
(2007) 08 JH CK 0057
In the Jharkhand High Court

Arun Kumar Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 311

Citation : (2007) 4 JCR 12

Hon'ble Judges : N.N. Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tewari, J.—The petitioner has prayed for quashing the letter issued by the District Superintendent of Education, Hazaribagh by his Memo No. 3125 dated 14.10.2006 (Annexure 7), terminating the services of the petitioner and directing prosecution against him for suppressing facts at the time of appointment. The petitioner has also prayed for a direction for his reinstatement with all consequential benefits including full back salary.

2. According to the petitioner, he had passed his Senior Secondary Examination in 1990 and I.Com in 1992 in 1st Division. He thereafter Graduated in commerce with Hons. In 1996. The petitioner then took admission in B.Ed. course in Lalit Narayan Mithila University, Darbhanga and completed the session of the course in May 2002. However, the University delayed the final B.Ed. examination.

3. While the petitioner was waiting for appearing in final B.Ed. Examination, the Jharkhand Public Service Commission (hereinafter referred to as "J.P.S.C" for short) published a notice dated 24.8.2002 inviting applications for recruitment of Primary Trained Teachers from the persons (i) who are the citizens of India (ii) who have passed Matric examination and (iii) who have completed two year Teachers Training or B.Ed. or Dip in Teach.

4. At that time the petitioner, who was a Graduate and had completed his Teachers Training Course, but. was waiting for his B.Ed. examination, applied for

the said post. In his application he had clearly mentioned that he was waiting for appearing in B.Ed. examination.

5. Nevertheless, the J.P.S.C. issued Admit Card to the petitioner for the examination to be held for the recruitment of primary teachers.

6. On getting the Admit Card, the petitioner appeared in the examination conducted by the J.P.S.C. on 27.5.2003.

7. The J.P.S.C. then published the first list of successful candidates on 17.11.2003. The petitioner's name did not appear in the said list.

8. In the meanwhile, the B.Ed. examination held in the month of December 2003, the petitioner appeared in the said examination. The result was published in July 2004. The petitioner passed B.Ed. Examination in 1st Division with distinction.

9. The State Government, thereafter, directed the J.P.S.C. to issue the second merit list to fill up the remaining vacancies.

10. The J.P.S.C. then issued the second list of the successful candidates on 18.8.2005. The petitioner's name appeared in the second list. He was called and was directed to submit all his educational certificates and other documents for scrutiny. The petitioner submitted all the requisite documents. The documents were scrutinized by the respondent No. 3. The petitioner also produced his B.Ed. certificate which was issued to him in the meanwhile.

11. After thorough scrutiny of the certificates, the concerned authority issued appointment letter to the petitioner being Memo No. 2006 dated 26.6.2006 (Annexure 4).

12. On getting the appointment letter, the petitioner gave his joining in Arvind Middle School, Patratu, District, Hazaribagh on 6.7.2006, as Assistant Teacher.

13. Since thereafter, the petitioner had been discharging his duties efficiently and without any complain from any corner.

14. Surprisingly, the petitioner received a letter being Memo No. 2944 dated 22.9.2006 issued by the respondent No. 3, whereby he was asked to explain as to why his services be not terminated for deliberately suppressing facts at the time of his appointment.

15. The petitioner submitted his explanation on 12.10.2006 denying the allegation and stating that the J.P.S.C. and the respondents had scrutinized all his documents and educational qualifications and, thereafter, the appointment letter was issued to him and no fact at all was suppressed by him.

16. Though the petitioner had denied the allegation of suppression of any fact, the impugned order being Memo No.3125 dated 14.10.2006 (Annexure 7) was served on the petitioner, terminating his services on the allegation of, suppression of fact that he had appeared in B.Ed. examination after submission

of his application for the post. In the same order the Block Education Extension Officer has been directed to lodge an FIR against the petitioner for suppression of facts in his application for the post.

