

(2017) 03 JH CK 0072
In the Jharkhand High Court
Case No : 388 of 2013

Bal Kishun Sao

APPELLANT

Vs

Md. Usman & Ors.

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Constitution of India](#), [Article 141](#) -
Bihar Taken Over Elementary School Teachers Promotion Rules, 1993, Rule 13

Citation : (2017) 03 JH CK 0072

Hon'ble Judges : H. C. Mishra, Dr. S.N. Pathak

Bench : DIVISION BENCH

Advocate : Prashant Pallav, Vijay Badaik, Ashish Kumar Thakur, Manoj Tandon, Amit Kumar Tiwari

Judgement

1. As common question is involved in all these matters, they are heard together and disposed of by this common Judgment.
2. Heard learned counsel for the appellant in the letters patent appeal, and the petitioners in both the connected writ applications, learned counsel for the State, as also learned counsel for private respondents.
3. The appellant in the letters patent appeal was not a party to the writ application, W.P.(S) No. 2194 of 2013, out of which this Letters Patent Appeal arises, rather he was granted leave to pursue this appeal by order dated 12.5.2014 passed in I.A. No. 8375 of 2013.
4. The LPA arises out of the Judgment dated 17.4.2013 passed by the learned Single Judge of this Court in W.P.(S) No. 2194 of 2013. The writ application was filed by the private respondents herein, who were untrained teachers, appointed by Human Resource Development Department, Government of Bihar, in accordance with the policy decision and resolution dated 5.3.1991. These private respondents were untrained graduates and were appointed in the year 1994 on the basis of the merit list prepared after completing all the legal formalities. The

private respondents and other similarly situated untrained teachers, though they were appointed, but they were not sent for training by the State Government. The matter went up to the Supreme Court in S.L.P. (Civil) No.23187 of 1996 (Ram Vinay Kumar & Ors, Vs. State of Bihar & Ors) and in the said S.L.P., the Supreme Court gave directions to the State of Bihar for sending the untrained teachers for in-service training and pursuant thereto, those untrained teachers were sent for training some times in the year 1998. The untrained teachers completed their training in the year 1999, but their results were published only in the year 2002 and that too, only after the intervention of the Court. Those teachers filed different writ applications for getting Grade-I, i.e., matric trained pay scale, with effect from the date of their initial appointments. The present Letters Patent Appeal also arises out of one such writ applications in which, the prayer of the teachers, who were untrained at the time of their appointments, were allowed by the learned Single Judge of this Court, holding them entitled to get Grade-I with effect from their initial date of appointments and successive promotions accordingly. The writ application [W.P. (S) No. 2194 of 2013] was allowed by the learned Single Judge in terms of the order passed in W.P. (S) No. 5465 of 2007 (Awadh Bihari Mishra & Ors. Vrs. State of Jharkhand & Ors.), in which, also the similar relief was given by the learned Single Judge of this Court. It may be stated that three Letters Patent Appeals were filed by the State of Jharkhand before this Court against the orders passed in the writ applications filed by the teachers, who were untrained at the time of their appointments, being L.P.A. No.214 of 2008, L.P.A. No. 295 of 2008 and L.P.A. No. 319 of 2008. All these Letters Patent Appeals were decided by common Judgment dated 6th November 2012, by a Division Bench of this Court, in which, this Court took note of the Circular dated 25.6.1999 issued by the Finance Department, Government of Bihar, which provided that the seniority shall not be effected by training or non-training. This Court had also taken note of the fact that the said circular had subsequently been withdrawn by the decision of the Cabinet of the State of Bihar. This Court also took into consideration the "Bihar Taken Over Elementary School Teachers Promotion Rules, 1993" (hereinafter referred to "the Promotion Rules of 1993") and particularly Rule 13 thereof, which provided that untrained teachers shall not be entitled for promotion to any grade, i.e., Grades-1 to 8. Discussing this Rule and Circular, the L.P.A. Court dismissed all those three Letters Patent Appeals, by Judgment dated 6th November 2012, which has been brought on record as Annexure-B to the counter affidavit filed on behalf of the private respondents.

5. Against the aforesaid Judgment dated 6th November 2012, the State of Jharkhand moved before the Hon"ble Supreme Court in S.L.A. (Civil) Nos.5520-5522 of 2013, which was again dismissed by the Supreme Court by order dated 8.3.2013, in the following terms :-

"Heard learned senior counsel for the petitioners, counsel for respondents and perused the relevant material. We do not find any valid and legal ground for interference. The Special leave petitions are dismissed."

