
(2012) 01 JH CK 0010
In the Jharkhand High Court
Case No : W.P (S) No. 3024 of 2005

Indradeo Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Bihar Non-Government Secondary School (Taking over Management and Control) Rules, 1983 — Rule 7(1)(ga), 7(1)(kha)
Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 9

Citation : (2012) 2 JCR 89

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Vijay Kr. Gupta, for the petitioner. JC to SC-II, for the State, for the Appellant; Manoj Tandon, for the respondents 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J.—Learned counsel for the petitioner is challenging the order, passed by the Deputy Director of Education. Secondary Education, dated 1st July, 2004. which is at Annexure 14 to the memo of petition, whereby, the case of the petitioner for approval of his promotion to the post of Assistant Teacher has been rejected. The petitioner is also challenging the consequential order, passed by the District Education Officer, Dhanbad, dated 11th November, 2004, which is at Annexure 15 to the memo of petition, whereby, the order dated 1st July. 2004 has been communicated with a further direction to revert the petitioner back on the post of Clerk. Learned counsel for the petitioner has drawn the attention of this Court towards Annexure 14 and submitted that the promotion, which was given to the petitioner in the year, 1995, has now been decided by the impugned order at Annexure 14 as illegal, because there is no provision of promotion from the post of Clerk to the post of Teacher in the Minority Schools and this is the only ground for which the promotion was withdrawn and that too after several years.

2. Learned counsel for the petitioner has read the provisions of Bihar Non-Government Secondary School (Taking over Management & Control) Rules, 1983, enacted u/s 9 of the Bihar Non-Government Secondary School (Taking over Management & Control) Act, 1981. Even these provisions re permitting 5% of the posts of Teachers to be filled up by promotion from the posts of Clerk in the Minority Secondary Schools and, thus, there is a provision and, therefore, the reason, given in the impugned order is absolutely reflecting non-application of mind.

3. Learned counsel for the petitioner has also pointed out the counter affidavit, filed by the respondents, wherein also, they have admitted the fact that there are legal provisions for promotion to the post of Teacher from the post of Clerk in the Minority Secondary Schools, which are Government aided institutions. Thus, the reason given in Annexure 14 of the memo of petition is absolutely illegal and without application of mind.

4. Now looking to the counter affidavit, it appears that the correct legal procedure has not been followed or complied with.

5. Learned counsel for the petitioner submitted that the affidavit cannot change the reasoning, given in the impugned order. Affidavit can explain the reasons, given in the impugned order. The reason given in the impugned order is that the petitioner was given promotion from the post of Clerk to the post of Teacher, but, there are no legal provisions for the same. This reason is absolutely wrong, even looking to the counter affidavit. It is one thing that the correct procedure established under the law is not followed and it is altogether another aspect of the matter that there is no provision under the law for promotion at all. If the correct procedure is not followed and promotion is given to the petitioner, the respondents are always at liberty to give notice and thereafter to take a decision for withdrawing the same. But, the petitioner's promotion is withdrawn only for the reason that there is no provision of law at all, as stated in the impugned order whereas their own counter affidavit runs counter to the impugned order and, therefore, it is submitted by the learned counsel for the petitioner that the impugned order deserves to be quashed and set aside,

6. I have heard learned counsel for respondent Nos. 1 to 4, who submitted that looking to the counter affidavit, it appears that the correct procedure for promotion of the petitioner to the post of Teacher has not been followed. The approval of the Government has not been taken before giving promotion to the petitioner and. therefore, the petitioner is not entitled to continue on the post of Teacher.

7. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the impugned order at Annexure 14 dated 1st July, 2004, which was signed by the Deputy Director of Education, Secondary Education, Government of Jharkhand, Ranchi, on 26th June, 2004, for the following facts and reasons :

(i) The present petitioner was appointed as a Clerk with the respondents in the year, 1979 and thereafter, he was given promotion in the year, 1995 as Assistant Teacher and was put in the pay scale of the post of Assistant Teacher. Thereafter, the petitioner worked for several years and salary was also paid to him for the post of Assistant Teacher.

(ii) It appears that an order has been passed on 26th June, 2004 and the letter has been written on 1st July, 2004. which is at Annexure 14 to the memo of petition, whereby, it has been stated that though the petitioner was promoted to the post of Assistant Teacher, there was no such legal provision for promotion to the post of Assistant Teacher from the post of Clerk in the Minority Secondary Schools and, therefore, the petitioner's promotion was not accepted by the respondents and the consequential order has been passed on 11th November, 2004, which is at Annexure 15 to the memo of petition.

(iii) It, however, appears from the counter affidavit that there are legal provisions for such promotion. The said provisions are contained in Bihar Non-Government Secondary School (Taking over Management & Control) Rules, 1983, enacted u/s 9 of the Bihar Non-Government Secondary School (Taking over Management & Control) Act, 1981, especially at Rule 7(1)(kha)(ga) of the Rules, 1983. Thus, the reason, which has been given in the impugned order at Annexure 14 to the memo of petition, is absolutely wrong. Without reading the Rules and without referring the provisions of law, the impugned order at Annexure 14 to the memo of petition has been passed, so far as the present petitioner is concerned.

(iv) It further appears from the counter affidavit, filed by the respondent-State that the correct legal procedure for promotion has not been followed and necessary sanction from the Government has also not been obtained. This statement has been made at paragraph Nos. 5, 6, 10 and 13 to the counter affidavit. Looking to these paragraphs, it appears that there is much deviation from the impugned order. The reasons, given in the impugned order, and the reasons, given in the counter affidavit, are running counter to each other. The impugned order says that there is no provision for promotion from the post of Clerk to the post of Assistant Teacher whereas the counter affidavit reflects that the correct legal procedure has not been followed. It ought to be kept in mind by the respondents that the affidavit cannot change the reasons, given in the impugned order. No reason can be added in the counter affidavit in support of the impugned order, in which no such reason has been given.

(v) It has been held in para 8 by Hon''ble Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , as under :

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the

time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji. Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, (at p. 18) :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.

(Emphasis supplied)

(vi) It has further been held in the case of *Commissioner of Police, Bombay v. Gordhandas Bhanji*. as reported in AIR (39) 1952 SC 16, paragraph 9 thereof reads as under :-

9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself

(Emphasis supplied)

(vii) In view of the aforesaid decisions, the additional reasons, given in the counter affidavit are of no help to the respondents, because these reasons are never in the impugned order.

(viii) Moreover, the reasons, given in the impugned order, and the reasons, given in the counter affidavit, are against each other.

8. As a cumulative effect of the aforesaid facts, reasons and the judicial pronouncements, I hereby quash and set aside the impugned order at Annexure 14, passed by the Deputy Director of Education (Secondary Education), Government of Jharkhand, Ranchi, dated 1st July, 2004, which has been signed on 26th June, 2004, as also the consequential order at Annexure 15, which is dated 11th November, 2004. However, liberty is reserved with the respondents to take action against the petitioner, if they are so choosing, in accordance with law. The writ petition is, accordingly, allowed and disposed of. Petition allowed.