
(2009) 01 JH CK 0003
In the Jharkhand High Court

Chandra Shekhar Prasad Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 01 JH CK 0003

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application to the letter No. 832 dated 18.06.2008 (Annexure-11) written by the Respondent No. 5 addressed to Respondent No. 6 stating therein that the petitioner's father could not be treated as a Government Servant and therefore the petitioner's appointment on compassionate ground is illegal and irregular. Besides his prayer for quashing the aforesaid letter, the petitioner has also prayed for restraining the respondents to act thereon. The petitioner has also prayed for quashing the Office Order No. 1285 dated 23.07.2008 issued by the Respondent No. 6 (Annexure-13) whereby the payment of the petitioner's salary has been stopped.

2. Facts of the case in brief is that the petitioner's father Late Mahendra Prasad Ram was appointed on the post of Assistant Teacher in the year 1983 along with several others, by the order of the then District Superintendent of Education, Sahebganj. Later, such appointments were declared illegal by the Special Secretary, Department of Education, Government of Bihar, Patna sometime in the year 1983-84 and the payments of salary of the petitioner's father and others were stopped. Being aggrieved, the petitioner's father along with other teachers filed a writ petition before the Patna High Court against withholding of their salary vide C.W.J.C. No. 3852 of 1984. While disposing of the writ application by its order dated 19.12.1984, the Court had directed the respondents to pay the salary to the teachers since it was the admitted case of the party that the teachers were continuously working on their respective posts. Thereafter, the

Special Secretary, Department of Education, Government of Bihar, Patna by his order, terminated the services of the petitioner's father and that of several other teachers. Being aggrieved, the teachers including the petitioner's father filed another writ application before the Patna High Court vide C.W.J.C. No. 177 of 1985. By an interim order dated 26.03.1985, while admitting the writ application for hearing, the Court had stayed the operation of the termination order.

Meanwhile, in compliance of the High Court's order passed in the earlier C.W.J.C. No. 3852 of 1984, the Respondent No. 6 issued a directive vide Memo dated 15.03.1986 to pay the salary to the appointed teachers which was earlier stopped. Accordingly, payment of salary to all such teachers including the petitioner's father was resumed and they continued to discharge their duties as Assistant Teachers in their respective schools. The petitioner's father was posted at the relevant time at the Primary School, Demba in Mirzachowki Circle.

During the period of his service, the petitioner's father Late Mahendra Prasad Ram died in harness on 05.02.1996. After the death of his father, the Respondent No. 6 by his letter dated 05.08.1997 addressed to the Deputy Director of Primary Education, Bihar, Patna, sought for guidelines in the matter of payment of family pension, gratuity and also for the appointment of one of the dependents of the deceased teacher on compassionate ground. In reply, the Respondent No. 6 was advised by the Deputy Director of Education, Bihar, Patna vide his letter dated 05.08.1997 to act in accordance with the Rules considering the fact that the deceased at the time of his death was treated to be in service and was paid the amount of Group Insurance and unavailed earned leave.

The petitioner thereafter filed his application praying for his appointment on compassionate ground. The Respondent No. 6 by his letter dated 18.03.1998 referred the petitioner's application to the Deputy Commissioner, Sahebganj and in due course, the petitioner's case was put up before the District Compassionate Committee, Sahebganj on 24.04.1998 for taking a decision on the petitioner's prayer for his compassionate appointment. After inviting all relevant detailed information regarding the petitioner's claim and the grounds thereon from the Respondent No. 6, the District Compassionate Committee at its meeting dated 20.12.2001 took a decision that the petitioner was found eligible for his appointment on the post of Clerk. The recommendation of the District Compassionate Committee was forwarded to the Deputy Commissioner - cum - Chairman of District Compassionate Committee through the concerned department on 30.03.2002. The recommendation so forwarded to the concerned authorities and ultimately by the order of the Regional Deputy Director of Education, Santhal Pargana Division, Dumka dated 27.06.2002, the petitioner was appointed on the vacant post of Clerk in the Office of Respondent No. 6. On being so appointed, the petitioner, since the date of his joining the post on 29.06.2002, was continuously in service without any blemish.

While the petitioner's appointment came to be accepted and regularized by the respondents, the District Education Officer, Sahebganj called for the concerned

documents relating to the petitioner's appointment from Respondent No. 6 and thereafter by his impugned letter dated 18.06.2008 addressed to the Respondent No. 6, the District Education Officer (Respondent No. 5) declared that the petitioner's appointment was illegal since the petitioner's father Late Mahendra Prasad Ram could not be treated as a Government Servant and as such, the services of the petitioner should not be taken any further.

On the above direction being communicated to the petitioner, he filed his representation before the Respondent No. 6 questioning the propriety of the decision taken by the Respondent No. 5. It is this decision of the Respondent No. 5 and the consequent actions of the Respondent No. 6 refraining from taking any further work from the petitioner and stopping payment of salary, that has been assailed in this writ application.

