihar, Patna.
5. The Director, Education Department, Government of Bihar, Patna.
6. The District Magistrate, Muzaffarpur.
7. The District Education Officer, District Muzaffarpur.
8. The District Programme Management, Jeevika, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 02-08-2018

This writ application has been preferred challenging the validity of the memo no.6067 dated 03.08.2016 issued by the Principal Secretary, Education Department, Government of Bihar, Patna (respondent no.2) by which it has been provided that at least two members of the Social Working Committee of the Rural Organization of 'Jeevika' shall supervise the schools falling within their area at least on two occasions in a month with respect to the six points namely (1) opening and closure of the school at prescribed times, (2) attendance of the teachers on duty, (3) admission of the



students and their presence, (4) regular teaching in the schools, (5) cleanliness and use of toilets in the schools and (6) supervision of the mid-day-meal.

2. By the impugned letter (Annexure-2) directions have also been issued that if during inspection of the school the members of the Jeevika Social Working Committee find that any teacher is absent from the school, the headmaster of the school shall mark the teacher absent in presence of the member of the Jeevika and on the basis of the supervision note/inspection note submitted by the members of the Jeevika the concerned Block Education Officer shall ask for explanation from the absent teacher. It is further provided that on the explanation being dissatisfactory, in the matter of regular teachers the drawing and disbursing authority shall be competent to deduct the salary of the teachers for the absent period and in the matter of Niyojit teachers the District Programme Officer (Establishment) may be recommended for deduction from the salary.

3. Attention of this Court has also been drawn towards Clause-3 of the impugned letter wherein it is provided that if in course of inspection/supervision in any primary school on the date of inspection less than 75% attendance of the students is recorded/found, the headmaster and the teachers of the school shall personally approach the guardians of the students and shall ensure their presence.



It is further stated in Clause-3 that if on three regular inspection dates less than 75% attendance is found, the salary of the headmaster/teacher for the said date of inspections will be deducted which will not be more than 50% of their respective salary.

4. Learned counsel for the petitioner submits that the impugned letter, as contained in Annexure-2, is illegal, arbitrary and bad in law. It is submitted that, at the first instance, the Jeevika which is a kind of organization engaged in providing work to the women and downtrodden members of the society with an intention to provide them social and economic empowerment as a self-help group cannot be conferred with the power to conduct inspection of the schools and if powers are conferred upon these organizations in absence of any rule, it will not only be de hors to the object for which Jeevika organization functions but would also be a kind of creating authority upon them to interfere in the affairs of the school.

5. It is further submitted that the letter prescribes a kind of duty upon the headmaster and the teachers to meet the guardians of the students and persuade them to send their wards to the school which is not and cannot be a duty to be imposed upon the teachers of the school. It is further submitted that in any case the provision made to the effect that in case on the date of inspection the attendance of the school is found less than 75% on three occasions, the salary of the



headmaster and teachers shall be deducted for those days are highly arbitrary and have no nexus with the object to be achieved. It is submitted that such imposition will be in the nature of punishment upon the teachers of the school which will have a civil consequence.

6. Learned counsel submits that the Jeevika has been constituted by the State Government, Bihar under Bihar Rural Livelihood Promotion Society. The Bihar Livelihood Promotion Society is an independent society under the Department of Finance, Government of Bihar and has been registered under the Society Registration Act. Jeevika has been designed to address rural poverty in Bihar through the collaboration of the women and downtrodden of the society and it is envisaged as a self-management community institution of participating households to enhancing income through sustain efforts. The attention of this Court has been drawn towards Annexure-1 which is a kind of information with respect to the organization, its functions and duties. The project objective of Jeevika is to enhance social and economic empowerment of the rural poor in Bihar through (a) building self managed community institutions of the rural poor (b) enhancing income of the poor through sustainable livelihoods (c) increasing access to social protection including food security through a greater voice.

7. Learned counsel, therefore, submits that the



members of the Jeevika may be even illiterate persons who have no concern with the working of the educational system and, therefore, handing over the work of inspection and supervision of the schools in the hand of any two members of the Jeevika would badly affect the education system in the schools as the members of the Jeevika may, given the kind of power conferred upon them, dominate the headmaster and the teachers of the school. It is submitted that the direction to deduct the salary of the teachers because of absence of the students is highly arbitrary and is a result of colourable exercise of power by the authorities of the State.

8. Initially, when we went through the counter affidavit of respondent no.2, there being no response to the submissions of the petitioner, we pointed out the submissions made on behalf of the petitioner and called upon the Secretary of the Department to produce before us all the data pertaining to infrastructural facilities in the schools and then by a subsequent order dated 20.06.2018 we took note of the fact that despite our indulgence given to the State government an appropriate affidavit indicating the rationale and justification behind the impugned resolution was not filed, once again we directed the learned counsel for the State to file supplementary counter affidavit and stayed the operation of Clause-3 of the resolution.

9. In our order dated 20.06.2018, we also directed the



State government to clarify as to whether “Jeevika” a non-governmental organization can be entrusted to inspect the school and check attendance etc. of the teachers or impose a duty on the teachers of ensuring a particular percentage of students.

