
(2013) 06 JH CK 0025

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1188 of 2012

Jiban Krishna Das

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2013) 3 JLJR 301

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant;

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the Memo No. 3108 dated 10.12.2011, issued by the District Superintendent of Education, Pakur (respondent No. 5), whereby the petitioner's services have been terminated on the ground that though he belongs to the Other Backward Classes (O.B.C.) category, he had got appointment under the Scheduled Caste category. The petitioner has also prayed for his reinstatement in the service with all consequential benefits. According to the petitioner, he was appointed as Assistant Teacher in the District of Sahibganj (now Pakur) after following the legal procedures long back on 1.1.1988. However, in the panel prepared after the selection, the petitioner's name was shown in the "Harizan-Purush" category. The petitioner had immediately filed representation pointing out the said typographical mistake. The respondents, thereafter, corrected the records and never mentioned the petitioner as "Harizan" in any of the service records including the service book. The petitioner, accordingly, was allowed to serve on his post without any demur. A seniority list of the teachers was prepared and published on 2.7.2005 in which the petitioner's name appeared at Sl. No. 270 specifically showing him belonging to the O.B.C. category. Surprisingly, a show cause notice dated 3.12.2011 was issued to the petitioner

after more than two decades, alleging that his appointment was made under the "Harizan" category, though he belongs to the O.B.C. category and asking him as to why his services be not terminated. The petitioner submitted his reply dated 8.12.2011 stating, inter alia, that he has never misrepresented himself as "Harijan". On the contrary, he had pointed out the error in the panel showing him under "Harijan" category. On his representation, the records were corrected. He was, thereafter, never shown as "Harizan" in any of the service records. The respondents also did not serve any such charge against the petitioner and suddenly passed the impugned order dated 10.12.2011, whereby the petitioner's services have been terminated.

2. Mr. Manoj Tandon, learned counsel appearing on behalf of the petitioner, submitted that the impugned order is wholly arbitrary, illegal and unsustainable. The allegation against the petitioner is wholly unfounded. He has never misrepresented himself as "Harizan" for obtaining employment. His appointment was not under the Scheduled Caste category. There was an error on the part of the respondents in showing the petitioner's name in the panel under "Harizan-Purush" heading. The petitioner had brought the error to the notice of the respondents by filing representation immediately on 18.1.1988. Since thereafter no service record or the Government record reflects the petitioner as "Harizan". In the seniority list published in the year 2005 (Annexure-9), the petitioner has been specifically shown in the O.B.C. category. The respondents never raised any such objection for about 23 years. By the impugned order, the petitioner's services have been suddenly terminated on frivolous ground and that too without following the due procedures of law. Learned counsel further submitted that the order of termination can be issued only after holding a departmental enquiry, as provided under Rule 8 of the Bihar State Nationalized Primary Teachers Appointment and Disciplinary Proceeding Rules, 1994 [hereinafter referred to as "the said Rules of 1994"] which has also been adopted by the State of Jharkhand. Rule 8 of the said Rules of 1994 specifically provides that the order of termination from services cannot be passed without initiating a departmental proceeding. The impugned order is violative of the said mandatory rule as well as the principle of natural justice and is wholly unsustainable.

3. The respondents have opposed the writ petition by filing counter affidavit. It has been stated, inter alia, that the petitioner belongs to O.B.C. category, but he obtained appointment under "Harizan" category. He has committed fraud in collusion with the then Superintendent of Education. Sahibganj and the in-charge clerk. However, it has been admitted that no departmental proceeding was initiated against the petitioner by serving any such charge on him.

4. Having heard learned counsel for the parties and considered their submissions well as the facts and materials on record. I find that before passing the impugned order, no departmental proceeding, as required under Rule 8 of the said Rules of 1994, was initiated against him. Only a show cause notice was issued, which was replied by the petitioner. Merely issuing a show cause notice

does not satisfy the requirement of Rule 8 of the said Rules of 1994. The impugned order is violative of the said statutory rule, as no departmental proceeding was initiated against the petitioner by framing any charge before passing the impugned order. Since the said order of termination is based on certain allegation, it amounts to dismissal from service without affording sufficient opportunity to the petitioner and without complying with the provisions of Article 311(2) of the Constitution of India besides being violative of Rule 8 of the said Rules of 1994. Further, the respondents have strangely raised an issue after lapse of about 23 years and that too without any allegation that the petitioner had ever misrepresented himself as "Harijan" for obtaining employment. Raising such stale issue after lapse of more than two decades is also wholly unjustified. For the reasons aforementioned, this writ petition is allowed. The impugned Memo No. 3108 dated 10.12.2011 issued by the District Superintendent of Education, Pakur (respondent No. 5) is quashed. The petitioner is reinstated in the service with all consequential benefits. Since the petitioner was illegally prevented from discharging his duty by issuing the said arbitrary order, he shall be entitled to get full back salary.