

(2010) 09 JH CK 0138
In the Jharkhand High Court
Case No : Writ Petition (S) No. 393 of 2010

Dinesh Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 58 BLJR 1649 : (2010) 4 JLJR 440

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : S.K. Pandey, for the Appellant; G.P.-III, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed under Article 226 of the Constitution of India for issuance of an appropriate writ directing the Respondents to regularize /absorb the services of the Petitioner on the post of Assistant Teacher in Project Girls High School, Baharagora, District - East Singhbhum and to pay salary with effect from as stipulated under Government Letter No. 142 dated 4.2.1989 (Annexure-6).

2. The then State of Bihar took a policy decision to establish 4 High Schools in each Block of the State including one Girl's High School to eradicate the backwardness from the Society, which policy was notified under Letter No. 1115 dated 27.5.1981. Under the said letter, it had also been decided that in the matter of selection of the Project School, preference would be given to those schools, which are being run by the public assistance or have been granted permission for establishment of the school. Pursuant to that, 150 Schools (boys and girls) were selected in the year 1981-82. Keeping in mind the said benefit, local people of Baharagora Block decided to establish a Girls High School at Baharagore and for that a Managing Committee was constituted for administration of the school which got started functioning from the year 1983 and the Petitioner was appointed as Mathematics Teacher by the Managing

Committee on 27.1.1985. At the time of appointment, the Petitioner was holding Post Graduate degree but subsequently he also acquired degree in training from Sister Nivedita College, Kolkata.

3. Under the aforesaid policy, only 150 Schools could be selected in the year 1982-83 and, therefore, the State Government took a decision vide Letter No. 12C dated 25.1.1985 selecting 300 Blocks including Baharagora Block to establish/select 300 Girls' High Schools. Pursuant to that, 75 Girls' High Schools in different Blocks were selected at the first instance but subsequently, a Three Man Committee was constituted to select the Project: School in rest of 225 Blocks. The said Committee selected the school of the Petitioner along with others as Project School on 19.3.1985. In course of time in the year 1984-85, teaching and non-teaching staffs of the schools, selected as Project School, when realized that they are being discriminated in the matter of payment of salary with the teachers of the Project Schools, selected in the year 1981-82, they made representation before the Government. Thereupon, a letter bearing No. 142 dated 4.2.1989 (Annexure-6) was issued stipulating therein that the payment would be made to those teachers who were having requisite qualification and were appointed by the Managing Committee, after taking permission from the Establishment Committee. The eligibility of the teachers was to be examined by the Three Members Committee who was supposed to submit a project report/check list. Accordingly, the District Education Officer, East Singhbhum inspected the Project School of the Petitioner and submitted project report/check list to the Director, Secondary Education vide its letter dated 30.1.1990 to be placed before the Screening Committee and in the said check list, Petitioner's name does find mentioned. However, the interest of some of the teachers got adversely affected vide Letter No. 142 dated 4.2.1989 and hence, it was challenged before the Patna High Court. Subsequently, the matter reached to the Hon'ble Supreme Court where it was disposed of by recording that the matter relating to the regularization of services of the teachers of the Project Schools be decided by the Full Bench of the Patna High Court and, accordingly, the Patna High Court decided the matter, where Letter No. 142 dated 4.2.1989 was under challenge. The Full Bench of Patna High Court while deciding number of issues did hold that nothing wrong seems to have been done in selecting the Project Schools in the year 1984-85 and that if the teachers got their minimum qualification enhanced till the recommendation of the Screening Committee, they will be entitled to be regularized in the service. The decision rendered by the Full Bench of the Patna High Court was challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 6626 - 6681/2001, whereby a decision rendered by the Full Bench was upheld though over one of the issues relating to the matter of selection of the Project Schools in the year 1985, slight modification was made, whereby Chief Secretary of Bihar was directed to constitute a Three Members Committee to consider the eligibility of the teachers of the Project Schools, selected in the financial year 1984-85. Accordingly, since 89 Schools, out of 300 Project Gills' High Schools are situated within the territory of State of Jharkhand, the Chief