10. Today, in course of hearing, the learned State counsel has placed before us the supplementary counter affidavit filed on behalf of respondent no.2. We find that instead of providing the required information as to infrastructural facilities provided to the school, a vague statement has been made in the supplementary counter affidavit that the queries made by this Court have been answered vide affidavit dated 20.02.2018. It is further stated that duty assigned to the members of social work committee of Jeevika is in no way even remotely affecting the right and interest of the members of the petitioner’s association as Jeevika has not been entrusted to assess the performance of teacher or impose any type of duty to ensure particular percentage attendance of children in the school. It is stated that Jeevika has been assigned the duty to assess the factual position of the school and report in prescribed format to the education authorities so that the authorities may take appropriate remedial measures. Learned counsel for the State submits that under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the ‘Act of 2009’) now the provisions of the Act requires



constant monitoring and social auditing by the representative of the local authority, parents or guardian of the children etc. and, therefore, no illegalities may be found in assigning these duties to the Jeevika.

11. In support of Clause '3' of the impugned letter (Annexure-2) it has been argued that Clause '3' has been provided with a view to ensure proper implementation of the provisions of the Act of 2009 to ensure attendance of the children. It is stated that under Section 24 of the Act of 2009 duties have been cast upon the teachers to hold regular meetings with the parents and guardians and apprise them about the regularity in attendance, learning level of their wards, progress made in learning and any other relevant information about the child. It is, therefore, submitted that it is the duty and responsibilities of the teachers to understand their role properly and to understand their duties so that aim and object of the Act of 2009 may be achieved. The supplementary counter affidavit even filed now nowhere provides a reasoning and rationale as to how the headmaster and the teachers of the school may be punished for short attendance of the students on the date of inspection.

12. Having heard learned counsel for the petitioner and learned counsel representing the State, we are of the considered opinion that the respondents have failed to satisfy this Court as to the rationale behind the conferment of the power upon the members of the



Jeevika to inspect and supervise the school and to submit a report to the education authorities in the prescribed format. There is no denial of the pleadings of the petitioner that the members of the Jeevika may be even illiterate women or poor and downtrodden members of the society. It is also not denied that the aim and object of promoting 'Jeevika' is to create a kind of self-help group at the village level who can come together and get involved in finding sources of livelihood which in result empowers them socially and economically. 'Jeevika' is a non-governmental organization is also not denied. In these circumstances, we find that the conferment of power upon the members of the Jeevika to inspect the school and report on the six points to the education authorities has got no statutory sanction. We are also of the opinion that such self-help groups which have been created for a totally different purpose cannot be conferred with the powers which have tendency to supervise the affairs of the school and by virtue of powers conferred upon them they may even dictate the headmaster and teachers of the school in certain matters. We are, therefore, unable to approve such conferment of power upon the members of the 'Jeevika'. We rather find that under Section 21 of the Act of 2009 there is a statutory School Management Committee which has been conferred with the power of monitoring the working of the school. Apparently conferment of power on Jeevika is in



conflict with the statutory scheme.

13. We are also of the opinion that Clause ‘3’ of the letter no.6067 dated 03.08.2016, as contained in Annexure-2 to the writ application, is in the nature of a penal provision. According to this, the headmaster and teachers of the school are obliged to contact the parents/guardians of the students and to persuade them to send their wards to the school. The respondents have not brought before us, despite called upon to provide, infrastructural facilities which they have made available to the school or availability of any system by which the school has been facilitated to contact the parents/guardians of the students and to hold their meetings etc. periodically. Section 24 of the Act of 2009 reads as under:-

*“24. Duties of teachers and redressal of grievances.—
(1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:—*

(a) maintain regularity and punctuality in attending school;

(b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;

(c) complete entire curriculum within the specified time;

(d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.



(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.”

14. The Court is of the opinion that while Section 24 of the Act of 2009 provides that the teachers of the school shall be required to hold regular meetings with the parents/guardians and apprise them regularly in respect of the attendance etc. of their wards, Clause-3 of the impugned letter talks of a condition imposed upon the teachers to contact the parents of the students individually in order to ensure attendance of the students. We find that the teachers or headmaster of the school may be facilitated with the infrastructures and systems by which they can inform the parents/guardians of a student about the attendance and other developments with regard to their respective wards, but the headmaster and teachers whose only duty is to teach the students cannot be burdened with a duty to contact the parents individually. It is for the State Government to provide such infrastructures/systems/devices in the schools which may be used to inform the parents/guardians of the students. We are also of the opinion that for the shortage of attendance of the school on the day



of inspection by no means the headmaster or teachers of the school may be punished by deducting their salary. Deduction of salary has got a civil consequence and, therefore, such punishment cannot be imposed only because the students were found short in attendance on the day of inspection of the school. We, therefore, find that Clause-3 of the letter providing for the penal provision is also bad in law and cannot be allowed to operate.

15. In result, the impugned letter no.6067 dated 03.08.2016 in so far as it talks of conferment of power on Jeevika to inspect and supervise the school and then provides for penal provision under Clause-3 of the letter wherein salary of the headmaster and teachers of the school may be deducted in case of shortage of attendance of the students below 75% on the day of inspection stands quashed.

16. The writ application is allowed to the extent indicated above.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CA V DATE	N/A
Uploading Date	06.08.2018
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