
(2004) 04 JH CK 0089

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1803 of 2002

Charanjeet Kaur Gill

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 434

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; Suresh Kumar, J.C. to AAG, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Sahay, J.—The order dated 4.2.2002 (Annexure-8) passed the District Superintendent of Education. East Singhbhum, Jamshedpur, has been challenged in this writ petition, whereby the DSE has cancelled the approval of the appointment of the petitioner to the post of a teacher in Kalgidhar Middle School on the ground that she was untrained and thereby has directed the Managing Committee of the School to terminate the service of the petitioner in view of the Departmental Rules and in case the services of the petitioner is not terminated by the Managing Committee of the School, then the Department shall not be responsible in any way for the payment of the salary to the petitioner.

2. According to the case of the petitioner, she was working as Assistant Teacher in Kalgidhar Middle School, Tuila Dungri, Jamshedpur which is a minority School and for which the entire financial assistance is being provided by the State of Jharkhand.

3. The petitioner being a member of Scheduled Caste, was appointed to the post of Assistant Teacher in Punjabi language by the Managing Committee of the said School. The services of the petitioner was approved by the District

Superintendent of Education, Jamshedpur vide office order dated 29.7.1989 (Annexure-2) on the basis of recommendation of the Secretary of the said School. It is stated that since January, 1996 the payment of salary of the petitioner was suddenly stopped. It is stated that by issue of Annexure-5, the District Superintendent of Education, Jamshedpur vide his letter dated-13.6.1997, informed the Secretary of the said School that the proposal for fixation of the pay-scale of the petitioner Mrs. Charanjeet Kaur Gill on the basis of 5th Pay Revision was sent to the Director of Primary Education, Bihar, Patna, but the same has been returned because the petitioner was not a Trained teacher whereas the minimum requisite qualification for appointment of a Teacher in a minority school is Matric Trained and there is no provision for appointment of any untrained person to the post of Assistant teacher.

4. The petitioner thereafter filed CWJC No. 3760 of 1997 (R), before this Court challenging the said letter of the D.S.E. (Annexure-5).

5. This Court by order dated 19.8.1999 allowed the said writ application and set aside the order dated 13.6.1997 and directed the respondents to pay the salary to the petitioner which was due to her since January, 1996, taking into consideration that the petitioner has performed her duties. The order passed by this Court in the said writ application being CWJC No. 3760 of 1997 (R) has been annexed as Annexure-6 to the present writ application.

6. In the said order, it was held that there was nothing on the record to suggest that any order of termination of the service of the petitioner was issued by the respondents and, thereafter the respondents could not have withhold the salary of the petitioner which she was entitled, for the period she had actually performed her duty.

7. Learned counsel for the petitioner has submitted that this Court held in the aforesaid writ application i.e. CWJC No. 3760 of 1997 (R) that the petitioner being a member of the Scheduled Caste was eligible to be appointed in the absence of a trained candidate in the light of the provision incorporated in Clause VI of the Non-Government Primary School (Control of taking over). Ordinance, 1976 and, therefore, the impugned order as contained in Annexure-8 to the present writ application, cancelling the approval of the appointment of the petitioner was illegal and, as such, is liable to be quashed.

8. On the other hand, learned counsel for the State, on the basis of the averments made in the counter affidavit, has submitted that the Education Department of the Government of Bihar by issue of Notification No. 2501, dated 31.12.1992 has specifically provided that an untrained teacher cannot be appointed in any minority school after 1.1.1977. The said Notification dated 31.12.1992 has been annexed as Annexure-A to the counter affidavit. Learned counsel for the State has drawn my attention to Clause-2 (iv) (Kha) of the said Notification and submitted that the minimum qualification for appointment of a teacher was a matric trained. It further envisages that any untrained teacher

appointed after 1.1.1977 shall not be recognised on any condition and, therefore, the order as contained in Annexure-8 passed by the District Superintendent of Education, cancelling the approval of the appointment of the petitioner was perfectly justified and valid.

