

(1992) 09 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6266 of 1991

Deobansh Pandey

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 — Rule 21

Citation : (1992) 1 PLJR 221

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : R.P. Singh, B.K. Pandey and S.K. Singh, for the Appellant; S.A. Khan for the State and M/s Bishnu Kant Dubey, Mithilesh Kumar Rai and Narendra Nath Jha for the Respondent No. 4, for the Respondent

Judgement

G.C. Bharuka, J.—In this writ application the prayer of the petitioner is that an appropriate writ or direction be issued to the respondents to promote the petitioner on the post of headmaster of the High school, Kharar, in the district of Gaya (hereinafter to be referred to as "the school" only) with effect from 31.1.1983 treating the school as a separate unit. According to the petitioner, as stated in the writ application, the school was established in the year 1969 and a Managing Committee was constituted for its administration. Permission for its establishment was granted by the Bihar Secondary Education Board (hereinafter to be referred to as "the Board" only) on 19.1.1971 and was granted partial recognition with effect from 1.1.1970. Permanent recognition was granted to the school with effect from 1.1.1975. The management of the school was taken over by the Government under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980, with effect from 2.10.1980. The provisions of the said Ordinance were enacted as Act no. 33 of 1982 thereafter to be referred to as "the Act" only).

2. The petitioner was appointed as an assistant teacher by the Managing Committee of the School on 22.12.1969 in the scale of untrained graduate. Shri

Bhagwan Prasad, Respondent no. 4 was appointed as an assistant teacher by the Managing Committee on 6.4.1970 and he was granted untrained graduate scale from October, 1971. The respondent no. 4 passed B. Bd. examination on 2.12.1973 and the petitioner passed diploma in teaching on 12.3.1977 and, accordingly, the Managing Committee granted B. A. trained scale to the respondent no. 4 from 2nd December, 1973, and to the petitioner from 12th March, 1977.

3. One Shri Tribeni Prasad was appointed as the headmaster of the school on 4.7.1979, who superannuated on 31.1.1983 and handed over charge of the office of headmaster to the petitioner pursuant to a direction issued by the District Education Officer. Accordingly, the petitioner started functioning as acting headmaster of the school. Subsequently one Sri Hasan Imam, an assistant teacher of Gaya High school, Gaya, was promoted in the cadre of the headmaster and was posted in the school on 16.4.1986. On 1.8.87 the petitioner was transferred from the school to the High school, Narhat, in the district of Nawada as an assistant teacher, where he is at present working in that capacity.

4. It appears that in the year 1987 a gradation list was prepared on the basis of seniority for giving time-bound promotion to the teachers of Magadh division, which was communicated to the officers concerned on 20.4.1987 for necessary action. In the said gradation list, the petitioner was shown senior to the Respondent no. 4. On 31.12.1987 the headmaster of the school retired and, accordingly, the respondent no. 4, who was the seniormost teacher in the school, was directed to act as Acting headmaster with effect from 1.1.1988. Subsequently, by a notification dated 20.7.1991 as contained in Annexure-10 to the writ application issued by the Respondent Director, respondent no. 4 has been appointed as headmaster of the school. From the aforesaid notification, it appears that the respondent no. 4 has been appointed as the headmaster of the school pursuant to the powers conferred on the Director u/s 10 (9) of the Act and in accordance with the recommendations of the School Service Board in the light of the Government Order No. 511 dated 20.11.1981 and departmental letter no. 1072 dated 9.11.1987. The respondent no. 4 has been appointed as headmaster with effect from 1.1.1988.

5. Learned Counsel appearing for the petitioner has assailed the impugned notification as contained in Annexure-10 to the writ application, appointing the respondent no. 4 as headmaster of the school, on the ground that since the post of the headmaster in the school had fallen vacant between 2.10.80 and 26.9.1983 i.e. after the nationalisation of the school but before coming into force of the rules framed under the Act, the petitioner ought to have been appointed as headmaster of the school as being the seniormost teacher of the school because in Government letter no. 511 and the Government letter, referred to in the impugned notification (Annexure-10) the promotion to the post of headmaster was to be effected by treating the school as a unit. Further submission is that at the time the post of headmaster had fallen vacant in 1983,

the petitioner was the seniormost eligible teacher in the school and, as such, he was entitled for being promoted to the post of headmaster as that right is vested in him and his mere transfer to another school did not destroy the same right. Accordingly, it was submitted that the post of the headmaster was to be filled up by granting promotion by treating the school as a unit and, in view of the Government orders referred to in the impugned notification (Annexure 10) the benefit of promotion should have been granted only to the petitioner and not to Respondent no. 4, who is admittedly junior to him.

6. Learned Counsel appearing for the respondent no. 4, by referring to the statements made in the Caveat petition, inter alia, submitted that the petitioner, for his various acts of commission and omissions and embezzlement of school fund, was suspended on 18th March, 1974, and subsequently his services were terminated in June, 1974. Thereafter any how he was reinstated in the service later on but he was not paid his salary for 13 days in March, 1974. Thus there was a break in his service and, therefore, according to the Learned Counsel for the Respondent no. 4, the petitioner can not be deemed to be in continuous service of the school, so as to fulfill all criterion of being treated as a founder headmaster. His further submission was that the Respondent no. 4 has rightly been appointed as the headmaster of the school by recognising him as the founder headmaster in view of the Government letter no. 511 dated 20th November, 1981, read with letter no. 1072 dated 9.11.1987.

