
(1997) 02 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 10380 of 1995

Balram Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:

Citation : (1997) 2 PLJR 920

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Ramchandra Jha and Mahendra Pathak, for the Appellant; Ranjan Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioner seeks quashing of the order of the Special Secretary, Secondary, Primary and Mass Education, dated May 27, 1995, which has been passed pursuant to direction of this Court in C.W.J.C. No. 11736 of 1993, rejecting his claim for recognition as Headmaster of Dhamdaha High School, Purnea, and a direction to the Respondents to recognise him to the post of Headmaster in view of the Government order as contained in Circular No. 510 dated November 20, 1981 of the Education Department.

2. Circular dated November 20, 1981, copy whereof has been marked Annexure-3 to the writ petition, lays down, inter alia, that the school in which vacancies in the post of Headmaster had occurred prior to 2.10.80 shall be treated as separate unit and the same shall be filled up by promotion from the teachers of the same school subject to his fulfilling the requisite condition. The Special Secretary in his impugned order has held that the vacancy had occurred on 2.10.80 and, therefore, the school cannot be treated as separate unit and the Petitioner cannot be entitled to be recognised/promoted as headmaster.

3. Mr. Ramchandra Jha, learned Counsel for the Petitioner, submitted that the regular Headmaster of the school supereannuated from service on June 30, 1979.

Thereafter, on December 31, 1979 one Nawal Kishore Mishra was promoted as the Headmaster. However, his promotion was not found to be in order and the same was cancelled by the State Government vide its letter No. 1273 dated July 1, 1980. Copy of the said letter dated July 1, 1980 appears at Annexure-17 of the writ petition. Nawal Kishore Mishra in the light of the said order made over charge of the office to the Petitioner on October 1, 1980. According to the Petitioner, Nawal Kishore Mishra has been as deemed to have superannuated from service with effect from June 30, 1979 and he has been allowed pension and other retirement dues accordingly. Learned Counsel for the Petitioner, in these facts, contended that the vacancy must be deemed to have occurred prior to 2.10.80.

4. From perusal of the impugned order dated May 27, 1996 (Annexure-14) appears that the Special Secretary took into consideration the fact that Nawal Kishore Mishra had continued to function as Headmaster of the school, till October 1, 1980 and it was only in the afternoon that date that he made over charge of the office to the Petitioner and concluded that the vacancy must be deemed to have occurred on October 1, 1980. In the facts of the case, this conclusion of the Special Secretary cannot be accepted. Firstly, it is not a case of normal superannuation or making/taking over charge of the office.

5. It is common knowledge that superannuation from service takes place on the last date of the month, if Nawal Kishore Mishra would have superannuated from service in the normal course, such superannuation would have taken place on September 30, 1980 itself but, as stated above, Nawal Kishore Mishra was appointed Headmaster on temporary basis on December 31, 1997 pursuant to vacancy caused on account of retirement of regular Headmaster with effect from June 30, 1979 itself, which promotion was also subsequently found to be illegal on July 1, 1980. Merely because factually Nawal Kishore Mishra continued as Headmaster upto October 1, 1980 it cannot be said that there was no vacancy in post prior to October 2, 1980. It is specific case of the Petitioner that Nawal Kishore Mishra did not challenge the aforesaid order dated July 1, 1980 and his retirement dues have been calculated and paid treating him to be superannuated with effect from June 30, 1979 itself.

6. Secondly, having regard to the objects underlying the Government order contained in the letter No. 510 dated November 20, 1981 there cannot be any doubt that the intention was to treat the schools where vacancies had arisen prior to October 2, 1980 and schools where vacancies had arisen on or after October 2, 1980 on different footing. Such schools In which vacancies had occurred earlier were treated to be separate unit arid the vacancies were to be filled up by promotion from in-service teachers of the schools themselves. The view taken by the Special Secretary appears to be too technical, even if the rest of the facts are ignored. However, for the reasons already stated above, I have no doubt in my mind that in the facts of the case the vacancy had occurred prior to 2.10.80 and therefore, the school had to be treated as separate unit. In that

view of the matter, the order of the Special Secretary cannot be said to be correct. During course of hearing, counsel for the State referred to subsequent order of the Director, Secondary Education, passed on October 4, 1996. The latter is mere reiteration of what the Special Secretary has stated in the aforesaid impugned order dated May 27, 1995. The order of the Special Secretary being not in accordance with law it is obvious that the latter order of the Director Which is a mere consequential order also be treated to be on same footing as being not in accordance with law.

7. Before I conclude, I may mention that in terms of the provisions of the Circular No. 510 dated November 20, 1981 the Vidyalaya Seva Board had already concurred in the promotion of the Petitioner vide its letter dated January 27, 1992. The said recommendation/concurrence has, however, not been given effect to by the Director/State Government so far in view of the controversy as to whether the school has to be treated as separate unit or not. The aforesaid controversy having been resolved, as above, it is clear that the Petitioner is entitled to his recognition/promotion on the post of Headmaster of the school. The Respondents are directed to issue consequential order accordingly as early as possible and preferably within four weeks of receipt/production of a copy of this order.

8. This writ petition is allowed.