3. A counter affidavit has been filed on behalf of the Regional Deputy Director of Education, Dumka (Respondent No. 4) as also on behalf of the District Superintendent of Education, Sahebganj (Respondent No. 6).

4. Heard learned Counsel for the petitioner and learned Counsel for the Respondents.

5. Assailing the impugned orders, the learned Counsel for the petitioner submits that the respondent No. 5 has acted beyond his jurisdiction in taking a decision contrary to the decision taken by the District Compassionate Committee which was virtually amounts to reviewing the decision taken by the District Compassionate Committee. Learned Counsel adds further that having accepted the services of the petitioner's father in the post of Assistant Teacher and having granted all retiral benefits as applicable to Government Teachers and after having sanctioned the family pension to the widow of the deceased employee, the respondents cannot now retract from their original stand and claim that the petitioner's father could not be considered to be a Government Servant. Learned counsel submits further that the impugned decision of the Respondent No. 5 and the order of terminating the petitioner's service is illegal on the further ground that before taking such decision, the petitioner was not afforded any opportunity of being heard and therefore such decision being contrary to the principles of natural justice and equity, the same has to be treated as arbitrary, void and illegal.

4. A counter affidavit has been filed on behalf of the Regional Deputy Director of Education, Dumka (Respondent No. 4).

5. While admitting the fact that the petitioner was appointed on compassionate ground and posted in Class-III service as a Clerk, the impugned orders have been sought to be supported on the following explanations:

(i) A complaint was received on 03.11.2007 from one Professor Najarrul Islam, Deputy Chairman of the Twenty Point Programme Implementing Committee, Sahebganj questioning the legality of the petitioner's appointment. On receipt of

the complaint, the Respondent No. 4 called for all the relevant documents pertaining to the petitioner's appointment including the details of the services of the petitioner's father, from the District Education Officer, Sahebganj (Respondent No. 5). The District Education Officer, Sahebganj (Respondent No. 5), after conducting an enquiry, submitted his Enquiry Report (Annexure-11) stating that the father of the petitioner could not be treated as a Government Servant and as such, the appointment of the petitioner on compassionate ground on the death of his father was illegal. The District Education Officer, Sahebganj had also informed that the name of the petitioner's father did not appear in the panel prepared by the State Government nor was he re-appointed and therefore, he could not be treated as a Government Servant and as such, by reference to the contents of the Government Circular No. 13293 dated 05.10.1991, since the benefits of compassionate appointment could be given only to the dependents of the deceased Government Servants, the petitioner could not have claimed the benefit of compassionate appointment on the ground of demise of his father.

It is further sought to be explained that earlier in the year 1981-82 a large number of teachers were illegally appointed by Shri Bhola Ram, the then District Superintendent of Education, Sahebganj.

On detection of the illegality, the appointments of all such teachers were terminated. The aggrieved teachers thereafter moved the High Court of Patna and the matter went up to the Hon'ble Supreme Court. Pursuant to the orders passed by the Courts in the analogous cases, a fresh panel of the eligible and qualified teachers were prepared and published by the Secretary, Primary and Adult Education Department, Government of Bihar vide Memo No. 1813 dated 24.08.1994. The name of the petitioner's father did not appear in the panel. The obvious inference therefore was that he did not possess the requisite qualification and therefore, he could not be considered for his re-appointment. However, instead of immediately terminating his services, he was allowed to continue in service and during the period of continuing in service, he died in harness on 05.02.1996.

It is further stated that before terminating his services, the petitioner was served with a notice calling upon him to submit his explanation in respect of his illegal appointment on compassionate ground and against the proposed termination of his services. Instead of submitting any explanation the petitioner simply filed a statement that he has already challenged the impugned letter dated 18.06.2008 and requested for awaiting the final decision of the Court.

6. A Separate counter affidavit has been filed by the District Superintendent of Education, Sahebganj (Respondent No. 6). Taking umbrage at the imputations leveled against her by the Respondent No. 5 that she had not submitted the relevant documents called for, the Respondent No. 6 has asserted that in response to and in compliance with the order of the District Education Officer (Respondent No. 5) vide his letter dated 14.06.2008, she had made available all records pertaining to the petitioner's appointment to the Respondent No. 5 in

present of the Head Clerk of the District Education Office under a forwarding letter (Annexure-B). She has further stated that on the recommendation of the District Compassionate Committee taken at its meeting dated 20.12.2001 and after considering all the relevant documents, Government Resolutions, Notifications, Public Directives of the State Government, the Regional Deputy Director of Education, Santhal Pargana, Dumka (Respondent No. 4), who is himself the appointing authority, had issued the letter of appointment to the petitioner on the Class-III post. The relevant documents which were submitted by the Respondent No. 6 and placed before the Compassionate Appointment Committee, included the direction/instruction of the then Deputy Director, Secondary, Primary & Adult Education, Government of Bihar, as contained in Memo No. 2833 dated 13.12.1997 and it was after proper discussion and consideration of all the relevant factors that the Compassionate Appointment Committee had recommended for the petitioner's appointment. It was after a lapse of more than six years of such appointment that the District Education Officer, Sahebganj has raised a new dispute beyond his jurisdiction stating that the father of the petitioner cannot be treated as a Government servant and also alleging that the Respondent No. 6 has been "encouraging the illegal appointment of the petitioner".

