
(1994) 03 PAT CK 0037

In the Patna High Court

Case No : Civil Writ. Jurisdiction Case No. 2470 of 1992

Bhairvi Nandan Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

Citation : (1995) 1 BLJR 441 : (1994) 2 PLJR 226

Hon'ble Judges : Gurusharan Sharma, J;G.C. Bharuka, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—In this writ application the petitioner is aggrieved by the part of the order dated 7.10.1986 passed by the Director, Secondary Education (Annexure-"2") by which the request of the petitioner for recognition of his service as an Assistant Teacher in Gouri Shankar Bajranj Jalan Girls High School (hereinafter referred to as "the school" only) lying in the district of Sitamarhi, has been rejected on the ground that he is not having the necessary teachers training qualification.

2. Admittedly the school in question had been taken over by the State Government under its scheme of establishing Project Schools in the State. Under the said scheme in its First phase 150 schools were taken over in 1982-82 and subsequently in the Second phase in total 300 schools are sought to be taken over. It appears that the school in question was recognised by the State Government as a project school with effect from 1.1.1982. Subsequently by the impugned order though services of various lady teachers and one male teacher namely Gananeshwar Tiwari were recognised by the Government as Assistant Teachers in the school but that of the petitioner has been rejected, In the impugned order it has been notified that though the petitioner was appointed by the Managing Committee of the said school on 10.8.1981 but his services cannot be recognised by the Government as an Assistant Teacher because he is untrained.

3. Learned Counsel for the petitioner has challenged the validity of the impugned order (Annexure "2") on the ground that under the policy decision of the Government as envisaged under letter No. 405 dated 19th July, 1986 (Annexure "3") provisions have been made for payment of salary to even untrained teachers. Therefore, it has been wrongly held by the Director that the services of the untrained teachers appointed in private schools which were subsequently taken over under the Project Scheme cannot be recognised for treating them as government servants in that capacity. To substantiate this plea, the learned Counsel has referred to the orders passed by the Director. Secondary Education in relation to some lady teachers whose services have been recognised though they were untrained. The said orders have been filed as Annexure "6" and "7".

4. Mr. Alam, learned S.C. VI appearing for the respondents has controverted the plea of the petitioner by submitting that under the scheme of the Government the services of no untrained male teachers could have been recognised nor any instance has been cited by the petitioner in this respect. So far as the lady teachers are concerned under the Government policy itself specific provisions have been made providing therein that in absence of eligible trained teachers from amongst the class of Harijans, Scheduled Tribes and Women untrained candidates can be appointed subject to certain conditions and it is only in view of this policy decision some untrained lady teachers were given benefit of recognition and appointment in Project Girls School.

5. I am in full agreement with the learned Standing Counsel. His submission is clearly substantiated by the provisions made in Government letter No. 705 dated 12.10.1982 (Paras 10 and 16), letter No. 1027 dated 2.11.1985 and letter No. 98 dated 6.2.1986. These letters provide for appointment of teachers in the schools taken over under the Project Scheme and unambiguously provide that one of the requisite qualifications for appointment as assistant teacher was that he/she held a teachers training qualifications, may be, B.Ed, or M.Ed. In case of non-availability of trained teachers, untrained teachers falling in the categories of Harijans, Tribals and Woman could have been given the appointment. A reading of the aforesaid letters which contain the policy decisions of the Government, clearly establish that untrained male candidates, not being Harijan or tribal, could not have been given appointment in the project schools.

6. So far as reliance placed on behalf of the petitioners on Government Circular (Annexure 3) is concerned, it merely provides for payment of salary to the teachers who had been duly appointed in accordance with the procedures prescribed by the Government. Since, as stated above, the teachers so appointed could have been both trained and untrained, therefore, in this circular scales were provided for the teachers falling in both the categories, learned Counsel for the petitioner wanted us to read the circular in isolation for drawing an inference that the Government had, in fact, made appointments even of persons who were not trained and, therefore, rejection of his claim for appointment as an assistant teachers is discriminatory and arbitrary. In my opinion, the submissions is wholly

misplaced. I have already noticed above that only untrained candidates falling in the categories of Harijans, Tribals and Women were given appointments for want of qualified untrained candidates. Admittedly, the petitioner does not fall in any of the three categories. Accordingly, plea of the petitioner that even untrained candidates of general category has a right to be appointed as an Assistant teacher in the project school has to be rejected as mis conceived.

7. The Government orders contained in Annexures "6" and "7" granting appointed to some untrained lady teachers is also of no avail to the petitioner as noticed above. untrained lady teachers can be given appointment in Project Girls School under some given circumstances. Annexure "7" refers to one Sri Gaganeshwar Tiwari, Assistant Teachers for his absorption in some other school. But it will be found from Paragraph-II of the impugned order (Annexure "2") that he is trained graduate and, therefore, his services were directed to be recognised with a condition that if in the school in question some lady teacher is appointed then he may be transferred to some other appropriate school. It is only in this context that his case has been considered in the order dated 25th November, 1988 (Annexure "7").

8. For the aforesaid reasons I find it difficult to grant any relief to the petitioner. The writ application is accordingly dismissed but without costs.

Gurusharan Sharma, J.

9. I agree.