17. The said order has been passed against the petitioner without framing of any charge and without affording him any opportunity to meet the allegation and without holding any enquiry by the department.

18. The petitioner has assailed the impugned order on the following grounds : (i) The impugned order of termination with the said allegation and stigma against the petitioner, without giving him any opportunity of hearing is violative of the principles of natural justice and is null and void, (ii) The main allegation of the respondents is that at the time of applying for the said post, he did not possess the B.Ed. degree nor had appeared in the B.Ed. Exam as required under the advertisement, whereas the petitioner had clearly mentioned in the application that he had completed the course and is to appear in the B.Ed. Exam and there was no suppression of fact, (iii) The requirement under the advertisement was completion of B. Ed. training and not passing of examination. The petitioner had completed the two years training course and had to appear in examination. He thus fulfilled the criteria as per the advertisement, (iv) The J.P.S.C. and other authority after proper scrutiny and satisfaction had issued the appointment letter, (v) The petitioner was appointed by letter dated 26.6.2006 and much before that, he had passed the B.Ed. examination in the year 2004 and had all the eligibility at the time of appointment, (vi) The fact was mentioned and certificates were scrutinized but nobody questioned at the time of issuing admit card or scrutiny of documents and issuing letter of appointment that the petitioner was not eligible for appointment on the said post, (vii) The impugned order terminating the petitioner's services with the allegation and stigma against him without initiating any departmental proceeding amounts to dismissal and is also violative of Articles 311(2), 14 and 21 of the Constitution and the same is wholly arbitrary, illegal and without jurisdiction.

19. The State-respondents contested the petitioner's claim. In the counter affidavit filed on behalf of the respondent Nos. 2-4, the respondents, inter alia, took the following grounds : (i) The writ petition is not maintainable as the termination of the petitioner's services was due to giving wrong statements regarding his eligibility in the application form, (ii) At the time of submission of application form, the petitioner had not passed the B.Ed. Examination nor he had appeared in the said examination and as such at the time of submission of application form, the petitioner was not having the required qualification and eligibility (iii) A letter was issued by the Secretary, Human Resources Development Department being No. 1256 dated 21.5.2004 directing the J.P.S.C. to appoint all those candidates who had either passed B.Ed. or appeared in the B.Ed./Teachers Training Examination held before 30.9.2002; (iv) The petitioner had neither passed the B.Ed./Teachers Training Examination nor had appeared in the B.Ed. Examination prior to 30.9.2002. (v) The decisions rendered in W.P. (S)

Nos.474/ 05 and 532/05 holding even the appearing candidates eligible, are not applicable to the facts and circumstances of the present case. In the instant case, the name of the petitioner was recommended in the second list issued by the J.P.S.C. in the year 2005. Though the petitioner by then had passed the B.Ed. Examination, but he had not appeared in the said examination prior to the last date of submission of application form and due to the same, the petitioner's appointment was vitiated. The petitioner's termination was recommended by the District Education Establishment Committee after considering the reply to the show cause given by the petitioner.

20. Mr. V.P. Singh, learned Sr. counsel appearing on behalf of the petitioner, emphatically argued that the impugned order terminating the petitioner's services on allegation amount to dismissal which is not permissible under law unless the person is held to be guilty of a grave charge by following the procedure established by law. The impugned order has been issued arbitrarily without framing any charge, without initiating any departmental proceeding and without giving him any opportunity of being heard. The impugned order is violative of the principles of natural justice as well as of Article 311(2) of the Constitution of India and is non est. Learned Counsel submitted that by the impugned order the respondents have taken away the valuable right of livelihood of the petitioner without following the prescribed procedure of law. The respondents have not even mentioned the reason as to why they were not satisfied with the explanation submitted by the petitioner. The said decision of the respondents is whimsical, unfair and visits the petitioner with civil consequences by snatching his livelihood.

