

(1991) 12 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3916 of 1991

Brij Nandan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-1991

Acts Referred:

Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 — Rule 5(AA) (3)(C)
Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 9

Citation : (1993) 1 PLJR 397

Hon'ble Judges : S. Roy, J; Chaudhary S.N. Mishra, J

Bench : Division Bench

Advocate : T.N. Jha and G.P. Singh, for the Appellant; R.N. Yadav for Respondents No. 1 to 5 and M/s T.B. Singh, R.K. Singh, N.K. Sinha and R.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Roy & Chy. S.N. Mishra, JJ.—The petitioner in this application has challenged the validity of Annexure-8 by which he was directed to hand over charge of the office of the Head Master of Orro High School in the district of Nawadah to respondent no. 6. He has also challenged the validity of Annexure-10 whereby respondent no. 2 held that respondent no. 6 is senior to the petitioner as an Assistant Teacher. There is dispute regarding the inter se seniority between the petitioner and respondent no. 6. The petitioner moved this Court in C. W. J. C. No. 6660 of 1990 which was disposed of by directing to the respondent No. 2 to decide the question of inter se seniority between the petitioner and respondent no. 6 by a reasoned order. Copy of the order passed in the earlier writ application is Annexure 9 to this application. Respondent no. 2 thereafter, by annexure-10, has held that respondent no. 6, is senior to the petitioner.

2. The following facts are not in dispute.

The petitioner was appointed as an Assistant Teacher on 1.1.1960 by the then Managing Committee. The petitioner was then an Intermediate. He obtained a degree of Sahitya Alankar, equivalent to graduation, in August, 1966. He obtained training on 27.11.1970. He is drawing salary of a trained graduate. Respondent no. 6 was appointed as an Assistant Teacher on 1.2.1966. He was then a graduate. He obtained training on 26.12.1971. He is drawing his salary in the scale of a trained graduate.

3. It will thus appear that the petitioner, then an Intermediate, was appointed earlier than respondent no. 6, a graduate, as an Assistant Teacher.

4. There is no dispute that for Assistant Teachers, there are three scales of pay, i.e. selection grade, subordinate grade and junior grade. Both the petitioner and respondent no. 6 are in the subordinate grade. There is also dispute that the inter se seniority between the petitioner and respondent no. 6 shall have to be decided on the basis of rules framed u/s 9 of the Bihar Non-Government Secondary Schools (Taking Over of Management & Control) Act, 1981. The rules framed thereunder are known as the Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983, (hereinafter referred to as the rules).

5. Rule 5 of the rules lays down the factors to be taken into consideration for the purpose of determination of inter se seniority. Reliance was placed by the Learned Counsel appearing on behalf of the parties to rule 5 (AA) (3) (C) which reads as follows :?

6. According to the Learned Counsel for the petitioner, for determining inter se seniority date of entry in service is relevant and not the date of graduation. It was urged that since the petitioner entered in service on 1.1.1960 and the respondent no. 6 on 1.2.1966, former shall have to be treated as senior to the latter. It has also been stated that at all relevant time, except when annexure-8 was issued, the petitioner has been treated senior to the respondent no. 6

7. Learned Counsel appearing on behalf of respondent no. 6 submitted that clause (c) provides that inter se seniority between teachers, like the petitioner and respondent no. 6 in the subordinate grade, shall have to be determined keeping in view the date of their graduation and not the date of entry in service.

8. Clause (C) firstly provides that trained post-graduate, trained graduate, physically trained graduate, Acharya, Fazil and equivalent qualifications or other qualified teachers who were appointed in the scale of trained graduate shall be treated as teachers in subordinate grade. It secondly provides that untrained graduates appointed upto 18th, September, 1972 shall also be treated teachers in subordinate grade. It is thus clear that untrained graduates appointed upto 18th. September, 1972 have been put at par with trained graduates so far grade is concerned. It thereafter provides that inter se seniority of such teachers that is untrained graduate, if appointed upto 18th. September, 1972, will be determined on the basis of the date of joining as such untrained graduate teachers. From perusal of clause (C) we find that diploma in Intermediate has not been

mentioned therein.

9. Today, both the petitioner and respondent no. 6 are trained graduates. Untrained graduates appointed upto 18th. September, 1972 have been clubbed together with trained graduates. For the purpose of determining inter se seniority, the date of graduation of such untrained teachers, who were appointed upto 18th. September, 1972, is crucial. We have already noticed that the petitioner was an Intermediate when he joined the school and became a graduate in August, 1966, whereas respondent no. 6 was a graduate in February, 1966. But neither was initially appointed in the scale of a trained graduate. In view of the fact that initial appointment of respondent no. 6 was as an untrained graduate, in our opinion, under clause (C), respondent no. 6 must be held to be senior to the petitioner. We, therefore, find no infirmity in annexure-10. Consequently, there is nothing wrong with annexure-8.

10. Rule 5 (4) referred to at the time of bearing of this application reads as follows :?

11. So far rule 5 (4) is concerned, it provides, inter alia, that persons appointed as teachers after 18th. September 1972 having academic qualifications mentioned therein, shall be treated to be teachers of junior grade. So far rule 5 (4) is concerned, in view of the fact that neither the petitioner nor respondent no. 6 is a teacher in junior grade, this rule has no relevance.

12. This application is, therefore dismissed.

13. After we dictated the order, Learned Counsel appearing on behalf of the petitioner submitted that a regular Headmaster of the School should be appointed without delay, to which Learned Counsel appearing on behalf of respondent no. 6 has no objection. For proper administration of the school in question it is essential that a regular Headmaster be appointed. It is ordered that respondent no. 2 shall take appropriate steps forthwith for appointment of a Headmaster on a regular basis in the school in question in accordance with law.