
(2001) 02 PAT CK 0107
In the Patna High Court
Case No : L.P.A. No. 1527 of 1999

Dhrub Lochan Pradhan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2001) 2 PLJR 345

Hon'ble Judges : Nagendra Rai, J; D.P.S. Choudhary, J

Bench : Division Bench

Advocate : R.K. Rajan, for the Appellant; Ganga Pd. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai & D.P.S. Choudhary, JJ.—This appeal u/s 10 of the Letters Patent of the High Court of Judicature at Patna has been filed against the order dated 2.11.1999 passed in CWJC No. 9062 of 1998 [reported in 2000 (1) PLJR 996] by a learned Single Judge of this Court whereby claim of the appellant to recognise him as Headmaster of High School, Kucha" District West Singhbhum from 2.10.1980 has been rejected. The case of the appellant is that he was appointed as a Headmaster in the said school on 1.1.1972. The permission to establish the school was granted by the then Bihar Secondary Education Board on 3.2.1976 wherein the services of the appellant was recognised as Headmaster. The school was permanently recognised by the said Board on 17.10.1979 and service of the appellant has been recognised as Acting Headmaster. The Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 (hereinafter referred to as the Ordinance) was promulgated which was later on replaced by Act no. 33 of 1981. According to the provisions, of the said Ordinance the services of the appellant stood transferred to the State Government as a Headmaster with effect from 2.10.1980, but the benefit of the said provision was not given to him and thereafter the appellant filed a representation before the Director, Secondary Education which was rejected. He

came to this Court in CWJC No. 3236 of 1985 and the said writ application was disposed of with a direction to approach respondent No. 2, Director. Secondary Education. The representation of the appellant was rejected on 5.10.1987. Again the appellant moved before this Court in CWJC No. 11 of 1988 questioning the validity of the order, but this Court did not interfere with the order and directed the appellant to move before the Bihar Administrative Tribunal, Patna. The appellant moved the Tribunal. In the meantime, the Tribunal ceased to function and as such no order was passed in the said matter. In 1993, the appellant was transferred to another High School at Jwalkanta. Singhbhum (East) in the capacity of the Headmaster, but later on he was treated as an Assistant Teacher and one Shri Kant Mandal was allowed to function as a Headmaster of the said School. Again, the appellant filed a writ application being CWJC No. 3072 of 1993(R) which was dismissed as withdrawn with liberty to the appellant to move before the Director, Secondary Education for relief in accordance with law. In pursuance of that, the appellant moved before the Director, Secondary Education, but no decision has been taken. In the meantime, the services of the appellant have been regularised as Headmaster but with effect from 2.10.1987 and not from 2.10.1980. Thereafter he filed the aforesaid writ application for the aforesaid relief which has been rejected as stated above. Hence the present appeal.

2. The stand of respondent-State, on the other hand is that the school in question was recognised by the Board on 17.10.1979. The State Government issued Government Orders in exercise of power conferred under the Ordinance, being Circulars No. 510 and 511 dated 20.11.1981 which provided that minimum seven years of Teaching experience was required for the purpose of approval of the services of founder Headmaster and the cut-off date for counting the services was 2.10.1980. The permission of the School in question was granted on 3.2.1976. Thus up to 2.10.1980 he has no requisite experience for the post of Headmaster and consequently he could not be appointed/promoted as a Headmaster with effect from 2.10.1980.

3. The learned counsel for the appellant submitted that the appellant should have been treated as a Headmaster of the High School from the date of take over i.e. 2.10.1980 and in support of said submission, he relied upon a judgment of the Supreme Court in the case of A. K. Pradhan vs. State of Bihar & ors., 1998 (2) PLJR (SC) 2.

4. The learned counsel appearing for the respondent-State on the other hand submitted that the appellant did not possess the requisite teaching experience on the date of take over of the school i.e. 2.10.1980 and as such his claim is not justified. The decision of the Supreme Court in the case of A. K. Pradhan (supra) is not applicable in the case of the appellant.

5. The only question for consideration in this case is as to whether the appellant's claim for treating him as a Headmaster of the said school with effect from the date of take over is to be allowed or not.