6. The appellant and the petitioners in the present LPA and the connected writ applications are aggrieved by the fact that they are trained teachers, though appointed subsequently to the untrained teachers, but in view of the fact that they were trained teachers, they were senior to the untrained teachers. When the seniority was given to the untrained teachers, after getting the in-service training, with effect from the date of their initial appointments, they became senior to the appellant and the writ petitioners.

7. It may be stated at this place itself that another set of S.L.As. were filed in the Hon'ble Supreme Court, by trained teachers similarly situated to the present appellant and the petitioners, which were S.L.A. (Civil) Nos. 6777-6779 of 2013 (Shekhar Kumar Jha & Ors. Vs. Arun Sinha & Ors.), against the same Judgment dated 6th November 2012 passed in L.P.A. No. 214 of 2008 and analogous LPAs. S.L.A. (Civil) Nos. 6777-6779 of 2013 were also dismissed as withdrawn by the Supreme Court by order dated 01.07.13, giving liberty to those petitioners to raise all their contentions available under the law.

8. Brining on record the order dated 01.07.2013 passed in S.L.A. (Civil) Nos. 6777-6779 of 2013 as Annexure-3 to the Letters Patent Appeal, the present appellant has again sought to challenge the earlier Judgments passed by this Court, in the writ applications and the earlier LPAs, whereby the untrained teachers, after getting the in-service training, were granted Grade-I with effect from the date of their initial appointments. The present petitioners have also challenged the policy decision taken by the State of Jharkhand as contained in Memo No. 3027 dated 14.12.2015, issued by the Government of Jharkhand, in its Department of School Education and Literacy (Primary Education Directorate), Government of Jharkhand, which has been brought on record as Annexure-3 to W.P.(S) No. 6220 of 2016. This policy decision has been taken in compliance of the earlier orders of this Court and the Supreme Court, giving the benefit of Grade-I to the untrained teachers appointed in the year 1994, with effect from the date of their initial appointments.

9. Learned counsel for the appellant and the petitioners in the connected writ applications have submitted that by virtue of the earlier Judgments passed by this Court the untrained teachers, who got themselves trained subsequent to the appellant / petitioners, have been made senior to these appellant / petitioners, in view of the fact that they have been given the benefit of Grade-1 with effect from the date of their initial appointment. Learned counsel submitted that this is absolutely illegal and arbitrary and cannot be sustained in the eyes of law, as those teachers could be given the benefits of Grade-1 only with effect from the date of getting trained and not from the date of their initial appointments, and consequently, the present appellant / petitioners, who were trained prior to them, shall always rank senior to those teachers who were untrained at the time of their appointments and got trained after the appointment of the appellant / petitioners as trained teachers.

10. Learned counsel submitted that while deciding the earlier writ applications,

particularly, W.P. (S) No. 638 of 2006 (Arun Sinha & Ors. Vs. The State of Jharkhand & Ors.), this Court has treated the Promotion Rules of 1993, as a circular and it had also taken into consideration the circular dated 25.6.1999, which was no more in force, as it was withdrawn by the State of Bihar. It is also submitted that this circular was also quashed by the Patna High Court by the Judgment dated 17.5.2000 in CWJC No. 7103 of 1999. Learned counsel accordingly, submitted that the writ applications were wrongly decided by this Court and the same error has been committed by the LPA Court also, while deciding the L.P.A. No. 214 of 2008 and analogous LPAs.

11. Learned counsel further submitted that in the resolution of the State Government dated 14.12.2015, as contained in Annexure-3 to the W.P. (S) No. 6220 of 2016, not only that the teachers who were untrained at the time of their appointments, have been given the benefit of Grade-1 with effect from the date of their initial joining, rather, they have been clubbed together with the trained teachers for their future promotions, inasmuch as, in paragraph-15 (iii), it is stated that the such teachers shall be given the benefit of future promotions in accordance with the Promotion Rules of 1993, while giving the benefit of Grade-1 from the date of their initial appointment. It is submitted by learned counsel that by virtue of this resolution, the teachers who were untrained at the time of their appointment, and who now stand senior to the trained teachers, shall also now be entitled to future promotions prior to the trained teachers, which is also absolutely illegal and arbitrary.