7. Since both the petitioner as well as the respondent no. 4 have based their claims on the basis of the Government letters referred to in the notification as contained in Annexure-10 to the writ application, it is necessary to examine the scope, ambit and applicability of those letters in the facts and circumstances of the present case. All Non-Government Secondary Schools including the school in question, except of certain categories as mentioned in the Act, have been nationalised pursuant to the provisions of Section 3 of the Act with effect from 2.10.1980. Section 4 (3) of the Act provides that except the age of superannuation of the headmasters, teachers and other employees of the school taken over by the State Government which was fixed as 58 years, other terms and conditions of their service shall continue to be the same, as there were before the taking over of the management and control of the school until any alteration is made therein by the State Government by framing rules in accordance with Section 15 of the Act.

8. Subsequently the State Government framed rules known as Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 (hereinafter to be referred to as "the Rules" only), which have come into force with effect from 26.9.1983 being the date of its publication in the Official Gazette. In these rules detailed provisions have been made with regard to the creation of cadre of headmaster, teachers and non-teaching staff of the nationalised secondary schools as also for their appointment, promotion, transfer disciplinary proceedings etc. It appears that since during the intervening period i. e. after the

nationalisation of the schools and before the enforcement of the Rules, it became imperative on the part of the Government to take immediate decision to meet the emergent situation with respect to filling up of the posts of headmasters, which were lying vacant on the date of nationalisation as also for promotion and transfer of the teaching and non-teaching staff and employees of the schools, various letters and directions as also circulars have been issued in purported exercise of the powers conferred on the State Government under removal of difficulties clause as envisaged u/s 16 of the Act. But after enforcement of these Rules to avoid any confusion or inconsistency, in rule 21 of the Rules, it has been specifically provided that from the date of the enforcement of the Rules, any rule or order framed or issued prior to that date by the Bihar Secondary Education Board or the State Government on the subjects concerned by the Rules shall be deemed to have been repealed.

9. It appears that after the schools of the category of the present school were nationalised on 2.10.80, the Government took material decisions for filling up of the posts of headmaster which were lying vacant on the said date. The said decisions are contained in letters no. 510 and 511 both dated 20th November, 1981. In letter no. 510 it has been provided that the said vacant posts of headmasters will be filled up from amongst the eligible and qualified teachers of the respective schools by treating the school as an independent unit. The scope and ambit of that Government letter has been considered in detail in the case of Jagdish Pandit v. The State of Bihar and others (C.W.J.C. No. 1876 of 1990) which has also been disposed of by this Bench today. Since this Government letter does not have any bearing on the facts of the present case, I do not wish to deal with the same any further. But so far as letter no. 511 is concerned, it needs a detailed consideration in this case, because the contesting parties have based their claims on this letter. This letter deals with the appointment of acting founder headmaster on the vacant post of headmaster in the schools which were recognised till 1.10. 1980. In this letter founder headmaster has been defined to mean such teacher who was in service of the school since the date of its establishment continuously without any break and who was having the requisite educational qualification and eligibility for the post of headmaster. As per Government decision in that letter such teachers should have been appointed as the headmasters if they have Seven years teaching experience in accordance with para 2(3) of that letter as substituted by subsequent letter no. 1072 dated 9.11.1987.

10. Rule 4 of the Rules provides for eligibility for appointment/promotion to the post of headmaster and rule 7 (Ka) provides the procedure for such appointment/promotion. Rule 4 (Ka) (3) (3A) provides that in the matter of direct appointment to the post of headmaster, the candidates must have 10 years teaching experience in a recognised school after graduation but in the case of scheduled tribe, Harijan and founder headmaster, 7 years minimum teaching experience will be deemed to be sufficient. In the note appended to the said Rule, it has been provided that the founder headmaster will mean a teacher, who has been

appointed in the school prior to 2.10.80 and who has been in service of the school since the date of its establishment continuously without any break and who was having the requisite educational qualification and eligibility for the post of incharge headmaster right from the beginning.

11. In the present case admittedly the post of the headmaster of the school in question has fallen vacant after 2.10.80, the date of nationalisation, first on 31.1.1983 on superannuation of Shri Triveni Prasad and subsequently on 31.12.1987 on the superannuation of Shri Hasan Imam. The said post has now been sought to be filled up by appointing the respondent no. 4 under the impugned notification dated 20th July, 1991 (Annexure-10) by relying on the aforesaid Government letter no. 511 dated 20.11.1981 as amended by letter no. 1072, referred to in the said notification.

12. In my opinion, neither the petitioner nor the Respondent no. 4 who lay their claims on the basis of the said Government letter, for seeking promotion on the post of headmaster of the school, are entitled to claim such promotion nor it was competent on the part of the respondent authorities to accord any benefit to the respondent no. 4 pursuant to the said Government letters, because of following reasons ; (i) After coming into force of the Rules, the promotion/appointment could have been made only in accordance with the provisions contained in the Rules, (ii) The Government letter in question stood repealed in view of Rule 21 of the Rules and (iii) Under the Rules a teacher could be deemed to be a founder headmaster, who, apart from other requirements is also, possessed with the requisite educational qualifications and eligibilities right from the beginning of his joining the service in the school, which neither the petitioner nor the respondent no. 4 had inasmuch as they passed their B.Ed. examination and Diploma in teaching much after their joining the service. For the reasons aforesaid, it is held that neither the petitioner nor the Respondent no. 4 are entitled to be appointed/promoted in the cadre of headmaster on the basis of their claim as founder headmaster. Accordingly, the notification as contained in Annexure-10 to writ application is quashed. The writ application is partly allowed to this extent only. However, there shall be no order as to costs.

S.B. Sinha, J.

I agree.