
(2008) 12 JH CK 0070
In the Jharkhand High Court

Kamdeo Prasad Shahi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Citation : (2008) 12 JH CK 0070

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application has prayed for an order for quashing the Memo No. 200/Ranchi dated 04.02.2005 (Annexure-1) issued by the Respondent No. 2, by which petitioner's claim for treating him as permanent Headmaster of Raghunath Shahi Project High School, Govindpur in the district of Deoghar, has been rejected. A further prayer has been made for issuance of an appropriate direction to the Respondents to treat the petitioner as regular Headmaster of the School from the date of taking over of the School by the State Government under the Project Scheme and further to pay all consequential benefits meant for the post of Headmaster accordingly.

2. The facts of the case in brief are as follows:

The Raghunath Shahi Project High School, Govindpur in the district of Deoghar was established by the permission of the Bihar Secondary Education Board as a private School in the year 1978, under the Managing Committee, which was constituted for administration and for appointment of staffs to start the School. The petitioner was appointed by the Managing Committee of the School on 18.01.1978 as the first teacher. Later, the Managing Committee appointed the petitioner on the post of Headmaster of the School on 19.07.1978. Under the policy decision of the State Government taken on 27.05.1981 a scheme under the name of Project Scheme was floated. The petitioner's School was taken over by the State Government under Project Scheme on 15.03.1982 under the Bihar Non- Governmental Schools Secondary (Management and Control) Act, 1981. After the school having acquired status of Government School, the petitioner

continued to work as an acting Headmaster of the School and he used to receive his salary though the salary for the post of Headmaster was not paid to him. Claiming that he is entitled for the salary meant for the post of Headmaster w.e.f. the date of taking over of the School on 01.01.1982, the petitioner filed a representation before the concerned authorities of the Department of Secondary Education for his regularization on the post of Headmaster of the School. When the petitioner's representations did not yield any result, he filed a writ application vide C.W.J.C. No. 7638 of 1991. The writ application was disposed of on 02.09.1992 by this Court with a direction to the Respondents to consider the petitioner's case and pay him his salary. When despite the orders, the Respondents did not take any action, the petitioner filed a Contempt Application before this Court against the Respondents for non-compliance of the order dated 02.09.1992 passed in aforesaid C.W.J.C. No. 7638 of 1991. The Contempt application vide M.J.C. No. 330 of 1993 was disposed of on 02.02.1995 with a direction to the Director, Secondary Education to obtain all the relevant papers from the petitioner by 20.02.1995 and to decide the matter by passing a speaking and reasoned order within two months from the date of receipt of a copy of the order. The petitioner again approached the concerned Respondents with a copy of the order passed in Contempt Petition by this Court. The petitioner had explained in his representation that the rules relating to the Secondary Schools Teachers in the State of Bihar which was known as Bihar Nationalized School (Service Condition) Rules, 1983 was adopted in respect of Project Schools Teachers also and notification to this effect has been issued by the State Government vide Notification No. 300 dated 01.06.1999. After bifurcation of the State of Bihar, the school came within the territorial jurisdiction of State of Jharkhand. After the creation of the State of Jharkhand, the Bihar Nationalized School (Service Condition) Rules, 1983 was adopted also by the State of Jharkhand and was made applicable to the teachers of Government Schools and to the Project Teachers also. The petitioner had also enclosed the recommendations made by the District Education Officer, Deoghar vide letter dated 24.01.2002 to promote the petitioner to the post of permanent Headmaster of the School. In support of his claim the petitioner had also annexed a copy of the judgement of the Supreme Court in the case of A.K. Pradhan and also in the case of Susheela Devi by way of citing instances that other teachers under similar circumstances who had been continuously working for more than seven years as Headmaster in their respective Schools, were regularized in the post of Headmaster. When despite such representation, no order was passed by the Respondents authorities, the petitioner again filed a writ application vide W.P.(S) No. 4097 of 2004. By order dated 30.08.2004, this Court disposed of the writ application with a direction that the petitioner shall file a representation alongwith a copy of the High Court's order with a corresponding direction to the Director, Secondary Education to consider the petitioner's grievance and pass an appropriate order. The petitioner filed his representation in accordance with the directions of the High Court as contained in the aforesaid order. However, by the impugned order dated 04.02.2005, the respondent No. 2

rejected the petitioner's claim. Being aggrieved with the rejection of his claim, the petitioner has filed the instant writ application.

3. Sri Bijay Kumar Pandey, learned Counsel for the petitioner would explain that even on the basis of the undisputed facts, the petitioner who was initially appointed by the Managing Committee of the School as a Headmaster of the School in 1978, had continued to function as the in-charge Headmaster of the School even after taking over of the School by the State Government. Relying upon the judgement of the Supreme Court in the case of A.K. Pradhan v. State of Bihar and Ors. 1998 (1) PLJR (2)(S.C.), learned Counsel argues that even after taking over of the School by the State Government on 01.01.1982, the petitioner had continued to work as In-charge Headmaster of the School and as the senior most teacher of the school had gained more than seven years of teaching experience besides possessing a B.Ed degree. The petitioner was, therefore, entitled to be considered for appointment as the Headmaster of the School.

4. During the pendency of this writ application, an order was passed by the District Education Officer, Deoghar on 26.06.2006 (Annexure-19) whereby the petitioner was replaced by a junior teacher of the school on the post of Acting Headmaster of the School. The petitioner has, by way of amendment to his original writ application, introduced the aforesaid fact with the corresponding prayer for quashing the aforesaid order. The petitioner has challenged such appointment of the junior teacher on the ground that the appointment of acting headmaster could be made under the Rules only by the order of the Director, Secondary Education and not by the District Education Officer.