21. Learned Counsel referred to and relied on decision of the Supreme Court in P.S.E.B. and Ors. v. Leela Singh AIR 2007 SCW 2023 and also the decisions of this Court in Sumitra Gope v. State of Jharkhand and Ors. 2007 (1) JCR 320 (Jhr.) and in Kumari Nupur Ekka and Anr. v. State of Jharkhand and Ors. 2006 (4) JLJR 575.

22. Learned Counsel submitted that the petitioner had produced all his certificates before the authorities for scrutiny and verification. There is no allegation that any of the certificates produced by him is forged or fabricated. The allegation that the petitioner had no requisite qualification and eligibility is also wholly false and baseless. The petitioner was appointed by letter dated 26.6.2006, whereas he had already passed his B.Ed. Examination in July 2004 in 1st Division with distinction. Even before applying for the said post, the petitioner had completed his B.Ed. Course, but the examination was belatedly held and for that he cannot be faulted. The requirement as per the advertisement was completion of B.Ed. Course and on that basis candidates who had appeared in the exam were also allowed before their final result of B.Ed. Examination. Since the petitioner had completed the B.Ed, course and was appearing candidate, he had applied for the same clearly mentioning the same. There was no suppression of any fact by him. Admittedly, there is no allegation that the petitioner had

misrepresented that he had already passed the B.Ed. Examination before applying for the post. The respondents have arbitrarily gone beyond the terms of the advertisement and the letter of appointment and have whimsically terminated the petitioner's services, with oblique motive to favour and accommodate someone else.

23. Mr. Shamim Akhtar, learned SC-II, reacting on the petitioner's contentions submitted that in the advertisement as well as in the letter of appointment, there was a clear condition that if it is found subsequently that the appointee did not possess necessary eligibility and qualification or if the certificates are found forged, the services can be terminated. In view of the said clear term in the appointment letter, no proceeding or hearing at all was required as has been claimed by the petitioner and as such the impugned order is neither illegal nor violative of the principles of natural justice nor Article 311(2) of the Constitution of India. The last date for submission of application form as per the advertisement was 30.9.2002, but on that date the petitioner was not having the B.Ed. Degree. Though the petitioner passed the B.Ed. Examination in 2004, he had no training eligibility on the date of submission of application form. His appointment was thus ab initio void. No enquiry was required in such cases of appointment.

24. Learned Counsel relied on the decisions of the Supreme Court in Mohd. Sartaj and Another Vs. State of U.P. and Others, and in State of Rajasthan and Another Vs. Kulwant Kaur, .

25. Learned Counsel submitted that when a person lacks the basic qualification and eligibility at the time of applying for the post, he does not have any right to the post and as such he cannot be allowed to continue on the post. Such person also cannot claim any equity in view of the decision of the Supreme Court in State of Rajasthan, (supra). There is, thus, no merit in the petitioner's claim and contentions.

26. According to learned Counsel for the respondents as also according to the impugned order, the petitioner had no requisite eligibility and qualification on the date of applying for the said post and he had suppressed the said fact in his application. It has been contended that as per the condition No. 3 of the appointment letter, the petitioner was not entitled to hold the post and his services were liable to be cancelled without any notice.

27. The condition which is said to have been violated by the petitioner is reproduced as follows:

Abhyarthi Dwara Upasthit Shaikshnik Ewam Prashaikshnik Praman-Patra Ewam Anaya Kagzat Ki Jach Sambandhit Board Ya Sanstha Se Karaye Jane Par Unka Koi Bhi Praman-Patra Ewam Anaya Kagzat Jali Paye Jane Ki Isthiti Men Bina Suchna Ke Kisi Bhi Samay Unki Niyukti Radda Kar Di Jayegi Aur Unke Virudh Kahuni Karrawai Ki Jayegi.

According to the said condition, if any document relating to educational qualification or training certificate submitted by the candidate, is found forged, on verification from the concerned Board/Institution, his appointment shall be cancelled at any time without any notice, and legal action shall be taken against him.