6. It is admitted position that the Ordinance was promulgated on 11th August, 1980 and the said Ordinance was enacted as the Bihar Non-Government Secondary School (Taking over of the Management and Control) Act, 1981 (hereinafter referred to as the Act) and the same was published in the Bihar Gazette on 24th January, 1982. The school was taken over with effect from 2.10.1980. The provisions of the Ordinance and the Act are identical. Section 15 conferred power on the State Government to frame rules for the purpose of carrying out the purposes of the Ordinance. Section 16 conferred power on the State Government to remove difficulties in giving effect to its provision. Section 3 deals with the provision regarding taking over of the management and control of the schools of different categories. Section 4 of the Act deals with the consequence of taking over management and control. Sub-section (2) of Section 4 refers that the services of every Headmaster, teacher or other employees of the school taken over by the State government shall be deemed to have been transferred to the State Government with effect from the date of taking over of the school and become employees of the State with such designation as the State Government may determine. Sub-section (3) of Section 4 provides that the age of superannuation of Headmasters, teachers and other employees of the schools taken over by the State Government shall be 58 years while the terms and conditions of the services would continue to be the same as before taking over the management and control of the school until any alteration is made therein by the State Government in the prescribed manner by framing of the rules.

7. The State Government proceeded to frame rules but as the framing of rules was to take time, the State Government issued two circulars being Circular nos. 510 and 511 dated 20.11.1981. These circulars were issued in exercise of power u/s 15 of the Act. Circular No. 510 contained a provision with regard to promotion of Assistant Teacher to the post of Headmaster in the Nationalised Secondary School with regard to vacancies occurring prior to 2.10.1980. It provides that the school is to be treated as a unit and the Assistant Teacher having requisite qualifications, namely, graduation from a recognised University, B.Ed and 10 years experience (in case of Scheduled caste, Scheduled Tribe and female candidates seven years of experience was required) shall be eligible for appointment to the post of Headmaster. Circular No. 511 contained a provision with regard to recognition of services of a founder Headmaster. It provided *Infer alia* that in case of founder Headmaster, the minimum experience required for the post of Headmaster would be seven years and if they have completed seven years of experience up to 2.10.1980 and possess other qualifications as provided therein, they shall be recognised as a Founder Headmaster. The said circular further provided that with regard to vacancies occurring after 2.10.1980, the appointment to the post of Headmaster shall be made according to the rules after creating a cadre of teachers on the basis of their seniority.

8. It is admitted position that the rules have been framed subsequently and it provides for filling up the posts of Headmaster by promotion as well as by direct

recruitment and there is State cadre of Headmaster and the school is not treated as a unit for the purpose of promotion to the post of Headmaster. So far as the circular No. 511 containing provision with the regard to recognition of Founder Headmaster is concerned, it provided in clear terms that seven years period are to be counted upto 2.10.1980, but the Circular No. 510 containing provision for promotion of the Assistant Teacher to the post of Headmaster with regard to vacancies prior to 2.10.1980 by treating the school as a unit does not contain such provision. This question was considered by a Division Bench of this Court in the case of Phulena Prasad Yadav vs. The State of Bihar and ors. [1991 (2) PLJR 449]. This Court with regard to Circular No. 510 held that the relevant date for counting the period of experience for promotion is with reference to the state of affairs as existing on 2.10.1980 when the school was taken over. In other words, the teaching experience has to be counted up to 2.10.1980 for filling up the vacancies of Headmaster by treating the school as a unit. So far circular No. 511 is concerned, it was held that the circular itself provided that the founder Headmaster must possess seven years teaching experience of a recognized school after graduation as on the date of take over of the school.

9. Thus, Division Bench of this Court as back as in 1991 has settled the controversy with regard to filling up vacancies of the Headmaster of the Nationalised High School having occurred prior to 2.10.1980. In our view, taking any other view with regard to the same will frustrate the very purpose for which the circulars were issued by the State Government. Admittedly, before taking over of Non-Government Secondary Schools every school was treated as a unit and promotion etc. was provided by treating as such. Accordingly, these circulars were issued providing that those vacancies will be filled up from amongst the eligible Assistant Teachers of the school by treating each school as a unit and in such a case the relevant date for judging his eligibility would be the date on which the school was taken over i.e. 2.10.1980. If the teacher has no requisite qualification and experience on the relevant date, then the teacher of that school cannot be promoted on the post of Headmaster with regard to vacancies occurred prior to 2.10.1980 and thereafter his case has to be governed by the rules framed later on where the post of Headmaster is to be filled up on the basis of State cadre either by direct recruitment or by promotion as provided under the rules. If the submission of the appellant is accepted then that will create very anomalous position. In that case, if teacher has no teaching experience on the relevant date, then the vacancies occurring prior to 2.10.1980 shall be allowed to remain vacant till the teacher of that school acquires teaching experience and this could not have been the intention of authority while issuing the aforesaid circulars. It is evident from the aforesaid circulars that these circulars were made only to fill up the vacancies to the post of Headmaster being occurred prior to 2.10.1980 and the schools were treated as unit and thereafter the promotion was to be made on the basis of rules framed thereafter which was under consideration of the State Government at that time.

