

(2005) 12 JH CK 0022

In the Jharkhand High Court

Case No : LPA No"s. 87 and 161 of 2004 with W.P. (S) No"s. 3100 and 3889 of 2004

Ashok Kumar Dangi and Others, Ashok Kumar Sahani and Others, Mahendra Kumar Gupta and Others and Jainuel Ansari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Constitution of India, 1950 — Article 21A, 226

Jharkhand Primary Teachers Appointment Rules, 2002 — Rule 2, 2B, 4

Citation : (2006) 2 JCR 139

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : P.K. Sinha, M. Tiwari, S. Akhtar, M. Kumar and Sujata Bhattacharjee, for the Appellant; A.K. Sinha, A. Alam, Nehala Sharmin, S. Peprawal and S.K. Mishra, for the Respondent

Judgement

This Judgment has been overruled by : State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, AIR 2011 SC 3182 : (2011) 130 FLR 973 : (2011) 8 JT 203 : (2011) 7 SCALE 420 : (2011) 13 SCC 383 : (2011) 7 SCR 748 : (2011) AIRSCW 4442

Narendra Nath Tiwari, J.—A hazy situation regarding the vacancies for the Physical Education Trained Teachers has given rise to these cases. All the appellants/ writ petitioners are having the qualifications of physical education trained and they have claimed for their appointment to the post of teachers in the primary schools. Their instant grievance is that although they possess the qualification and eligibility for appointment of Assistant Teachers for appointment in the primary schools of the State of Jharkhand yet their appointments are being illegally curtailed. According to the advertisement published in the local newspaper dated 22.4.2003, the required minimum qualification for appointment of teachers in the primary-schools of the State of Jharkhand is matric pass or equivalent examination having two years teachers" training Le. B.Ed./Dip. in Ed./

Dip. in Teach/C.P.Ed./Dip. P. Ed., which they possess but their chances of appointments have been considerably minimized by substituting a new clause subsequently that their appointments shall be made only against the vacant posts of physical trained teachers, though there was no such term in the earlier advertisement and the same was silent regarding the number/ratio of the vacancies meant for physical trained teachers in the State,

2. Facts.-After the reorganization and creation of the State of Jharkhand, a new rule was framed by the State for the purpose of appointment of the teachers of primary schools, namely, Jharkhand Primary Teachers' Appointment Rules, 2002, (hereinafter referred to as "the said Rules" or "Rules 2002"). According to the said Rule, appointments of primary teachers are to be made through the Jharkhand Public Service Commission (for short "JPSC"). In order to fill up the vacancies of primary school teacher in 22 districts of State of Jharkhand, the JPSC issued an advertisement on 24.8.2002 inviting applications for appointment against 9,223 vacancies of the primary teachers. In the advertisement district wise vacancies were shown. The essential qualifications and eligibility conditions included that : (a) applicant must be a citizen of India (b) applicants must have passed the matric examination/any equivalent examination and (c) the applicants must have two years teachers' training and must have passed qualifications of B.Ed./Dip. in Ed./Dip. in Teach/ C.P. Ed./Dip. P. Ed. It was specifically mentioned that the selected candidates would be appointed by the District Education Establishment Committee. The" said advertisement was followed by a clarification of the word "trained", candidate, which means who passed two years teachers' training or possessed B.Ed./Dip. in Ed./ Dip. in Teach and C.P.Ed./Dip. P. Ed. The appellants/writ petitioners and others, who possessed the eligibility and the requisite qualifications, applied for the post and Admit Cards were issued to them for appearing in the written test scheduled to be held on 27.5.2003. In the meantime some public interest litigations were filed including W.P. (PIL) No. 2769/2003, which was disposed of along with other writ applications, in which a Division Bench of this Court held that the candidate, who do not possess the requisite qualification as per the amended Rule 4(d) of the Rules, 2002, would not be considered for recommendation/selection for appointment even if they have appeared in the written examination and their candidature will be ignored. Under the cover of the said judgment, a clarification was issued by the JPSC that the candidates having C.P.Ed./Dip.P.Ed. shall be eligible for appointment only against the vacancies of physical trained teachers. The said subsequent addendum has given rise to the present controversy, as earlier in absence of the said subsequent condition, the appellants/candidates having physical, trained certificates were to be considered for appointment against the total vacancies of 9223, whereas their chances have been reduced to bare 27 shown vacancies described district-wise as follows :

