

(2008) 08 JH CK 0080
In the Jharkhand High Court

Bishwanath Ojha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 9

Citation : (2008) 08 JH CK 0080

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner had originally challenged the order dated 21.2.2003 issued by the Regional Deputy Director, North Chhotanagpur Division, Hazaribagh (respondent No. 3), whereby the petitioner was directed to hand over the charge of the office of the Headmaster to the respondent No. 5. A further prayer has been made for issuance of a writ of mandamus directing the respondents to correct the existing seniority list under which the petitioner has been shown as junior to the respondent No. 5. However, prayer is now confined only to the correctness of the existing seniority list since admittedly, the petitioner had handed over charge of the office of the Headmaster to the respondent No. 5 on 24.2.2003, in compliance with the direction contained in the impugned order dated 21.2.2003 of the respondent No. 3.

2. The case of the petitioner is that on his appointment to the post of teacher he joined his duty in R.S.K.B.C. High School, Nirsa, Dhanbad and was granted B.A. trained scale and from the date of his appointment, he has been continuously working in the North Chhotanagpur Division.

The respondent No. 5 was appointed as Assistant Teacher in the year 1975 in the Patna Division and she was subsequently transferred to the North Chhotanagpur Division on 25.2.1981 and on her transfer, she had jointed the school at Mugma on 26.3.1981.

While both petitioner and the respondent No. 5 were working as teachers in the same school, the then Headmaster of the school who was to retire on 31.1.1003, sought instruction from the District Education Officer as to whom should he hand over charge of his office, but in absence of any guidance, the Headmaster handed over the charge of his office to the petitioner considering the petitioner to be the senior most teacher in the school and since thereafter, the petitioner was officiating as Headmaster of the school.

Earlier, vide letter No. 22nd August 2002 the District Education Officer, Dhanbad issued a letter to all Principals and Headmasters of the Government/Nationalized/Project/Minority High Schools calling for requisite information with regard to the date of taking over of the school and the date of transfer of the teachers from one division to another division. This information was sought for the purpose of finalizing the gradation list of the teachers. A draft seniority list was accordingly prepared by the Headmaster of the petitioner's school mentioning the fact therein that the respondent No. 5 was transferred from Patna Division to North Chhotanagpur Division and that, she had joined the school on 26.3.1981 and that the petitioner had joined this school in 1977.

3. The contention of the petitioner is that in spite of the information conveyed to the District Education Officer that respondent No. 5 had joined the school on her transfer in March 1981, whereas the petitioner has been working in the school since the date of his appointment in the year 1977 and therefore, the petitioner is entitled to be ranked senior to the respondent No. 5 in the gradation list, the respondent No. 4 by the impugned order, directed the petitioner to handover the charge of the office of headmaster of the school to the respondent No. 5 declaring thereby that the respondent No. 5 was senior to the petitioner since such seniority appears in the earlier gradation list (Annexure-7).

Grounds advanced by the petitioner claiming seniority over respondent No. 5 is that the respondent No. 5 was transferred on the basis of her own request from Patna Division to North Chhotanagpur Division. Section 5 of the Bihar Nationalized School Service Condition Rules, 1983 stipulates that if any teacher has been transferred on his/her own request from one division to another division, then earlier service rendered by him/her in the existing division will not be counted for the seniority in the other division, unless such transfer has been done pursuant to any policy decision of the Government. Furthermore, provision contained in the aforesaid Rules stipulates that the cadre of the existing teacher will be division wise and Controlling Officer will be the Regional Director of the said division. It has been further stipulated in the Rule 12 that transfer of the Assistant Teachers shall be done within the same division itself and if any teacher is transferred beyond the division, then such teachers shall have to loose his/her seniority.

Petitioner's further contention is that that pursuant to the information supplied by the Headmaster of the school, the gradation list which has been prepared vide Annexure-7 in the year 1983, is incorrect in as much as, without considering the

fact that the respondent No. 5 had joined the school on her transfer on her own request from the Patna Division to North Chhotanagpur Division in the year 1981, she is deemed to have lost her earlier seniority and she has to be ranked junior to the petitioner who is in service of the said school since the date of his appointment in 1977

4. Though, notice was served on the respondent No. 5, but she has not appeared, nor filed any counter-affidavit. However, the District Education Officer (respondent No. 4) has filed his counter-affidavit. Disputing the claim of the petitioner, the stand taken by the respondent No. 4 is that since respondent No. 5 was transferred from the Patna Division in 1981, therefore the service condition as stipulated in Bihar Nationalized High School Service Condition and Regulation, 1983 will not be applicable to her since, the service condition of 1983 cannot have retrospective effect.

5. I find force in the grounds advanced by the respondents. The Management and control of the Non-Government Secondary Schools were taken over by the State Government under the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981. Upon such taking over, all such schools including the nationalized schools came under the control of the Board and for better administration, the schools located within the entire State were divided into different zones, each zone kept under the immediate control of the Regional Deputy Director of the concerned zone. Though, Section 9 of the aforesaid Act empowers the State Government to frame Rules in respect of formulating service conditions of the teachers of all the taken over schools, but such rules were framed for the first time in 1983 and was notified in June 1983 by way of promulgating the Nationalized Secondary Schools (Service Condition) Rules 1983. Under Rule 5 of the aforesaid Rules, provisions were made for dealing with the service conditions of the teachers including the preparation of the seniority list and their promotion as also the Rules regarding the seniority on transfer of teachers from one zone to another zone.

6. The petitioner has claimed that as per Rules of 1983 relating to service condition of teachers, a teacher who is transferred from one division to another division on his/her own request, shall have to forgo his/her seniority in the previous zone.

7. Such rule will be applicable to the teachers only with effect from the date when the 1983 Rules were promulgated and the same cannot be deemed to have retrospective effect. It is nowhere indicated in the Rules of 1983 that though, it was notified in June 1983, it shall have effect from the date when the Management of the School was taken over by the State Government.

8. It is not denied that after the division of the schools throughout the State in different zones, the teachers of one division could be transferred to another division. The petitioner has not brought on record any such Rule existing prior to 1983 Rules under which a teacher who is transferred from one zone to another,

shall lose his/her seniority. In the instant case, admittedly the respondent No. 5 was transferred from Patna Division to North Chhotanagpur Division in the year 1981. At that time there was no condition laid down that on her transfer even made pursuant to her own request, she shall lose her original seniority. As such, on her transfer from Patna Division to North Chhotanagpur Division and on her placement in the present school, her seniority had remained intact calculated from the date of her joining service in the year 1975. The petitioner had joined his service admittedly in the year 1977.

9. It is obvious therefore that the respondent No. 5 had joined her service two years prior to the petitioner's date of joining and therefore, the respondent No. 5 was placed at a correspondingly higher place than the petitioner in the revised gradation list prepared in the year 1983. The contention of the petitioner that service condition laid down in 1983 Rules should have been taken into consideration while preparing the gradation list of the respondent No. 5 vis-a-vis the petitioner, is therefore not tenable.

10. In the light of the above discussion, I do not find any merit in this application. Accordingly, this application is dismissed.