
(2015) 08 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. 4929 of 2008

Bishwanath Das and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 — Rule 8(1)
Bihar Non-Government Secondary Schools (Taking Over of Management and Control)
Act, 1981 — Section 9
Constitution of India, 1950 — Article 14, 16

Citation : AIR 2015 SC 3518 : (2015) LabIC 4010 : (2015) 4 LLN 8 : (2015) 9
SCALE 54 : (2015) 4 SCT 428

Hon'ble Judges : V. Gopala Gowda, J;R. Banumathi, J

Bench : Division Bench

Advocate : Rudreshwar Singh, Gopal Jha, Gautam Singh and Vivek Vardhan,
Advocates for Sanjay Jain, for the Appellant; Ajit Kumar Sinha, Sr. Adv., Gopal
Prasad and Himanshu Chaubey, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

V. Gopala Gowda, J—This appeal by special leave is directed against the impugned judgment and order dated 26.7.2006 passed by the High Court of Jharkhand at Ranchi in Letters Patent Appeal No. 526 of 2003 (filed against the judgment dated 6.8.2003 of the learned single Judge in C.W.J.C. No. 7859 of 1997), whereby the High Court dismissed the appeal filed by the Appellants herein and concurred with the order of the learned single Judge by holding that they were illegally appointed on the posts of Clerk without following the procedure prescribed in Bihar Nationalised Secondary School (Condition of Service) Rules, 1983 (hereinafter "the Rules, 1983) and in violation of Articles 14 and 16 of the Constitution of India. The brief facts of the case are stated hereunder:

2. A Circular No. 16440 was issued on 3.12.1980 by the Government of Bihar through its Personnel & Administrative Reforms Department, prescribing the

procedure for appointment to Class-III post of Clerks in Government offices of the State, except those posts where the appointments were to be made by the Public Service Commission. However, subsequently the provisions of the recruitment Rules, 1983 were notified vide Notification dated 9.6.1983 by the state government in exercise of its power conferred Under Section 9 the "Bihar Non-Government Secondary School (Taking over Management & Control) Act, 1981. According to these Rules, the District & Education Officer was declared to be the competent authority to make appointment to Class-III employees. It further stated that there would be no written examination or interview for appointment and the marks obtained in the school and college examination would be the basis of the preparation of the merit list. It also prescribed the procedure of selection and appointment as also the service conditions of the schools under the Rules, 1983. The Selection Committee for appointment of Class-III employees was also prescribed under these Rules, which comprised of the District Education Officer, District Inspectors of Schools and the senior most head master of a nationalised secondary school.

3. As per Rule 8(1)(e) of the Rules, 1983, the cadre of Class-III non-teaching staff would be a District Cadre and the District Education Officer would be the appointing and controlling officer.

4. Several sanctioned posts of clerks were lying vacant in the Nationalised High Schools/Government High Schools on account of which there was shortage of clerks to carry on with the day to day work. The working of the schools were being hampered as a result and thus, the concerned Head Masters requested to fill up the several sanctioned posts of clerks which were lying vacant in the Nationalised High Schools/Government High Schools.

5. Considering the said request of Head Masters, a meeting of the District Selection Committee was convened on 8.12.1987 as per the Rules. A Resolution was passed by the said committee for immediate appointment of clerks for the proper and quick disposal of pending works in the schools. An advertisement was notified on the notice boards of all concerned offices of the district on the same date and communication was also sent to the employment exchange of the District inviting applications and sponsoring of names of the eligible candidates for appointment from them. The Appellants (who were also registered with employment exchange) applied for appointment to the post of Clerk pursuant to the advertisement dated 8.12.1987. Their application forms along with other applicants were scrutinized by the District Committee. The shortlisted candidates along with the Appellants were called for an interview on 15.4.1988 and following the reservation policy, a panel of two sets of selected candidates was prepared i.e. part "A" and part "B". Some of the Appellants were put in part "A" and other Appellants were put in part "B" in the waiting list.

6. The Selection Committee in its meeting held on 28.5.1988 approved the panel of selected candidates for appointment to the posts of clerk. Thereafter, the Appellants were issued letters of appointment by Vyator Kerketta, the then

District Education Officer and appointed them in the said posts of clerks in various schools. Initially, the Appellants were appointed for three months and later on their services were extended, pursuant to the resolution of the District Selection Committee. The Appellants joined duties in the said post and were posted in various High Schools in the District of Dumka and other offices.

