

(2017) 01 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6479 of 2016

Anant Priya Sen

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JCR 277

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Writ Petition (S) No. 6632 of 2016; Mr. Indrajit Sinha, Advocate, for the Petitioners; Mr. Sumeet Gadodia and Mr. Prem Pujari Roy, Advocates, for the Petitioners in all cases; W.P.(S) No. 6479 of 2016; Mr. Rajesh Kumar, G.P.V and Mr. Raunak Sahay, J.C. to S.C. (Mines), for the Respondent-State; W.P.(S) No. 6479 and 6536 of 2016; Mr. Chanchal Jain, J.C. to A.A.G, for the Respondent-State; W.P.(S) No. 6538 and 6560 of 2016; Mrs. Chaitali C. Sinha, JC to AAG, for the Respondent-State; W.P.(S) No. 6632 of 2016; Mr. Rahul Kamlesh, JC to SC II, for the Resondent-State; W.P.(S) No 6563 of 2016; Mr. Shadab Bin Haque, JC to GP I, for the Respondent-State; W.P.(S) No 6564 of 2016; Mr. Rakesh Kr. Shahi, JC to AAG, for the Respondent-State; W.P.(S) No 6565 of 2016; Ms. Neelam Tiwary, JC to Sr. SC I and Ms. Suchita Pandey, JC to Sr. SC I, for the Respondent-State; W.P.(S) No 6567 of 2016; Mr. Amit Kumar, JC to GP II, for the Respondent-State; W.P.(S) No 6589 of 2016; Mr. Ashish Kumar Thakur, JC to SC (L&C), for the Respondent-State; Mr. M. S. Anwar, Sr. Advocate, for the Respondent-JSSC

Final Decision : Disposed Off

Judgement

Mr. Shree Chandrashekhar, J.—Mr. Shashi Kumar Mishra, Deputy Director, Secondary Education is present in the Court.

2. Secretary, Department of Personnel, Administrative Reforms and Rajbhasha and Jharkhand Staff Selection Commission through its Secretary are impleaded party-respondents in the present proceeding. Mr. Sohail Anwar, the learned Senior counsel appears on before of the Commission.

3. Main prayers in these writ petitions except, W.P.(S) Nos. 6479/2016, 6564/2016 and 6632/2016 are for quashing the advertisements; one of which is dated 06.11.2016, and for a declaration that order contained in Memo dated 26.10.2016 does not affect the petitioners who were appointed between 2011 and 2013. Another prayer is for grant of honorarium, payable to the teachers appointed in Kendriya Vidyalaya under temporary arrangements, to the petitioners.

4. Heard.

5. In the counter-affidavit dated 04.01.2017, the respondent no.1 has pleaded that after the Centrally sponsored programme for running the Model Schools was discontinued, a decision was taken by the Government on 14.06.2016 to transfer the Model Schools under State Plan. Another decision taken was, sanction of total number of posts i.e., 11 posts of Post-Graduate (Trained) Teachers in each Model School. The respondents have pleaded that order dated 26.10.2016 was issued in view of scarcity of teachers in Model Schools. Clause 4 of Memo dated 26.10.2016 would disclose that appointments sought to be made pursuant to the said letter was to continue only till 31.03.2017. It was also indicated in the said letter that the teachers appointed pursuant to the order contained in Memo dated 26.10.2016 would not be entitled to claim appointment on permanent basis, on the basis of their engagement/appointment thus made. Considering the stand taken by the respondents in the present proceeding, it has to be concluded that the selection pursuant to order contained in Memo dated 26.10.2016 would not include appointment on the posts on which the petitioners were appointed. This exercise was undertaken only by way of a stopgap arrangement, for providing teachers for the current academic-session. Accordingly, it is held that the petitioners, at this stage, were not required to appear in the selection process pursuant to advertisement dated 06.11.2016 and while so, the stipulation in the advertisements requiring the petitioners to submit applications is quashed. Challenge to the aforesaid condition in the advertisements is answered accordingly.

6. In view of the aforesaid finding, prayer seeking a declaration that order contained in Memo dated 26.10.2016 does not affect the petitioners has been rendered infructuous.