28. Admittedly, there is no allegation that any certificate, either of Educational qualification or of Training submitted by the petitioner has been found forged, on verification from the concerned Board/Institution. The allegation against the petitioner does not fall within the ambit of the said condition. But the respondent No. 3 under the cover of the said condition, has terminated the petitioner's services on the allegation that on the date of submission of his application he was not B.Ed. and he had got the B.Ed. qualification thereafter. Since the allegation on which the petitioner's service has been terminated does not come within the fold of said condition No. 3, the impugned order is without any legal basis.

29. The petitioner has claimed that he had clearly mentioned in his application form that he was an appearing candidate in the B.Ed. Examination. The said fact has not been denied either by the State-respondents or by the J.P.S.C.

30. If the petitioner mentioned in his application that he was an appearing candidate, there was no question of suppression of fact regarding his training certificate. The contention of learned S.C.-II that an enquiry or proceeding was not required in view of the said Condition No. 3 of the appointment letter, is wholly unfounded.

31. In *Md. Sartaz*, supra, relied on by learned S.C. II, the Supreme Court has held that the cancellation of appointment cannot be said to be illegal and prejudicial, if the person has no required qualification and eligibility on the date of recruitment. The said decision was rendered on different facts situation.

32. In the said case, *Md. Sartaz* and another had applied for the post of Urdu Teachers in response of the advertisement published by the Government of U.P. for appointment of Teachers in the district of Muzaffarnagar. The minimum educational qualification for the post was either Higher Secondary or Intermediate or equivalent to that recognized by the Government (with Urdu as a subject) along with the Basic Teacher's Certificate (B.T.C.)/Hindustani Teacher's Certificate/Junior Teacher's Certificate (J.T.C.) or Certificate of Teaching (T.C.) or equivalent Training Certificate. On 19.6.1985, a list of selected candidates was published which includes the names of *Md. Sartaz* and another. They were given memorandum of appointment and, accordingly, they joined the post and started working. After two months, their appointments were cancelled on the ground that they did not possess the Basic Training Certificate (B.T.C.). They filed writ petition before the Lucknow Bench of the Allahabad High Court. The writ petition was dismissed. Appeal filed against the said order in the High Court was also dismissed. They thereafter preferred SLP before the Supreme Court which was

subsequently converted into a civil appeal. After discussing the facts and decisions cited, the Apex Court held that on the facts of the case, no prejudice was caused to the petitioners by the impugned order of cancellation of their appointment without giving notice and opportunity of hearing before issuing the cancellation order. Relying on a decision of *S.L. Kapoor Vs. Jagmohan and Others*, Hon''ble Supreme Court held that the said persons did not possess the requisite qualification at the time of their initial appointment and in view of the lack of basic qualification, they should not have been appointed nor their appointments could have been continued. The appellants did not have any right to the post and, therefore, no hearing was required before cancellation of their services, particularly, when the appointment was cancelled within a short span of time giving no probability for any legitimate expectation to them.

33. In the case in hand, the petitioner was appointed in the year 2006 and he had passed the B.Ed. Examination in the year 2004 and as such on the date of his initial appointment, the petitioner possessed the qualification and eligibility required for the post. The decision in *Md. Sartaz (supra)*, has no application to the facts of the instant case.

34. The decision in *State of Rajasthan (supra)*, was on the following facts : The State of Rajasthan enacted Rajasthan Panchayat Samiti & Zila Parishad Act, 1959. Under the said Act, Rajasthan Panchayat Samitis and Zila Parishad Service Rules, 1959 were framed providing the terms and conditions of appointment and prescribing the basic educational qualification and the eligibility criteria. For the appointment on the post of Primary School Teachers, minimum requisite qualification was Matriculation and Basic Short Training Certificate (BSTC). One Kulwant Kaur was appointed to the post of Primary School Teacher. But her services were subsequently terminated. She was reappointed on the post on temporary basis. Smt. Kaur did not have the basic requisite qualification. Her services were again terminated. She filed a writ petition before the Rajasthan High Court. By an interim order her termination order was stayed and she was allowed to continue in service. The High Court on the ground of equity allowed the writ petition. On appeal, the Supreme Court relying on the decision of *Md. Sartaz (supra)*, held that since she did not possess the basic requisite qualification for the post, she cannot be allowed to continue on the post. The judgment of the Rajasthan High Court was set aside. In Paragraph 17 of the said decision, Hon''ble Supreme Court held as follows:

17. It is also not a case where equity is in favour of the respondents. Only because an interim order was passed in favour of the respondent, the same would not mean that despite the fact that she did not possess requisite qualifications, her services would be allowed to continue. Even the old Rules were not applicable in her case. The matter would have been different had she acquired the requisite qualification prior to issuance of order of termination in 1994. Admittedly, she had not by then completed her training. Even at that point of time, she was not possessed of the Short Training Certificate. Her services

had, thus, rightly been terminated and in that view of the matter, purported acquisition of qualification by her in 1996 would be of no significance.

(Emphasis supplied)

35. The said decision of the Supreme Court, thus does not support the stand and contention of the respondents, rather the view expressed by the Apex Court supports the petitioner who had acquired the requisite B.Ed. Training Certificate not only before the order of termination, but much prior to his appointment and joining the post.

36. In *P.S.E.B. and Ors. v. Lila Singh*, (supra), Hon''ble Supreme Court has clearly held that a charge against an employee of having committed fraud in obtaining the appointment is required to be proved in a duly constituted departmental proceeding and without such enquiry the services of such an employee cannot be terminated.

37. In *Sumitra Gope v. State of Jharkhand and Ors.* this Court while dealing with the case of termination of services on the charge of attaching forged certificate with the application, held that the termination order without serving any charge-sheet, without holding an enquiry and without giving proper opportunity of defending the delinquent was arbitrary and contrary to Article 311(2) of the Constitution of India. In Paragraph 6 of the said decision this Court held as follows:

6. I find much substance in the submission of the learned Counsel for the petitioner. Admittedly, no charge-sheet was served. There was no departmental enquiry on the alleged charge of submitting a forged certificate. The petitioner was not given proper opportunity to defend herself. She was only given a notice informing the allegation which she had denied. Thereafter, without establishing the charge by adducing evidence, the punishment of dismissal has been imposed. The respondents have thus acted contrary to the procedure established by law as well as contrary to the provision of Article 311 of the Constitution of India and have arbitrarily issued the impugned order of dismissal dated 9.2.2004, causing serious civil consequences to the petitioner.

38. Further in the case of *Kumari Nupur Ekka and Anr. v. State of Jharkhand and Ors.* this Court relying on the decision of the Supreme Court in *Basudeo Tiwary v. Sido Kanhu University and Ors.* AIR 1998 SC 361 held that even where the selection/appointment is contrary to act, statute, rule or regulation, principles of natural justice are required to be observed.

39. Tested on the said established legal norms and Constitutional requirements the respondents failed to justify the impugned order of the termination of the petitioner's services.

40. The impugned order affects the petitioner's right of livelihood causing him serious civil consequences. Right to livelihood is a valuable human right and the same cannot be taken away without following due procedure established by law.

The impugned order issued without conducting any enquiry or giving any opportunity to the petitioner to defend himself is wholly arbitrary and violative of the principles of natural justice, and the same offends Articles 14, 21 and 311(2) of the Constitution of India.

41. For the reasons aforesaid, the impugned order dated 14.10.2006 as contained in Annexure 7 is, hereby, quashed. This writ petition is allowed. The respondents are directed to reinstate the petitioner forthwith with all consequential benefits including full salary of the intervening period without any break.

42. However, in the circumstances of the case, there shall be no order as to costs.