7. It is stated by the learned Counsel for the Appellants that the information regarding selection of Appellants and other persons was given to the higher authorities including the Director, Secondary Education-cum-Joint Secretary, Human Resources Department, Government of Bihar on 2.6.1988 vide letter No. 2283. The Appellants were treated as Government employees and accordingly, their service books were opened and statutory deductions were made from their salaries towards provident fund, gratuity, group insurance etc. during the period of their service with the Respondents.

8. In the meanwhile, on the basis of information received by the State Government that the Appellants were illegally appointed, an inquiry was conducted by the Deputy Collector. The Deputy Collector submitted a report dated 15.6.1990 stating that Kerketta, the then District Education Officer, Dumka had illegally appointed a large number of persons on Class-III and IV posts in the Education. Department of Dumka. Concurring with the said report of the Deputy Collector, the Deputy Commissioner vide letter dated 21.7.1990, recommended to the competent authority for initiation of an inquiry on the action of Vyator Kerketta in appointing the persons to the above posts as the same was contrary to recruitment Rules and law in this regard.

9. An inquiry was also conducted by the Regional Deputy Director-Respondent No. 3 herein, who submitted a report dated 10.11.1990, which was related to the allegations on Vyator Kerketta, the then District Education Officer, of indulging in bribery for the appointment of clerks in the schools of the district. There were also allegations made against him for forming of a group with the other teachers and that he is depriving the candidates of tribals of Dumka district of their rights, which charge was not proved.

10. On 23.3.1991, Vyator Kerketta, the then District Education Officer, Dumka issued an office order regularising the services of the Appellants with effect from the dates of their joining duty.

11. On 28.6.1997, the Director, Secondary Education, Department of Secondary Education Department - the Respondent No. 2, forwarded a Memo to the Respondent Nos. 3 and 4, informing them that the State Government had taken the decision to terminate the irregular appointments made by Vyator Kerketta, the then District Education Officer, Dumka. The memo further directed that in the interest of natural justice, the order of termination of service be issued after issuing show cause notice to the Clerks and conducting an inquiry in this regard.

12. Accordingly, show cause notices were issued to the Appellants on 26.7.1997 by the Respondent Nos. 3 and 4, seeking a reply from them as to why their

services should not be terminated, giving them a week's time to do the same.

13. Being aggrieved by order dated 28.6.1997 of Respondent No. 2 and show cause notice dated 26.7.1997 issued by the Respondent No. 4, the Appellants filed Writ Petition No. CWJC. No. 7859 of 1997 before the High Court. Some of the Appellants filed Writ Petition (S) No. 3867 of 2002 before the learned single Judge against the decision of the Respondents stopping the payment of their salary.

14. On 18.10.1997 an office order was issued by the Respondent No. 3 in pursuant to the order of Respondent No. 2 dated 28.6.1997, terminating the service of the Appellants.

15. Being aggrieved by the order of termination of service passed against them, the Appellants approached the learned single Judge by amending their Writ Petition Nos. 7859 of 1997 and WP No. 3867 of 2002 and challenged the correctness of the orders of termination dated 18.10.1997.

16. The learned single Judge dismissed the Writ Petitions of the Appellants vide order dated 6.8.2003, holding that though the advertisements were issued and the interview letters and appointments letters were issued by the District Education Officer, there was no mention of any interview conducted by the District Selection Committee or any panel of candidates prepared or roster clearance being obtained from the competent authority. The learned Single judge further held that all appointments made by the then District Education Officer were illegal and were liable to be cancelled. The learned single Judge further gave direction to the Respondents that the appointments are illegal. However, it was held that the Appellants were entitled to the arrears of salary and wages for the period that they actually rendered their services to the Respondents.

17. Being aggrieved by the order dated 6.8.2003 passed by the learned single Judge, the Appellants filed Letters Patent Appeal No. 526 of 2003 before the Division Bench of the High Court urging various grounds and prayed the reliefs as prayed in the writ petition.