9. After hearing the respective submission of the learned counsel for the petitioner I find that the submission of the learned counsel for the petitioner that this Court by its order dated 19.8.1999 passed in CWJC No. 3760 of 1997 (R) has already held that the petitioner being Scheduled Caste candidate was eligible to be appointed in absence of a trained candidate, is not correct. From a careful perusal of the aforesaid order passed by the Court, I find that there is no finding in the said order that the petitioner being a Scheduled Caste candidate was eligible to be appointed for the post of Assistant Teacher, though she was untrained. From Paragraph 1 of the aforesaid order dated 19.8.1999 of this Court, it appears that the petitioner had filed the said writ petition, against the order of the District Superintendent of Education, withholding, the Salary of the petitioner, therefore, a prayer was made to direct the respondents to pay the salary to her which she was entitled to be paid because she had worked against the post during the said period.

10. Therefore, as it appears it was not an issue in the said case as to whether the petitioner was eligible for the appointment to the post of Assistant Teacher in a Minority School only on the ground that she belonged to the category of Scheduled Caste, though she was not a trained teacher. Rather the point involved in the said writ application, was only as to whether the respondents were justified in withholding the salary of the petitioner without even termination of their service and whether the petitioner could have been deprived of her salary though she had worked against the said post.

11. Whereas, in the present case, the point for consideration is as to whether in view of the Notification dated- 31.12.1982 as contained in Annexure-A to the counter affidavit wherein, there is a specific bar for appointment of an untrained person as teacher on and from 1.1.1971, the appointment of the petitioner in a Minority School who is not a trained teacher can be said to be valid and as to whether the order as contained in Annexure-8 which has been passed relying on the said Notification dated 31.12.1982, is legal and Valid?

12. Even according to Clause 2 (cha) of the instruction issued by the Government of Bihar, dated the 15th of December, 1976 which has been relied on by the learned counsel for the petitioner, it appears that it only envisages that in case a trained candidate is not available for being appointed as a teacher in reserved category then in that special circumstance, an untrained person having other educational qualification can be appointed.

13. For ready reference, the aforesaid Clause 2 (cha) of the Instruction is quoted hereinbelow :

jp- izf"kf{kr vH;fFkZ;ksa ds miyC/k ugha jgus ij gh fo"ks"k ifjLFkfr esa vkjf{kr

dksfV esa fofHkUu "kSf{kd ;ksX;rk ds vizf"kf{kr vH;fFkZ;ksa dh fu;qf? dh tk ldsxh A

14. From the aforesaid quoted provision, it is clear that only when the post of teacher under the reserved category has to be filled up and no trained candidate is available then in the special circumstance, even an untrained person can be appointed, but in the present case, it is not the case of the petitioner that the post against which, she was appointed was for the applicants of reserved category and no trained person belonging to reserved category was available for the said post and, therefore, then in that situation and circumstance, she was appointed even though she was not trained. Therefore, in view as per the Government Notification dated-31.12.1982 (Annexure A), no untrained persons can be appointed as Teacher in ,a minority School even though he/she belongs to a reserved category and Clause 2 (iv) kha completely bars such appointment of any untrained person.

15. In view of my discussions and finding above, I hold that the District Superintendent of Education was perfectly justified in cancelling the approval of the appointment of the petitioner on the ground that she was not eligible to be appointed in a Minority School as she was not a trained teacher and it was in violation of the Notification dated 31.12.1982.

16. The decision of the Supreme Court in the case of J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers, reported in 1996 (6) SCC 674, cited by the petitioner is also of no help to her. In the said case also, the Supreme Court has held that the Management has full freedom to appoint any person either from the staff of the same school or from outside subject to restriction as regards as qualification prescribed under Statues, Rules or Regulation. Accordingly I find that the petitioner is not entitled to the relief as prayed for in this writ application and, as such, this application dismissed.