
(1981) 02 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 4513 of 1981

Brajnandan Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1982) 30 BLJR 218

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Jha, J.—In a petition under Article 226 and 227 of the Constitution, the petitioner prays for quashing Annexure-I, By Annexure-1, Ambica Prasad Pandey (respondent No. 6) was transferred from Mahsa Vidyapeeth High School, Sahjahanpur to Mahanth Harihar Das High School, Gulmahia-bagh in the District of Patna.

2. The admitted position is that the Education Service Commission u/s 43 of the Bihar Secondary Education Board Act, 1976 (hereinafter referred to as "the Act") advertised the post of Headmaster. Respondent No 6 applied for that post along with others. A panel of the Headmasters was prepared u/s 43(2) of the Act. On receipt of the panel, the Bihar Secondary Education Board thereafter referred to as "the Board") appointed respondent No. 6 as the Headmaster and directed the District Education Officer to post him at a certain High School. Respondent No. 6 was transferred to Mahsa Vidyapeeth High School, Sahjahanpur. His transfer was stayed by the direction of this Court by an order dated 16th September, 1981 in C.W.J.C. No 2866 of 1981. Thereafter, Ram Rup Prasad Rai, the Headmaster of Mahanth Harihar Das High School, Gulmahiabagh, retired on 30th November, 1981 It is on this post the Director of the Board directed him to act as permanent Headmaster of Mahanth Harihar Das High School, Gulamhiabagh, m Patna District. Previous to this, respondent No. 6 was posted

at Sahjahanpur as Headmaster within the District of Patna. In other words, respondent No 6 was transferred within the Patna District by the Director by order dated 11th September, 1981. In the present case, the vacancy occurred in Mahant Harihar Das High School, Gulamhiabagh on 30th November, 1981 on account of the retirement of Ram Rup Prasad Rai. In other words, the vacancy occurred after 2nd October, 1980. The date is important, because on 2nd October, 1980, the Bihar Non-Government High Schools, Ordinance, 1980 (Bihar Ordinance No. 146 of 1980) (hereinafter referred to as "the Ordinance") came into force.

3. By virtue of Section 3 of the Ordinance, all the non-Government High Schools were taken over by the State Government except minority schools proprietary schools and Central Schools. By virtue of Section 4(2) of the Ordinance, the effect of taking over of the non-Government High Schools by the State Government would be that all the Headmasters, teachers and other employees of the High School would be under the control of the State Government and they would be State Government employees. If it is so, then Rule 56 of the Bihar Service Code (hereinafter referred to as "the Code") will come into play. Rule 56(a) provides that "the State Government may transfer a Government Servant from one post to another...". It is, therefore, clear that the Headmasters, teachers and other employees became Government servants and, as such, the State Government is empowered to transfer them from one post to another. In this connection, it is relevant to note that if a clerk is appointed on a certain district either in the Collectorate or in the District Civil Court, such a clerk or peon can be transferred within that district from one to another post. Hence, the State Government also can transfer a Headmaster or other teachers within the same district. This method of transfer can be changed only by making rules by the State Government. So long as the rules are not framed about the service conditions of the teachers, Headmasters and other employees. I direct the Director of the Board to follow the practice of transfer of Headmasters, teachers and other employees within the same district. This type of transfer is already prevalent in other departments of the State Government.

4. Learned Counsel for the petitioner has not challenged before me the validity of the appointment of respondent No. 6 to the post of Headmaster. It is conceded by Mr. Mishra, learned Counsel for the petitioner, that respondent No. 6 was appointed by the Board out of the panel recommended by the Education Service Commission. Previous to the Ordinance, the decisions of this Court and 1977 Circular start that each school was an independent unit. Learned Counsel for the petitioner has cited several decisions which do not apply to the facts of this case. Those decisions relate to the appointment of teachers or Headmaster in respect of vacancies which occurred before 2nd October, 1980. This has also been conceded by Mr. Mishra before me.

5. Mr. Mishra has relied on three decisions of this Court, namely, (1) the case of Sri Dayanand Jha v. The State of Bihar and Ors. C.W.J.C. No. 1965 of 1981

disposed of on 1st September, 1981 the case of Sri Demi Singh v. The State of Bihar and Ors. C.W.J.C. No. 2239 of 1981, disposed of on 17th September, 1981, and the case of Keshav Singh v. The State of Bihar and Ors. C.W.J.C. No. 1119 of 1980, disposed of on 26th November, 1981.