7. Another prayer of the petitioners is, for payment of honorarium in terms of Resolution dated 15.09.2016. Though, Mr. Rajesh Kumar, the learned GPV has stated that the duty discharged by the petitioners would not be similar to the work assigned to the Assistant Teachers appointed pursuant to the advertisements/notice, in view of lack of pleadings in the writ petition and reply in the counter-affidavit, I am of the opinion that this prayer of the petitioners would stand satisfied, if a direction is issued to the respondents to make payment to the petitioners in terms of Resolution dated 15.09.2016 if they are also discharging similar and identical duties as would be discharged by the new appointees. It would be really inconsistent with the rule of fair play in action, if

the petitioners are also discharging similar duties still, are denied similar emoluments. Ordered accordingly.

8. Insofar as, prayer seeking implementation of decision contained in Memo dated 01.07.2015 is concerned, it needs to be recorded that this decision was taken when the Model Schools were run under the Centrally sponsored programme. Now, since a decision has been taken on 14.06.2016 to run the Model Schools under the State Plan, the State is entitled to devise its own method for appointment and to take an independent decision on payment to the teachers in the Model Schools. May be a similar decision has been taken on 15.09.2015, no direction can be issued for implementation of decision contained in Memo dated 01.07.2015.

9. Pursuant to order dated 06.01.2017, an affidavit has been filed by the respondent no.1, however, details of all the districts in which selection has been made, have not been providing. Leaving aside the above aspect, it is pertinent to note that the facts disclosed in the present proceeding leave no manner of doubt that engagement/selection of Assistant Teachers (Post-Graduate) has been made in gross violation of Article 14 and 16 of the Constitution of India. Not only that, the authorities who remained indifferent did not wake up even after this Court took cognizance of the matter and no remedial measure was taken. It appears that "let the Courts decide" attitude has still not been shaken-off by the authorities. Such an attitude is a blot on the administrative functioning, and needs to be dealt with under the extant disciplinary rules, however, considering the temporary nature of engagement and, that too, only for about three months, I am inclined to extend benefit of doubt to those who are responsible for the selection of teachers pursuant to the order contained in Memo dated 26.10.2016 and accordingly, I refrain from issuing notice to them. Consequently, I decline to interfere with the selection/engagement of teachers pursuant to the order contained in Memo dated 26.10.2016, however, it is made clear that after 31.03.2017 the new appointees cannot continue as Assistant Teachers, without permission of the Court. Interim order dated 16.12.2016 is hereby vacated.

10. The matter, however, cannot be closed at this stage. In the affidavit dated 04.01.2017, the respondent no.1 has pleaded that posts in 89 Model Schools would be sanctioned within four weeks. It is pleaded that, thereafter a regular exercise for selection of the teachers in all the Model Schools would be undertaken, in accordance with law. It needs no mention that once a decision has been taken for creation of posts, pending sanction of posts an exercise for regular appointments can be undertaken. Accordingly, it is ordered that;

(i) An advertisement shall be issued in the 1st week of February, 2017 and the Jharkhand Staff Selection Commission shall endeavour to conduct the written examination by the end of March, 2017. The entire process shall be completed by May, 2017.

(ii) Date of written examination shall be decided in consultation with the

Jharkhand Staff Selection Commission.

(iii) The advertisement shall duly indicate the nature of appointment and the terms and conditions (in brief) of appointment.

(iv) The Secretary, School Education and Literacy Department and the State Project Director, Jharkhand Secondary Education Project Council shall be responsible for ensuring compliance of this order.

11. Let a copy of the order be transmitted to;

(a) The Secretary, School Education and Literacy Department,

(b) State Project Director, Jharkhand Secondary Education Project Council,

(C) Secretary, Department of Personnel, Administrative Reforms and Rajbhasha,
and

(d) Jharkhand Staff Selection Commission through its Secretary , for compliance.
All these authorities shall extend necessary cooperation for ensuring regular appointment of the teachers in Model Schools, within the time-frame indicated herein above.