(a) Gumla 6 (b) Deoghar 9 (c) Palamau 5 (d) Simdega 7 Total 27

According to the appellants/writ petitioners, the respondents are not authorized

to change the condition and reduce their chances of appointment in the midst of the process and they are equally entitled for consideration of their appointments with all other candidates against 9223 posts, as they are within the ambit of the definition of "trained" candidates and they have also appeared in the same written test and they cannot be deprived of their rights by creating a different class for physical trained teachers. Rule "kha"(3) of the said Rules 2002 defines "trained" which include C.P.Ed. and Dip. P.Ed. and the candidates who possessed the said physical training qualification/certificates were also called for the written test, and were allowed to appear in the examination with all other candidates. Results of the writ petitioner of WP(S) No. 3889 and 3100 of 2004 were published and they were declared successful for Deoghar District and were recommended by JPSC for appointment as primary teachers but the results of appellants of both the LPAs were withheld which the respondents are bound to publish. The appellants/writ petitioners, thus, sought a mandamus commanding upon the respondents to take steps and issue letters of their appointment to the post of teachers in the primary schools against the existing vacancies of primary school teachers in all the districts, which was published in the advertisement dated 24.11.2002 and not to restrict/ reduce their chances for appointment only against the alleged vacant posts of physical trained teachers totaling 27 and only in four districts.

3. The respondents-contested the appellants/writ petitioners claim taking the common ground inter alia, that the appellants/writ petitioners are physical trained and are eligible for appointment to the post of only physical trained teachers and they are entitled to be considered for appointment against the vacant post of physical trained teachers. In the first set of counter affidavit filed in the appeals on behalf of the respondent Nos. 2 and 3, it has been contended that Rule 2 "Kha" of the said appointment Rule 2002 was amended on 6.3.2003, according to which the candidates having certificate of C.P.Ed/Dip. P. Ed. shall be considered for appointment only against the vacant post of physical trained teachers. The said amended provision was brought by the State Government prior to conducting the examination on 27.5.2003. According to the vacancy position, the post of physical trained teachers are only available in the four district of the State i.e. Gumla, Deoghar, Palamau and Simdega. The Jharkhand Public Service Commission (JPSC) inadvertently, made some recommendations for appointment also %of physical trained candidates as primary trained teachers but as soon as it realized the mistake, those recommendations were withdrawn. As per the amended rule, the appellants/writ petitioners are not eligible for appointment to the post of primary teachers and their candidature can only be considered against the vacant post of physical trained teachers and the commission will recommend the names according to the position of vacancies supplied to them for those posts.

4. In the second" set of counter affidavit, filed on behalf of the respondent Nos. 4 and 5, almost the same grounds have been repeated. It has been contended that the vacancies report received from all the 22 Districts were sent to the JPSC

in original and the appointments can be made only on the said basis. It has been stated that the physical trained candidates are not eligible for appointment to the post of primary teachers, as the curriculum and syllabus of physical training is quite different from the two years primary teachers' training/B.Ed./Dip in Ed./Dip. in Teach. Merely because the appellants/writ petitioners were allowed to appear in the examination on 27.5.2003 conducted by JPSC, they cannot claim their right to be considered for their appointment against the post for which they do not possess the requisite qualifications. It has been further stated that before coming into force of the Jharkhand Elementary School Appointment Rules, 2002, the physical trained teachers were appointed in untrained pay scale and they were entitled to get trained scale after passing two years teachers' training/one year in service teachers' training, B.Ed./Dip in Ed./Dip in Teach. The Government of Jharkhand has adopted the Bihar Nationalized Elementary School Teachers' Promotion Rules, 1993 and its subsequent amendment whereunder the teachers of elementary schools were upgraded in 8 grades of promotional avenue and under the said rule "trained" means those, who have undergone and passed the two years teachers' training or B.Ed./Dip in Ed./Dip in Teach or one year training during the service tenure.

5. Learned Single Judge, on hearing the writ applications of the appellants of the LPAs, came to the finding that the petitioners-appellants possessed the physical training course certificates and are eligible only for the post of physical trained teachers. For the purpose of appointment as a primary teacher, a candidate must possess the qualification of B.Ed./Dip in Ed. /Dip in Teach, which the petitioners do not possess. The petitioners have not acquired any right to be considered for appointment on the post of primary teachers only because they were allowed to appear in the examination as they have no requisite qualification of training i.e. B.Ed./Dip in Ed./Dip in Teach. The writ applications were accordingly "dismissed. Aggrieved by the said order of the learned Single Judge the instant LPAs have been preferred by the appellants while WP (S) Nos. 3100 of 2004 and 3889 of 2004 were filed subsequently and were also referred to this Bench for hearing along with the LPAs aforesaid.

