
(1999) 10 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 11264 of 1998

Gauri Shankar Dixit

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2000) 3 PLJR 448

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, R.S. Pandey and Rajiv, for the Appellant;
Gajendra Nath Ojha, for State, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioner seeks direction to the Respondents to recognise him as Headmaster of Karaikalla High School, Karaikalla, in the district of West Singhbhum.

2. It must be mentioned at the very outset that he had approached this Court for similar relief in C.W.J.C. No. 1672/93 (R) which was rejected on 12.8.93 in view of the Bench decision of this Court in Phulena Prasad Yadav v. The State of Bihar and Ors. 1993 BBCJ 02 : 1991 (2) PUR 449. The SLP preferred against the dismissal of the case being SLP No. 5266 (C)/94 was also dismissed on 6.2.95. The present writ petition has been filed on the strength of a recent order of the Supreme Court in the case of A.K. Pradhan v. State of Bihar 1998 (2) PLJR 2 (SC). Copy of the said order has also been marked Annexure-7 to the petition.

3. It appears that a similar contention raised in the case of Ram Balak Prasad Singh Vs. The State of Bihar and Others, . The learned Judge held that the order in A.K. Pradhan's case (supra) does not lay down any principle or law and, therefore, has no binding effect. Before I advert to the case of A.K. Pradhan it would be appropriate to state a few facts relating to the Petitioner's claim and

then refer to the decision in Phulena Prasad Yadav's case (supra).

4. The Petitioner claims to have been appointed as founder Headmaster in school in question on 1.1.71. The school was accorded permission to establish by the then Bihar Secondary Education Board on 18.2.72. On 24.6.76 it was recognised. Finally, in terms of the provisions of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980, the school was taken over with effect from 2.10.80.

5. The State Government later issued two circulars being Circular Nos. 510 and 511 dated 20.11.81 laying down the criteria and the Procedure for recognition of the teachers as Headmaster in the takeover school or founder Headmaster. They, inter alia, laid down that persons should possess certain years of teaching experience of recognised school. Dealing with the question as to the cut-off date with reference to which such teaching experience was to be reckoned in Phulena Prasad Yadav's case (supra) this Court held:

It is true that unlike circular No. 511, there is no specific mention as to on which date this ten years teaching experience is to be calculated. But having regard to the fact that the said circular contemplates making appointment on the post of Headmaster by promotion from amongst the eligible assistant teacher of the school in question, treating the school as a unit in cases where the vacancy had occurred prior to 2.10.1980, it would be clear that the cut-off date for the purpose of calculating the teaching experience has to be 2.10.1980 and no other date. A bare perusal of the first part of the said circular, which has been extracted above, would show that in respect of vacancies on the post of Headmaster of taken over High Schools two categories have been carved out. In the first category are such schools in which the post of Headmaster fell vacant before 2.10.1980 and in the second category are such schools where the posts fell vacant on or after 2.10.1980. In cases falling in the first category, the schools were to be treated as separate unit for the purpose of filling up the post of Headmaster, the idea being that the status quo ante prevailing prior to 2.10.1980 was to be maintained. The Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 came into force with effect from 2.10.1980 and, therefore, it was provided that if the vacancy had occurred prior to that date, such vacancy must be filled up by giving promotion to the assistant teacher possessing the prescribed qualifications for such appointment as before.... As I have indicated above, the underlying idea behind carving out two distinct classes and providing two different modes for making appointment on the vacant post of Headmaster in the aforesaid two classes was to give an opportunity of consideration i.e. a chance of promotion to only such of the eligible assistant teachers of the school in question, who on account of their possessing the requisite prescribed qualifications, could be promoted as Headmaster, had the aforesaid Ordinance not come into force. Therefore, the consideration, in my opinion, of the case of the person concerned for promotion has to be with reference to the State of affairs as existing on 2.10.1980 and,

therefore, it is with reference to that very date that the teaching experience also has to be counted.

6. It would, thus, appear that the claim of the Petitioner is squarely covered by the observations and the law laid down by this Court in the aforementioned case.

7. Adverting to the case of A.K. Pradhan, it would appear that his case was dismissed by the High Court relying on a Full Bench decision of this Court in Ram Ballabh Pd. Singh and Ors. 1986 PUR 373. The decision of the Full Bench was upheld by the Supreme Court by speaking order, which is reported in 1988 PLJR 70 (SC). The point for consideration before the Full Bench in the aforesaid case was whether upon taken over of the school under the aforementioned take over Ordinance/Act the services of unrecognised teachers stand automatically taken over by the State Government u/s 4(2) of the Ordinance/Act or not. Noticing certain observations made by the Supreme Court in that case, while considering the case of A.K. Pradhan, the Supreme Court noted:

The fact, however, remains that the Appellant has since completed more than seven years of service and is now eligible for being considered for regularisation.

8. I have no manner of doubt that the above order was passed in terms of Article 142 of the Constitution and cannot be treated as a binding precedent under Article 141 as held by this Court in Ram Balak Prasad Singh's case (supra). The reliance on A.K. Pradhan's case therefore cannot be of any avail to the Petitioner.

9. Shri Rajendra Prasad Singh wanted me to notice the averments made in paragraph 17 of the writ petition to the effect that the Petitioner has been continuing as founder Headmaster in the school right since 1.1.71. I am afraid, on this ground this Court cannot pass any order for recognising his services as founder Headmaster which is governed by the aforementioned circulars, moreso, the previous writ petition stood dismissed and the SLP against that order also failed.

10. In these premises, I do not find any merit in this writ petition, which is accordingly dismissed.