6. In the case of Sri Dayanand Jha (supra), the vacancy occurred before 2nd October, 1980. In this case, it has been held that the terms and conditions of the services of Headmasters, teachers and other employees of the school prior to coming into force of the Ordinance will be governed by the circulars, then prevalent. These provisions are referred to in Section 4(3) of the Ordinance. So far as the petitioner in the present case is concerned, he was an Assistant Teacher in Mahant Harihar Das High School, By virtue of Section 4(3) of the Ordinance, he will continue to hold the post of Assistant teacher in Mahant Harihar Das High School, Gulmahiabagh. It is also clear from paragraph No. 16 of the counter-affidavit that the petitioner was an Assistant teacher and he was not even appointed as Acting Headmaster of the aforesaid High School. If he was not elevated to the post of Acting Headmaster, then he cannot claim, as a right, the post of Headmaster. After coming into force of the Ordinance, the school lost the independent identity. By virtue of the Ordinance, all the non-Government High Schools were converted into Government High Schools and all the teachers, Headmasters and other employees working in that High School became State Government employees. If they became the State Government employees, the State has the right to transfer them within the same district. By virtue of the Act, the Board became the appointing authority of the Head-masters, teachers, etc. of the High Schools. In the beginning, the Managing Committee used to manage the High Schools and appoint the Headmasters, teachers, etc. Therefore, in my opinion, the decision does not apply to the facts of the present case. It is also clear from the judgment that the Headmaster in that case was not validly appointed. Therefore, the facts of that case do not apply to the present case.

7. So far as the decision in Sri Dani Singh's case is concerned, it also relates to a vacancy which occurred before 2nd October, 1980, and this fact is also conceded by the learned Counsel for the petitioner. In this case, the Headmaster (respondent No. 4) was not validly appointed as it is clear from the following observations:

In the present case, it will appear that such a panel was prepared on 6th June, 1980, in which the name of respondent No. 4 was also included. This will appear from Annexure-8 to the supplementary affidavit filed on behalf of the petitioner. The submission is that this panel is valid only for a period of one year as provided u/s 43(4) of the Secondary Education Board Act, 1976. Learned Counsel contended that on 2nd July, 1981, this panel was not valid and respondent No. 4 could not be appointed as the Headmaster of the school on that basis. There is much force in this submission.

Therefore, in that case the Headmaster was not legally appointed, having been appointed, after the expiry of one year from the date of the constitution of the

panel. Hence, this decision also does not apply to the present case.

9. So far as the Division Bench decision in the case of Keshav Singh v. State of Bihar and Ors. (supra), disposed of on 26th November, 1981, is concerned, that case also relates to a vacancy which occurred prior to 2nd October, 1980. Hence, this decision also does not apply to the facts of the present case.

9. Learned Counsel of both the parties have relied on Annexure-4. This is a letter written by the Special Secretary, Education Department, to the District Education Officers, It is dated 20th November, 1981, The subject of the letter related to the promotion of Headmasters on the vacant posts which fell vacant before 2nd October, 1980. In that letter, it was mentioned that if any vacancy occurred before 2nd October, 1980, then the High Schools will be treated as independent units and the Headmasters will be appointed on the basis of eligibility and on merit. Therefore, this letter relates to any vacancy occurring before 2nd October, 1980 in any High School in respect of the post of Headmasters. But, it was also mentioned in this letter that after 2nd October, 1980, the promotion should be made on the basis of the gradation list of the cadre to be prepared by the department.

10. Learned Counsel for the petitioner contends on the basis of Annexure-4 that so long as the gradation list of the cadre is not prepared, every school should be treated as an independent unit and Headmaster should be appointed from that school only. I am unable to accept his argument in view of the promulgation of the 1980 Ordinance. So far as Annexure-4 is concerned, the letter related to the filling up of the vacancy of the post of Headmaster which occurred before 2nd October, 1980, The authority ought not to have mentioned the procedure to be followed after 2nd October, 1980. In my opinion, the Court should not take into consideration this portion as it is contrary to the subject mentioned in the letter and this can be ignored. On a perusal of this Annexure-4, it is clear that if a vacancy of Headmaster occurs before 2nd October, 1980, that should be filled up from amongst the teachers of that High School. The position has changed after the Ordinance of 1980 came into force as these teachers became Government servants u/s 4(2) of the Ordinance. If they became Government servants, the procedure of transfer in respect of the State Government employees will apply to these teachers as well. This aspect of the matter has not been considered in any case of the Patna High Court and it is conceded by, learned Counsel of both the parties.

11. Learned Counsel for the petitioner contends that if the petitioner is not appointed as Headmaster of his own High School, then he will never be appointed Headmaster of any High School. I suggest to the Director to consider the case of the petitioner and, if the petitioner is found eligible for the appointment of Headmaster, then he should be appointed Headmaster of some other High School.

12. I have been very much impressed with the argument of Mr. Alakh Raj Pandey

who, in my opinion, has argued the case with ability and sincerity.

13. In the result, the petition is dismissed and the case is remanded to the Director, Bihar Secondary Education Board, to consider the case of the petitioner for being appointed as the Headmaster of any other High School. The parties shall bear their own costs.

14. Let a copy of this order be sent to the Director, Bihar Secondary Education Board.