6. Mr.P.K. Sinha, learned senior counsel appearing on behalf of the appellants, assailing the said finding, submitted that as per Rule 2-B of the Jharkhand Elementary Appointment Rules, 2002 and the amended Rule of 2003, the appellants are entitled to be considered for appointment as assistant teachers in a primary school of the State against the existing vacancies of primary teachers as they are selected against the advertised post and their consideration and appointment cannot be restricted only against said 27 vacant posts in four districts. He further submitted that at the time of inviting application they were eligible for appointment as assistant teachers and admit cards were issued to them as they were found eligible by the JPSC. Their right cannot be curtailed by any subsequent amendment and the same cannot have any retrospective effect. Even, according to the amendment, the only addition made is "Kewal Sharirik Shtkshko ke liye" which means that the primary teachers will be appointed from

those candidates who have requisite qualifications as prescribed in Rule 2-B of Appointment Rules, 2002 and particularly for the post of physical trained teachers only those candidates are to be selected who possess either C.P.Ed./ Dip. P.Ed. The advertisement dated 24.8.2002 was for 9223 posts of primary teachers without any differentiation between the general trained teachers and physical trained teachers and the letter No. 877 dated 8.4.2003 i.e. issued subsequent to the advertisement, cannot restrict the chances of selection of the petitioners. Learned counsel further submitted that the State of Bihar in its affidavit has categorically stated that the Government has not created separate posts of physical trained teachers. He submitted that according to Data Matrix Information, the total number of primary schools of the State of Jharkhand in 2002 was 17059 and accordingly if school is provided with one physical trained teacher each then at least 17059 teachers are required to be appointed. Most of the candidates are graduates having physical trained certificates and they are competent to teach even the general subjects of the primary school. He further submitted that the State Government has failed to produce any rule or guideline regarding the appointment of teachers or ratio of the physical trained teachers in the State of Jharkhand and in the public interest, a proper direction, by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, is required to be issued taking into consideration the provision of Article 21-A of the Constitution of India, under which it is a fundamental right to receive education. It has been submitted that the results of the appellants and others who are physical trained, has not been published, and a mandamus be issued for declaring the results and taking steps for their appointment as primary school teachers. He further submitted that the learned Single Judge, without appreciating the relevant facts, materials on record and the constitutional/legal aspects, has arrived at a wrong conclusion and erroneously dismissed the writ applications.

7. In course of hearing of these matters, this Court by order dated 24.2.2005 wished to know from the Secretary, Human Resources Development Department, Government of Jharkhand as to (i) whether the cadre of Primary Teachers (General Subject) and Physical Trained Primary Teachers are separate; (ii) what is the total strength of Primary Teachers (General Subject) and Physical Trained Teachers; (iii) what is the existing strength of the aforesaid two cadres of teachers; District wise, school wise post and vacancies. The said Secretary, who was present in the Court, informed that data regarding, the post was not made available by the State of Bihar after reorganization of the State of Jharkhand and that only the State of Bihar can furnish the said data. In view of the above, the appellants were allowed to implead the State of Bihar through the Secretary, Primary Education, Human Resources Development Department, Bihar, Patna, as a respondent and a direction was issued to furnish the details of the posts created in different primary schools of the districts now falling within the territory of the State of Jharkhand. The Secretary, Primary and Adult Education, Government of Bihar, thereafter filed an affidavit enclosing a chart of sanctioned

posts of the primary teachers but it has been categorically stated that no separate posts of physical trained teachers were created by the Government of Bihar and that 5% of vacant posts of primary teachers were earmarked for physical trained teachers in the year 1981 and appointment of physical trained teachers were made upto 1985. On the other hand, a supplementary affidavit has been also filed on behalf of the Principal Secretary, Human Resources Development Department, Government of Jharkhand, in which it has been stated that the record relating to sanction of posts is not in the custody of the State of Jharkhand and in the affidavit filed by the State of Bihar number of sanctioned posts of physical trained teachers has not been mentioned. In that way, the State respondent failed to furnish any information regarding the sanctioned posts of physical trained teachers in the State of Jharkhand.

8. Learned Advocate General appearing on behalf of the respondents, however, laid emphasis on the statements made in the affidavit filed on behalf of the State of Bihar and submitted that there is no clear picture about the vacancies of posts of physical trained teachers and that in the year 1981 only 5% of vacant posts of teachers were earmarked for physical trained teachers. Learned Advocate General also could not clarify the position as to whether separate posts have been created for physical trained teachers in the State of Jharkhand after its reorganization.