18. The Division Bench of the High Court observed that the prescribed procedure under the Rules was not followed by the then District Education Officer while making appointments as per Circular dated 3.12.1980 wherein the Rules, 1983 are mentioned. Firstly, that no advertisement was published in the newspapers inviting applications from eligible persons for the said posts, which is violative of Articles 14 and 16 of the Constitution of India. Secondly, the sole Selection Committee member viz. District Education Officer could not have recommended the names of the Appellants to the said posts, as he was not the competent authority to do so under the Rules. Thirdly, the merit list was prepared by him neither on the basis of the marks obtained by the applicants nor it was prepared on the basis of any test. Therefore, the list prepared by him could not be termed as a merit list, as even for the interview no marks were given. The High Court further held that the then District Education Officer issued the letters of

appointment to the Appellants though he had no authority and power to do so. Hence, appointments of Appellants being void ab initio in law, it was open to the authorities not to recognize such appointments made by the District Education Officer who was not competent officer under the Recruitment Rules for issuing such order of appointment to the Appellants. Having found no merit in the Letters Patent Appeal filed by the Appellants, the High Court dismissed the same.

19. Mr. Rudreshwar Singh, learned Counsel on behalf of Appellants has contended that the Appellants have been legally appointed by the then District Education Officer after following the procedure of appointment as provided under the Rules, 1983 and their services have been regularised as back as in the year vide order dated 23.3.1991 and they were working at their posts till the order of termination was passed. Therefore, the Respondents could not have terminated the services of the Appellants on the ground that their appointments are illegal. The High Court did not pay attention towards the point that Rules, 1983 were framed after the Circular dated 3.12.1980.

20. Reliance was placed by the learned Counsel on the report dated 10.11.1990 of Respondent No. 3 wherein the finding was that the appointment of the Appellants was made in accordance with law.

21. It was further contended by the learned Counsel on behalf of the Appellants that there was failure on the part of the High Court for not having taken into consideration an important aspect of the case, namely, that the Respondent No. 4 had issued the show cause notices stating that they were illegally appointed without considering the relevant factual aspects of the case namely, that their appointments were made against the sanctioned posts after proper advertisement was made by inviting applications from the eligible candidates which was duly notified in the notice board by the concerned District Officer of the District and that the concerned District Officer had issued letters of appointment to them after being satisfied with their credentials as to the appointment to the said posts. This aspect of the case was not noticed by the High Court while dismissing the Writ Petition and the Letters Patent Appeal.

22. On the other hand, Mr. Ajit Kumar Sinha, learned senior Counsel on behalf of the Respondents sought to justify the impugned judgment, contending that the High Court has rightly dismissed the appeal of the Appellants after proper appreciation of facts and considering the enquiry report and the Recruitment Rules. The same cannot be found fault with by the Appellants as they were illegally appointed to the posts of Clerk without following the prescribed procedure under the Rules which should have been taken into account while making appointment of the Appellants to such posts. As there was violation of Rules and the same was not complied with by the District Education Officer had further refuted all the contentions urged on behalf of the Appellants stating that they are wholly untenable in law and cannot be accepted.

23. Further, it was contended by him that the then District Education Officer,

Dumka could not have appointed the Appellants to the posts of Clerk as he had no authority and power under the Rules to do so. The Respondents should have published the advertisement inviting applications from the eligible candidates in the newspaper and should have followed the rules of reservation and roster system which was not done before making the said appointments as prescribed in the Rules. A panel of selected candidates should have been made by him and appointment should have been made by the Selection Committee which was also not done. He further contended that there is nothing on record to show that notice dated 8.12.1987 was sent to Employment Exchange, as also names of the Appellants were not forwarded by the Employment Exchange, which would clearly show that there was gross violation of the Rules while making such appointments. He contended that the Respondents have rightly passed the order of termination of service of the Appellants who were illegally appointed and that they had no right to continue in service.

24. Further, it was contended by the learned Counsel that enquiry report dated 10.11.1990 submitted by Respondent No. 3 upon which the Appellants have placed reliance was of no use as the same was conducted to know as to whether the then District Education Officer, Dumka along with another employee had formed a group and deprived the local tribes of their rights to public employment along with allegations of bribery.

25. This Court has held in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , that once the appointment of a person is held to be ab initio void and bad in law, it cannot be regularized under any circumstances whatsoever.

26. After hearing the learned Counsel on behalf of both the parties and on perusal of material evidence on record and after careful examination of the finding of fact with reasons recorded in the impugned judgment, we find that both the learned single judge as well as the Division Bench were right in dismissing the Writ Petition and Letters Patent Appeal of the Appellants.

