
(1986) 04 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3828 of 1985

Akshay Kumar Sinha and Others

APPELLANT

Vs

The District Superintendent of Education, Purnea and Another

RESPONDENT

Date of Decision : 01-04-1986

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1986) PLJR 632

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : A. Bose, S.P. Gupta and Kaushal Kumar, for the Appellant; Kamlapati Singh, G.P.V. and Balmukund Prasad Sinha, J.C. to G.P.V., for the Respondent

Final Decision : Allowed

Judgement

Satya Brata Sanyal, J.—The petitioners, who are matric trained from the institutions in the State of West Bengal are desirous of issuance of a writ of mandamus commanding the respondents to consider their cases for appointment to the posts advertised on 14.5.1981 (Annexure-1). FACTS:-- On 14.5.1981 an advertisement was issued (Annexure-1) for the post of ten teachers having qualifications B.Sc., I.Sc., B.A., I.A. and Matric or equivalent trained. Petitioner No. 1 passed his I.A. examination from L.N. Mithila University, Darbhanga, in the year 1976 and took training examination from Junior Basic Training Institute, Darjeeling in the year 1978-79 (Annexure-2/2). Petitioner No. 2 similarly having passed I.A. from L.N. Mithila University in the year 1978 took training from Junior Basic Training Institute, Kalimpong (Annexure-2/2) whereas petitioners 3 Jo 5 passed their Matriculation examination from the Bihar School Examination Board and got training from Junior Basic Training Institute, Kalimpong (Annexures 2/3 to 2/5). The petitioners having conformed to the basic requirements for the interview applied to the posts advertised and they having been found qualified were called for interview. It is said that they were enlisted as successful candidates as would be found in the waiting list maintained in the

office of the District Superintendent of Education, Purnea. It is also said that even though they were enlisted as successful candidates, in March, 1985 appointment letters were issued to all the successful candidates except those, like the petitioners, who obtained their training from the State of West Bengal. It may be stated here that the training institutes at Kalimpong and Darjeeling are run by the Education Directorate, West Bengal, and, therefore, they are not private institutes. The petitioners having come to know that even though they were enlisted they were not being given appointments made representation before the District Superintendent of Education and it is said that the District Superintendent of Education told them that they could not be given appointment because they are not trained in the State of Bihar; On 15.5.85 a detailed representation was filed (Annexure 4) where it was contended that the stand of the State that persons trained from West Bengal cannot be given letters of appointment was wholly illegal. They drew the attention of the authorities to the decision of this Court in C.W.J.C.-- No. 2619 of 1980 decided on 26.7.83 where this Court took the view that no material has been brought on the record to show that the Government does not recognise the degree granted by the institutes of West Bengal and/or they are not suitable degree for the purpose of appointment as trained teacher. Merely because the length of training in Bihar is a little more is not relevant in relation to the degrees conferred by the two States. The petitioners thereafter also sent reminders to their representation but till date the petitioners having not been favoured with any reply were constrained to move this Court for the relief already indicated above.

2. According to the contention of learned counsel for the petitioners, refusal to consider the case of his clients is wholly illegal and without jurisdiction and is contrary to the advertisement pursuant to which the petitioners applied for being appointed to the posts so advertised. The advertisement nowhere required that persons trained only in the State of Bihar would be considered. He further contended that there is no law and/or any declaration by the Education Directorate derecognising the degrees and diplomas granted by the institutes of West Bengal. In absence of such a declaration the refusal to consider and recognise the degree granted by the Government Institutes of West Bengal is arbitrary, capricious and violative of Article 14 of the Constitution of India. He also relied on two cases decided by this Court, one of which is Shri Mahendra Prasad Mehta Vs. The District Superintendent of Education and Another, and the other in C.W.J.C. No. 5449 of 1985 decided on 31.3.1986.

3. Learned counsel for the State contended that so far as C.W.J.C. No. 5449 of 1985 is concerned, their appointments were made on the basis of the training obtained in the State of West Bengal and the salary of a trained teacher was being refused and, therefore, this Court held that once they were found fit for being appointed there could be no rationale in refusing to pay the salary of a trained teacher. He further contended that the petitioners have filed their representation and the respondents may be asked to dispose of their representation and if the representation is allowed, the petitioners will not be

required to move this Court. He also contend that the petitioners must be over age by this time, and, therefore, their case for appointment can not be considered. He also submitted that in this State Article 460 of the Bihar Education Code lays down the length of the course of training and that is of two years" session. The length of the course in the State of West Bengal being one year, it does not fulfil the requirements of Article 460 and, therefore, is not the type of training which the State of Bihar requires to be possessed of by candidates to be held to be trained for the purpose of appointment and payment of salary to a trained teacher.

4. The basic question is whether the candidates obtaining training in one years" course either from West Bengal, or, for that matter, in any other State will be recognised by the State of Bihar. Can the State of Bihar, ipso facto, refuse to consider the degrees and/or diplomas granted by the various Universities situated in different parts of India on the ground that their course of study in a particular faculty is different from the one imparted by the Universities situated in the State of Bihar ? In my opinion, if at all it can do so, it must make a declaration in that regard and for that a Government order must be issued stating degree and/or diploma of which University of which State is recognised in the State of Bihar. It must also while issuing the advertisement make it manifest that the degrees and diplomas in a particular discipline obtained from certain institutes are not given consideration and/or the applicants must be trained only in the institutes of the State of Bihar. None of these steps has been taken. On the contrary, the applicants having been found to possess the minimum qualification required under the advertisement were called for interview and they were listed for appointment in due time. The stand of the State is reference to Article 460 of the Bihar Education Code did not find favour with a Division Bench of this Court in Mahendra Prasad Mehta's case (supra). In my opinion, till such time such a declaration is made and/or such a provision is incorporated in the advertisement it" self, persons trained by other State agencies cannot be discriminated by the Education Directorate in the State of Bihar. I am purposely not going into the larger question whether any State in the country can refuse to recognise the degrees and diplomas granted by other State Institutes and/or degrees and diplomas granted by Indian Universities. The questions of preference to the students of local institutions, preference to a particular State in the matter of appointment, admission in medical institutions on the basis of residence have all undergone stormy weather by various decisions of the Supreme Court. I may only reiterate that employment opportunities are national wealth of India and every citizen has a competitive right to exploit the said national wealth and resources. To deny an opportunity on the basis of residence and/or the consideration like the one in hand may not withstand the touchstone of Article 14 of the Constitution Of India. I am, therefore, of the opinion that the petitioners can not be shut out from consideration merely because they have obtained their training from institutes imparting training in the State of West Bengal. I do not also find any substance in the contention of learned counsel for the State that

the petitioners may have become over age and, therefore, they can not be given any appointment. It they are over age today it is because of the fault of the Education Directorate of the State and not for the fault of the candidates. They can not be disqualified on the ground of their age because when they were enlisted for appointment they were fulfilling the age as required by the advertisement. I find that the case is fully covered by the decision of a Division Bench of this Court in Mahendra Prasad Mehta's case (supra). It is futile to suggest that the petitioners are not eligible for appointment on the ground that they had obtained one year's training from the State of West Bengal. The writ application is, therefore, allowed with costs with a direction that the respondents must consider the case of the petitioners for being appointed if they are found medically fit. They can not be refused appointment on the ground that they do not fulfil the requirements of the advertisement (Annexure-1). Hearing fee Rs. 250/-.