9. The appellants in the supplementary rejoinder have annexed a provisional statistics issued by the 7th All India School Education Survey, National Information Center, Jharkhand State Unit, Ranchi, wherein the total number of primary schools have been shown as 17059 and that of upper primary schools as 4270, which in total comes to 21,329. Further the total number of Blocks is 233, total number of primary teachers, plan/non-plan is 60,392 and the total number of working physical teachers has been shown as 73.

10. In the advertisement in question there is no mention of any separate vacancies regarding the physical trained teachers. The only material, which has been brought on record on behalf of the State, is a policy decision of the erstwhile Government of Bihar, issued by the Special Secretary-cum-Director (Primary) by its letter No. 197 dated 17.2.1981. From the perusal of the same, it appears that the State Government has taken a decision to fill up all the existing vacancies of the primary teachers by appointing physical trained teachers on 5% of total vacancies. Nothing has been produced to show that the said policy decision has been modified. The State of Jharkhand has not also issued any policy decision or modified the said earlier decision after its reorganization and by implication the said policy decision dated 17.2.1981 issued by the Government of unified Bihar can be said to still existing and that can be taken as a basis for fixing the percentage of vacancies for the physical trained teachers also in the State of Jharkhand. Accordingly the ratio of vacancy of the physical trained teachers comes to 5% of the total number of existing vacancies of the primary teachers. The rational behind fixing the said percentage is not clear,

which might have been on the basis of the number of Blocks with an intention that at least one physical trained teacher should be made available in each Block of the State. It appears that the said decision was taken to begin with the scheme for the time being. A similar policy decision was taken for the middle schools, which was issued by the Director, Primary Education, by letter No. 885 dated 29.11.1980 and (sic) the said letter it was mentioned that a decision was taken to create 11 posts of teachers in the middle schools and out of that one post was to be created for physical trained teacher. In the said decision, it was also provided that since the physical education has become inseparable part of education and till appointments of a full time physical trained teacher is made, one of the working teachers of school is to be trained for the purpose of imparting physical education giving him additional remuneration.

11. The said decision with respect to the primary schools being letter No. 197 and 17.2.1981 and the decision with respect to the middle school issued by letter No. 885 dated 29.11.1980 if read together, it gives a clear picture of intention of the Government to provide the facilities for physical education to the students of primary and middle school.

12. In view of the above discussions, we come to the following conclusions :

(i) The Government of Jharkhand till date has got no definite scheme/ policy regarding number/ratio of the posts of physical trained teachers.

(ii) There is no different cadre for such physical trained teachers in the primary schools.

(iii) No separate posts were/are created either by the then unified State of Bihar or by the newly reorganized State of Jharkhand.

(iv) The then State of Bihar had issued a scheme/policy decision for appointment of physical trained teachers to the extent of 5% of the existing vacancies of the primary teachers.

(v) That as is evident from a decision taken with respect to the appointment of physical trained teachers in the middle schools issued by letter No. 885 dated 29.11.1980, each schools were to be provided with a physical trained teacher.

(vi) The said policy decision of the unified State of Bihar has not been modified nor any other policy decision has been taken by the State of Jharkhand.

13. In the facts and circumstances of the case and in view of the aforesaid consideration, we intend to pass the following orders :

(I) For the present the respondents shall make appointment of physical trained teachers at least on the 5% posts of the total vacancies of the primary teachers and the JPSC shall publish the pending results of such candidates whose results have not been published as yet without any further delay to the extent of the said number of vacancies within a period of one month from the date of receipt/ production of a copy of this order/judgment.

(II) The State-respondents may come with a clear policy decision regarding the appointment against future vacancies and the cadre of physical trained teachers in the schools and their promotional avenue or any such allied matter.

(III) Since there is no separate cadre for the present and admittedly the physical trained teachers come within the cadre of primary school teachers, it is held that the appellants and others, who possessed the eligibility, as required for appointments of physical trained teachers, are entitled for appointments as primary physical trained teachers and they are entitled to be considered for appointments to the extent of 5% of the total existing vacancies and to the extent of the reserved posts.

(IV) The physical trained candidates, who do not possess B.Ed./Dip. in Ed./Dip in Teach, or other equivalent primary teachers' training course certificate, have no right to put their claim for appointment against the posts which are meant for general subjects primary teachers and their right will be confined to the percentage of the ratio of the posts meant for them. However, after a fresh appointment as physical trained teachers, they may be treated as any other primary school teachers for the purpose of assignment of classes or for disciplinary conduct.

14. The impugned order of the learned Single Judge, out of which the LPA Nos. 87/2004 and 161/2004 arise are modified to the extent, as indicated above.

15. These appeals and writ petitions first above mentioned are disposed of in the light of above observations and directions. There is no order as to costs.