10. However, according to the learned counsel for the petitioner, the view taken

in Phulena Yadav's case (supra) is no longer good law in view of the judgment of the Apex Court in the case of A. K. Pradhan (supra). From the facts of the said case, it appears that the appellant of that case was Headmaster of unrecognized school which was taken over by the Government under the provisions of the Act. He represented before the State Government to regularise his service which was rejected on the ground that he has not completed seven years of service from the date of taken over of the institution. He approached the High Court and the High Court dismissed the same relying upon the Full bench decision of this Court in the case of Ram Ballabh Prasad Singh vs. State of Bihar and ors. reported in 1986 PLJR 373. Thereafter he filed an appeal before the Supreme Court. During course of hearing of the said matter, it was pointed out that the judgment of the Full Bench of this Court was upheld by the Supreme Court in the case of Ram Ballabh Prasad vs. State of Bihar, [1988 PLJR (SC) 70]. Taking note of the aforesaid fact, the Apex Court in paragraph 3 of the judgment held that the controversy, therefore, that the services of the employees working in an unrecognised institution were not automatically taken over by the Government, is to be treated as settled by the order passed in the above case. Thereafter the Apex Court having taken note of the fact that the appellant has completed more than seven years of service and now eligible for being considered for regularisation issued the following direction in paragraph 5 of the judgment.

We, therefore, dispose of this appeal with the observation that the appellant, if not already regularised as Headmaster, shall be considered for regularisation, w.e.f. the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government. There will be no order as to costs.

11. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Thus the law declared by the Supreme Court on the particular point is binding on this Court as well as the Subordinate court and any attempt to ignore the law laid down by the Supreme Court will amount to judicial impropriety. Even the obiter dicta of the Apex Court is to be obeyed. However, it is well settled that the observations made by the Supreme Court in the judgment cannot be read in isolation and divorced from the context in which the same was made. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. (See Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., In the case of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, the Apex Court held that a decision of the Apex court is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation made in the judgment.

12. Under Article 142 of the Constitution of India, the Supreme Court can pass an order for doing complete justice in any cause of matter, and if any direction is given under Article 142 taking into consideration the particular facts of the case,

the same cannot be treated as a precedent.

13. In the light of the aforesaid settled law now the question for consideration is as to whether the point raised in this case has already been decided by the Apex Court in the case of A. K. Pradhan (supra). The question involved in this case was not at all subject matter in the case of A. K. Pradhan (supra). The Apex Court taking into consideration the facts of that case, issued direction for regularisation if the appellant of that case has completed seven years of service which was to be reckoned from the date on which the institution was taken over. The question as to what should be the relevant cut-off date for counting the experience for filling up the vacancies of the Headmaster prior to 2.10.1980 in Nationalised school was neither considered nor any judgment was rendered by the Apex Court on the said point and as such the said judgment is of no help to the appellant in this case.

14. Admittedly, in this case the appellant had no requisite qualification, either seven years experience as a founder Headmaster or 10 years experience for appointment to the post of Headmaster on the date of taken over of the school i.e. 2.10.1980. In other words, on the cut-off date, he had no requisite experience and as such he cannot claim his promotion to the post of Headmaster with effect from 2.10.1980 and the learned Single Judge rightly rejected his claim. The appellant has already been promoted on the post of Headmaster with effect from 2.10.1987.

15. A Division Bench of this Court in the similar case of Gauri Shankar Dikshit vs. The State of Bihar & anr. being LPA No. 1477 of 1999 disposed of on 12.1.2000 held that the judgment of the Apex Court in the case of A. K. Pradhan (supra) is not applicable. We fully agree with the view taken in the said case. In the result, there is no merit in this appeal and the same is dismissed. In the facts and circumstances of the case, there will be no order as to costs.