12. Submitting, that the Circular dated 25.9.1999 issued by the Finance Department, State of Bihar, was wrongly considered and the Promotion Rules of 1993, have not been considered in its right perspective by the learned Single Judge as well as by the LPA Court, learned counsel submitted that in spite of the fact that the writ applications and the letters patent appeal have been decided by this Court and the S.L.As. preferred against them, have been dismissed by the Supreme Court of India in limine, but the same shall not stand as hindrance in the way of the fresh consideration of these cases, as all the earlier decisions were per incuriam. In support of his contention, learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in State of Manipur Vs. Thingujam Brojen Meetei, reported in (1996) 9 SCC 29, wherein, it has been held that the in limine dismissal of a SLP by a non-speaking order, which does not contain the reasons for dismissal, does not amount to acceptance of the correctness of the decision sought to be appealed against, and such an order does not constitute law laid down by Supreme Court for the purpose of Article 141 of the Constitution of India. Learned counsel has also placed reliance upon the decision of the Supreme Court of India in the case of Fuerest Day Lawson Ltd. Vs. Jindal Exports Ltd, reported in (2001) 6 SCC 356, wherein, again it has been held that a prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a latter case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the

reasoning and result reached, the principle of per incuriam may apply. Placing reliance on these decisions, learned counsel submitted that earlier orders of the Writ Court, as also the L.P.A. Court, are per incuriam the Rule 13 of the Promotion Rules of 1993, which still holds the field and which expressly lays down that untrained teachers shall not be entitled for promotion to any grade, i.e., Grades-1 to 8, and accordingly, this is a fit case for holding that those teachers who were untrained at the time of their appointments, shall be entitled to the benefit of Grade-1 only from the date of getting trained and not from the date of their initial appointment, and consequently, the present appellant / petitioners, who were trained prior to them, shall always rank senior to those teachers who were untrained at the time of their appointments and got trained after the appointment of the appellant / petitioners as trained teachers.

13. Per contra, learned counsel for the State, as also learned counsel for the private respondents, have submitted that the issue is no more res integra, as it has finally been decided by the L.P.A. Court in L.P.A. No. 214 of 2008 and analogous LPAs, expressly holding that the teachers who were untrained at the time of their appointments, upon getting trained, shall be entitled to Grade-I from the date of their initial appointments and this Judgment has also been upheld by the Supreme Court of India. Learned counsel accordingly, submitted that the present appeal and the writ applications are not at all maintainable.

14. Having heard learned counsels for the parties and upon going through the record, we find force in the submissions of learned counsel for the State, as also learned counsel for private respondents. We find that the matter is no more res integra, inasmuch as, the LPA Court in LPA No. 214 of 2008 and analogous LPAs, have taken into consideration the fact that the Circular dated 25.6.1999 issued by the Finance Department, State of Bihar, had been withdrawn by the State of Bihar. It has also been taken into consideration Rule 13 of the Promotion Rules of 1993 and has come to the final conclusion that the teachers who were untrained at the time of their appointments, upon getting trained, shall be entitled to get Grade-I with effect from the date of their initial appointments. S.L.As filed by the State of Jharkhand against the Judgment passed in L.P.A. No. 214 of 2008 and analogous LPAs, has been dismissed by the Supreme Court, by order dated 8.3.2013 passed in SLA (Civil) Nos. 5520-5522 of 2013. The fact remains that the relevant Promotion Rules of 1993 have been properly discussed by the LPA Court and the decision rendered by the LPA Court, has been affirmed by the Supreme Court of India.

15. The challenge by the writ petitioners before us to the resolution dated 14.12.2015 passed by the State Government in its Department of School Education and Literacy, is also no more open to challenge by these petitioners, in view of the fact that this resolution is nothing, but has been taken in compliance of the orders passed by this Court in the earlier writ applications and the L.P.As, and the resolution is fully in consonance with the earlier Judgments passed by this Court. The fact also remains that the other trained teachers

similarly situated to these appellant / petitioners had also moved the Supreme Court in SLA (Civil) Nos. 6777-6779 of 2013 and their SLAs have also been dismissed as withdrawn by the Supreme Court by order dated 1.7.2013, as contained in Annexure-3 to the letters patent appeal.

16. In that view of the matter, nothing else remains to be decided by this Court with respect to the claims of these appellant / petitioners. There is no merit in this Letters Patent Appeal or both these writ applications and the same are accordingly, dismissed.