
(2014) 01 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1319 of 2013

Dwarika Nath Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Citation : (2014) 1 JLJR 564

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Kripa Shankar Nanda, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner had the reason to come before this Court in the present writ application on the issuance of letter dated 15.1.2013 contained in memo No. 47 (annexure-6) issued by the Director, Primary Education, Jharkhand by which his proposal for fixation of pay scale has been rejected and communicated to the District Superintendent of Education, Khunti.

2. The petitioner is said to have been appointed as Assistant Teacher in the Government recognized aided Minority primary school namely Lutheran Middle School, Marcha Torpa, Khunti on 5.3.1983 as an untrained teacher after following the procedure of such appointment. The services of petitioner and one another person namely Digambar Singh, who was also appointed as Assistant Teacher in GEL Middle School, Diyakel were approved from the date of their appointment respectively i.e. from 16.3.1983 in the petitioner's case by order contained in memo No. 140 Patna dated 6.3.1995 issued by the Under Secretary, Department of Primary, Secondary and Adult Education, Government of Bihar. In view of the aforesaid letter the District Superintendent of Education vide memo No. 863 dated 5.4.1995 issued the office order where under the scale of pay of the petitioner and other persons namely Digambar Singh were fixed. The petitioner's

scale was fixed on Rs. 680-890-965. The petitioner, thereafter continued to be paid the salary on the release of grant in aid by the respective Government of Bihar and Government of Jharkhand as well till September, 2011 when the petitioner came to know subsequently that the pay fixation proposal in respect of the petitioner sent by the District Superintendent of Education, Ranchi has been refused by the Director, Primary Education through the impugned letter dated 15.1.2013.

3. Petitioner, has therefore, assailed the impugned order stating that the respondents after having approved the petitioner's service way back in the year 1995 and was getting salary on release of grant in aid to the school in question for more than 16 years are not justified in now refusing the fixation of pay scale of the petitioner. The same is wholly arbitrary on the basis of non-est ground. On perusal of the impugned order it appears that the only ground for refusal of the petitioner's pay fixation is that at the time of his appointment he was not a trained teacher, which was required in terms of the circular No. 3915 dated 15.11.1978 under which no appointment in the category of Assistant Teacher in the government aided recognized minority school could be made after 1.1.1971.

4. Learned counsel for the respondent-State also relies upon the letter dated 3915 dated 15.11.1978 issued by the Special Secretary, Education Department, Bihar, Patna(Annexure-A) which stipulates that any appointment of untrained teacher after 1.1.1971 shall in no case be recognized. It is submitted that petitioner was appointed after 1.1.1971. The said letter has further been reiterated on 20.8.1992 issued by the Education Commissioner, Government of Bihar. It is further stated in the counter affidavit that petitioner was wrongly appointed by the Secretary of the Minority School on 16.3.1983 and his services were approved after 12 years on 5.4.1995 issued by the District Superintendent of Education. It is further submitted that untrained candidates having qualification of I.Sc./B.Sc. and Urdu/Sanskrit knowing candidates were appointed under UNICEF scheme. In view of the letter dated 12.9.1989 by the Director(Research & Training), those untrained teachers of the Government School, who were appointed by the District Superintendent of Education, Ranchi were sent for teachers training. But the petitioner being untrained teacher of government aided minority school with the connivance of the then Regional Deputy Director, South Chhotanagpur Division, Ranchi got his name inserted at serial No. 48 in the list of such teachers whose name were sent for 2 years teachers training at Primary Teachers Education College, Bundu. Hence, he has got his teachers training in an illegal manner. In the matter of approval of proposition statement of teachers of non government aided minority school, all the relevant documents are sent for approval of appointment by the District Superintendent of Education to the Directorate. Only after such approval the grant in aid for payment of salary is released. The petitioner is alleged to have got his service approved vide memo No. 140 dated 6.3.1995 by the Under Secretary of the Department of Education, who was not competent to do the same. However, when the aforesaid fact came to the notice of the Director,

Primary Education at the time of fixation of 4th and 5th revised pay scale proposition statement was sent to the Directorate on 4.5.2011, the same has been rejected as being contrary to the guidelines contained in circular dated 15.11.1978. It has been stated that other persons, Digambar Singh is a trained teacher and his proposition statement has already been approved by the Directorate.

5. The petitioner has contested the claim of the respondents by submitting that the other persons namely Digambar Singh has continued to draw the salary on approval of his proposition statement, though he was also appointed in similar circumstances in 1983 itself in another minority school namely GEL Middle School, Diyakel, Ranchi. The respondents are therefore adopting a pick and chose policy.

6. I have heard counsel for the parties and gone through the relevant material on record including the impugned letter dated 15.1.2013. The petitioner was appointed as Assistant Teacher in the government aided minority school namely Luthran Middle School Marcha, Torpa, Khunti on 5.3.1983. It appears that the appointment of the petitioner was subsequently approved by the Education Department of Government of Bihar through letter contained vide memo No. 140 dated 6.3.1995 issued under the signature of Under Secretary, Department of Primary, Secondary and Adult Education, Government of Bihar. Consequent there upon the District Superintendent of Education, Ranchi issued the letter fixing the pay scale of the petitioner at Rs. 680-890-965 taking into account that his services have been approved from the date of his appointment on 16.3.1983. In the aforesaid background, the other fact which is relevant for consideration is that the petitioner also underwent teachers training by a conscious decision of competent authority i.e. then Regional Deputy Director, South Chhotanagpur Division, Ranchi in the year 1989. The lacuna of having been appointed as untrained teacher, in teeth of the guidelines of the letter dated 15.11.1978, had also been overcome as the petitioner after being sent for 2 years teachers training by a conscious decision taken by the R.D.D.E., South Chotanagpur, Ranchi completed the same in the year 1993 as per Annexure-3.

7. The petitioner continued to draw salary by the grant in aid provided to the minority school in question. His service had been approved and pay fixation has been done by the District Superintendent of Education, Ranchi in the year 1995 itself till it was stopped sometime in the year 2011 by the Director, Primary Education, author of the impugned order dated 15.3.2013, realizing that he had been appointed as untrained teacher in the year 1983 in teeth of the 1978 guidelines. It therefore appears that after appointment of the petitioner in the year 1983 and approval of his service in 1995 and being paid salary through grant in aid till 2011, a ground is being raised in the impugned letter issued in January, 2013 by the Director, Primary Education that the petitioner at the time of appointment was untrained in the year 1983.

8. As stated herein above, that lacuna had also been over come even before the

petitioner's service were approved in the year 1995. In the aforesaid facts and circumstances, discussed herein above, it therefore appears that the decision to refuse the proposal of pay fixation statement of the petitioner by the impugned letter dated 15.1.2013 is arbitrary and unreasonable. Accordingly, the impugned order dated 15.1.2013 is quashed. Consequently, respondents would take fresh decision in the matter of pay fixation of the petitioner in accordance with law within a reasonable time preferably within 8 weeks from the date of receipt of the copy of the order. The writ petition is disposed of in the aforesaid terms.