Secretary of the State of Jharkhand constituted a Three Members Committee in terms of the order of the Hon''ble Supreme Court to consider the eligibility of the teachers, whereas the State of Bihar was concerned with 211 Project Schools. Three Members Committee, appointed by the State of Bihar, after examining the matter, found all appointments made prior to issuance of Letter No. 142 dated 4.2.1989 proper and, hence, made recommendation for their absorption. The Committee even made recommendation for regularization of the services of the teachers, who had enhanced their qualification till the date when the matter was examined by Three Members Committee. The Three Members Committee of Bihar also accepted the training qualification, obtained by the teaching staffs from the other University/other Institution, which is situated in different places under the territory of India, subject to condition that they have obtained the said qualification prior to promulgation of N.C.T.E. Act. Accordingly, the Government of Bihar accepted the recommendation relating to regularization of the services of those teachers w.e.f. 1.1.1989.

4. As per the counter affidavit, the State of Jharkhand, in obedience of order dated 3.1.2006 passed by the Hon''ble Supreme Court in Civil Appeal Nos. 6626 -6681/2001, constituted a Three Members Committee for examining individual cases of teaching and non-teaching staffs of Project Girls' High Schools. Accordingly, Three Members Committee considered the case of the Petitioner but it did not find the Petitioner to be fit for regularization of service and hence, his claim has been rejected. The report of Three Members Committee has been annexed as Annexure-B to the counter affidavit showing therein that Petitioner's claim has been rejected for the reason that he at the time of appointment was a Graduate but subsequently, he acquired Post Graduate degree and in the year 1989 he took diploma in training from Sister Nivedita College, Kolkata but the said Institution was never recognized.

5. By filing rejoinder to the counter affidavit, the said order, under which the Petitioner's claim for regularization of services was rejected, was challenged to be bad on the basis of the judgment rendered in a case of Kalpana Lodhiya v. State of Jharkhand and Ors. reported in 2009 (1) JCR 332 (Jhr), wherein it has been held that the candidate after obtaining certificate of training degree from Sister Nivedita College, Kolkata prior to 1995 must be recognized as valid training degree and as such, it was submitted that the decision taken by Three Members Committee, being contrary to the decision of this Court, is fit to be set aside.

6. Thus, there does not appear to be any dispute that the Petitioner was appointed by the Managing Committee of the School on 27.1.1985, whereas the school was selected as one of the Project Schools on 19.3.1985. However, due to certain controversies, raised in the matter of regularization of teaching and non-teaching staffs of the Project Schools, when the matter came to the Hon''ble Supreme Court, the Hon''ble Supreme Court in order to set the controversy at rest directed the State to appoint Three Members Committee to consider the

eligibility of the teachers appointed by the Managing Committee. The Committee on its formation rejected the claim of the Petitioner, as the Petitioner had obtained degree in training from Sister Nivedita College, Kolkata, which was not a recognized college, but the Committee failed to consider that the N.C.T.E. Act came into force w.e.f. 1.7.1995, whereas the Petitioner had obtained B. Ed. (training) degree from the said Institute in the year 1989 and under this situation, this Court in the case of Kalpana Lodhiya (supra) has been pleased to hold that the training degree obtained from Sister Nivedita College, Kolkata prior to 1995 must be recognized as valid training degree, as N.C.T.E. Act, which was promulgated in the year 1993, came into force w.e.f. 1.7.1985. Thus, the order, under which Three Members Committee did not find the Petitioner to be eligible for regularization, is hereby set aside.

7. Consequently, the Authority is directed to take decision in the matter of regularization and the payment of salary of the Petitioner within a period of two months from the date of receipt/production of a copy of this order.

8. In the result, this application is allowed.