27. We are of the view that the impugned judgment is based on the records available which are produced along with counter affidavit namely, the enquiry report dated 15.6.1990 submitted by the Deputy Collector, Dumka to Deputy Commissioner, Dumka with regard to the illegal appointments of the Appellants. The same has been accepted by the High Court after adverting to the legal submissions made by the learned Counsel on behalf of the Appellants. In the impugned judgment, the Division Bench has referred to the procedure of appointment against class III posts as laid down by the State vide Circular No. 16440 dated 3.12.1980 issued by Personnel Administrative Department of the undivided State of Bihar. As per the said guidelines, vacancies are to be notified through Employment Exchange, advertisement is to be published in the newspaper, selection has to be made at the District level for the purpose of

appointment to the posts of Clerk. The knowledge of Hindi and English typewriting has also been made essential. The District Level Selection Committee has to be chaired by the District Head i.e. District Magistrate/Deputy Commissioner of the District, who has to nominate senior officer of the District as one of the members and the District Welfare Officer as the other member. It is only after the recommendation of such Committee, appointment against class III posts of Clerk is to be made in any mofussil (district) of the State. It is evident from the advertisement Memo No. 6409-10 dated 8.12.1989, upon which reliance is placed by the Appellants, that it was not published by the District Head i.e. District Magistrate/Deputy Commissioner of the District. The same was published by the District Superintendent of Education, Dumka in his own office and only the copy of the same was forwarded to the Block Level and headquarter of the Education Department. A copy of the same seems to have been forwarded to the District Employment Officer, Dumka on 10.12.1987, but there is nothing on record to suggest that it was actually received by the Employment Exchange. Therefore, the finding of fact has been recorded in the report by the Deputy Collector, Dumka that no advertisement was published in any newspapers. The Division Bench of the High Court had also recorded a finding of fact stating that notices were published on the notice board of one or other office of the Education Department only and no other departments. It further observed that the then District Education Officer, Dumka asked the candidates to appear in his Chamber on 15.4.1988 and so far as the merit list is concerned, it was held that the alleged merit list bears the signature of one or other person but does not disclose as to who was the member of the Selection Committee. It is neither the case of the Appellants that the District Magistrate/Deputy Commissioner of the District chaired the said Selection Committee nor is there anything on record to suggest that the District Welfare Officer was one of the members of the said Committee. The so-called merit list does not show the date of birth, qualification and knowledge of typing of the selected candidates. It also did not contain the marks obtained by any of the selected candidates. Further, the basis of placing the candidates in the merit list i.e. from Sl. No. 1 onwards has also not been reflected therein. With regard to letters of appointment issued by the District Education Officer of Dumka, it was held that he had issued the same between May, 1988 and May, 1989. The Division Bench of the High Court further referred to letter No. 385 dated 25.11.2002 issued by the Respondent No. 3, which is produced at page 111 in the Letters Patent Appeal along with memo of appeal. The same discloses the fact that no advertisement was published in the newspaper, rather some sort of notice was displayed in the notice Boards of some of the offices. The contention on behalf of the Appellants was that under the relevant Rules, 1983, for appointment to the posts in the cadre of class III non-teaching employees of the District Cadre, the District Education Officer, being their controlling authority, was empowered to appoint the Appellants. The said submission was rightly not accepted by the Division Bench of the High Court, after referring to the letters of appointment. It was further held by the Division Bench that the Appellants were appointed against class III posts of

Clerk, either in different Project Schools or in the offices of the District Education Officer. Therefore, it was held that the Appellants have not been appointed in conformity with the procedure laid down under the Rules, 1983. While appointing the Appellants, Circular No. 16440 dated 3.12.1980 has not been followed. The learned senior Counsel on behalf of the Respondents has rightly placed reliance upon the judgment of the Secretary, State of Karnataka v. Uma Devi (3) and Ors., discussed supra.

28. In view of the aforesaid concurrent finding of fact based on the available materials on record and particularly, the report of the Deputy Collector, Dumka referred to supra, we are of the view that the impugned judgment does not call for our interference. The learned single Judge and the Division Bench of the High Court have rightly dismissed the Writ Petition and Letters Patent Appeal of the Appellants challenging the order of termination of their service. This appeal is dismissed as the same is devoid of merit.