7. From the rival submissions the facts which emerge are that the petitioner's father was initially appointed as a teacher along with several other teachers. Such appointments were terminated on the ground of being illegal. The affected teachers had approached the Patna High Court against the order of termination of their services and the matter went up to the Supreme Court. Pursuant to the decisions and directions given by the Supreme Court and the High Court, a fresh panel of teachers was prepared by way of reappointment of the teachers whose services were terminated. Such panel was prepared after verifying the qualifications and eligibility criteria of the candidates.

It appears that the name of the petitioner's father did not find places in the panel suggesting thereby that he was not re-appointed. However, he continued to remain in service pursuant to an interim order of stay passed by the High Court in a writ application which he had preferred, presumably against the non-inclusion of his name in the panel. The respondent authorities, therefore, while allowing him to remain in service, had paid him his salary against his services. While in service, the petitioner's father died in harness and thereafter, the petitioner applied for his compassionate appointment. The Compassionate Appointment Committee considered all relevant documents and being satisfied that the petitioner's father was continued to be treated as a Government teacher, had recommended for the petitioner's compassionate appointment in 2001 and since then, the petitioner has been in continuous service.

8. Though the respondents have taken a stand that the petitioner's father cannot be treated as a Government teacher on the ground that his name did not appear in the panel but from the entire counter affidavit it appears that the

respondents have not thrown any further light on the writ application which the petitioner's father had filed before the Patna High Court and the decision if any of the Court on the writ application. It is in the writ application of the petitioner that reference appears to have been made regarding the writ petition filed by his father and the order of interim stay passed by the Court therein. In absence of any detailed information in this regard the counter affidavit of Respondent No. 4 and considering the fact that the petitioner's father despite his name not appearing in the panel of re-appointed teachers, was allowed to continue in service till the date of his death, the only inference which can be drawn is that the respondent while allowing the petitioner's father to continue in service albeit pursuant to the interim order passed by the High Court in the writ application filed by the deceased, had considered him to be a Government and had extended all benefits to him which are applicable under the Government Rules to Government teachers, as long as he was alive and even after his demise, the family pension payable to a Government teacher, was also fixed and released in favour of his widow. Having treated the petitioner's father as a Government teacher all along, the respondents cannot now, after his death, derecognize him as a Government teacher.

As would be evident from the counter affidavit of the Respondent No. 6, all the relevant documents pertaining to the services of the petitioner's father, the salary paid to him as well as the fact that the family pension was fixed and is being paid to his widow, as well as the relevant documents pertaining to the petitioner's identity and his qualification etc., were placed before the Compassionate Appointment Committee comprising of as many as 21 members including the Deputy Commissioner-cum-Chairman and after thorough deliberations on all the aspects, the Compassionate Appointment Committee was satisfied of the petitioner's eligibility for his appointment on compassionate ground and had recommended for his appointment accordingly. The Respondent No. 4 who is the appointing authority, had also accorded his own satisfaction on the recommendation of the Compassionate Appointment Committee and had issued the letter of appointment in favour of the petitioner way back in 2001. The petitioner has been regularized in permanent service. The impugned decisions for terminating the petitioner's service has now been passed after about six years of his appointment. It further appears, even as confirmed in the counter affidavit of the Respondent No. 6, that prior to the issuance of the impugned order of termination of the petitioner's services and with-holding payment of his salary, no notice was issued to the petitioner nor any opportunity given to him to defend against the proposed termination of his services. The notice referred to by the Respondent No. 4 in his counter affidavit was issued to the petitioner only after the impugned orders were already passed and in response to which the petitioner had informed that he has preferred the instant writ against the impugned orders.

The facts and circumstances discussed above indicate that the purported non-inclusion of the name of the petitioner's father in the panel of re-appointed

teachers was itself under challenge by the petitioner's father before the Patna High Court. The petitioner ought to have been given an opportunity of explaining the matters relating to the alleged non-inclusion of the name of the petitioner's father in the panel.

9. In the light of the above discussions, I find merit in this writ application. Accordingly, this writ application is allowed. The impugned orders (Annexure - 11 and Annexure - 13) are hereby quashed.