5. A counter affidavit has been filed on behalf of the respondents. The stand taken by the respondents is that the petitioner was appointed in the said school by the Managing Committee on 19.07.1978 although he had no training of teaching at that time. The Respondents have further denied and disputed the petitioner's claim of his being appointed as an Acting In-charge Headmaster of the school even by the Managing Committee. It is explained that in the year 1978, the In-charge Headmaster was one Sri. Nand Kishore Lal who was a post-graduate and the only trained teacher of the school and thereafter, as per Government's letter dated 01.08.1982, one Yugal Kishore Sahi was made In-charge Headmaster of the School and after him Sri Sita Ram Mishra, was made the In-charge Headmaster of the School. The claim of the petitioner that he was working as an In-charge Headmaster since 1978 is false and baseless. It is admitted however, that it was only after the petitioner became trained teacher on 18.06.1986, that he was given the charge of In-charge Headmaster as per the letter issued by the District Education Officer on 20.08.1986. The further stand of the respondent is that since the petitioner was working in a Project High School, as such the rules under the Bihar Nationalized Secondary School (Service Condition) Rules, 1983 did not apply to the petitioner and in the light of the forgoing circumstances, the judgement in the case of A.K. Pradhan (Supra) is not applicable to the case of the petitioner.

6. From the rival submissions, the facts which emerge are that the school under reference was initially established as a private school though under the permission of the Bihar Secondary Schools Department. The petitioner was appointed as a founder teacher of the school by the then Managing Committee of the School. After taking over of the School by the State Government under the Project Scheme, the petitioner continued to function as a teacher in the school and he was recognized as a Government teacher and was paid his salary by the Government. The petitioner acquired his B.Ed degree and training in the year 1986 and made himself eligible as a trained teacher. The petitioner's claim that he was working as an In-charge Headmaster not only prior to the taking over of the School by the State Government and even after taking over of the school, is denied and disputed by the respondents. However, the respondents have admitted the fact that after the petitioner had acquired the training as a teacher, he was appointed as an In-charge Headmaster of the School from 20.08.1986. Thus, undeniably the petitioner was found qualified at that time for the post of In-charge Headmaster by virtue of the fact that he was the senior most teacher of the School.

6. The grounds on which the petitioner's representation has been rejected as appearing from the impugned order are:

(i) That after taking over of the school under the Project Scheme, it is the concerned Department of the Government alone who has authority to appoint the permanent Headmaster of the taken over Schools. The Managing Committee of the School did not have any power whatsoever to appoint any person as the Headmaster of the School.

(ii) Since after taking over of the school in 1982, the post of Headmaster of School remained vacant, the petitioner was given the responsibility to function only as an In-charge Headmaster of the School since 20.08.1986.

(iii) The judgements in the case of A.K.Pradhan and Susheela Devi relate to rules applicable to the teachers of Government Secondary Schools and not to schools taken over under the Project Scheme and hence the Judgements not applicable to the teachers of the Project Schools.

7. Undisputedly, under the Project Scheme of the State Government, the petitioner's school was taken over by the State Government under its Department of Secondary Education and the school was given a status of a Government School. The teachers of all such Project Schools having been considered as Government teachers, they were paid their salary by the Government. The rules relating to Bihar Nationalized Secondary School was also adopted in respect of the Project School Teachers by the Government Notification dated 01.06.1999 and the same was also adopted by the State of Jharkhand.

8. A similar controversy was raised by the respondent State of Bihar in the case of Smt. Nayan Rai v. State of Bihar in C.W.J.C. No. 6023 of 1998 before a Bench of the Patna High Court. The fact of the case was that the petitioner Smt. Nayan

Rai was appointed as a founder teacher of a Non-Governmental School. She being the senior most teacher of the school, the Managing Committee of the School had appointed her to the post of Headmistress of the School. Vide Government Order dated 12.02.1985, the school was selected and taken over by the Government under the Project Scheme. After having completed more than seven years experience as a senior teacher in the school, she staked her claim for being regularized as the Headmistress of the School. Relying upon the judgement of the Supreme Court in the case of A.K. Pradhan (Supra), the High Court had directed the respondents to consider the case of the petitioner therein, for her appointment to the post of Headmistress in the concerned school or any other High School in accordance with law. The direction was accordingly carried out by the respondents. It cannot, therefore, be said that since the petitioner was a teacher of the Project School, the ratio in the judgement of A.K. Pradhan, Susheela Devi and Smt. Nayan Rai would not apply to the petitioner's case.

9. From the facts noted above, even though the petitioner may have been appointed as a Headmaster In-charge of the School by the Managing Committee and even though he may have continued to function as such after the school was taken over by the State Government, but his candidature could not have been considered by the State Government in view of the fact that admittedly he had not possessed the requisite qualification of possessing a B.Ed degree and teachers training. He had acquired such degree and training in 1986 whereafter he was given to act as an In-charge Headmaster. The petitioner having continued to function as In-charge Headmaster for more than seven years from the date of his appointment as such, he was certainly eligible for consideration for his regularization for the post of Headmaster at least with effect from the date on which he had completed seven years of service after having completed the teacher training and appointed as In-charge Headmaster. From the impugned order, it does appear that the respondent No. 2 has not considered the petitioner's case in proper prospective. The respondents have committed an error by distinguishing the petitioner's case on the ground that the rules as applicable to the teachers of Government schools did not apply to the Project School Teachers. When as pointed out by the petitioner by several instances, other teachers in similar circumstances were given the benefit of their regularization in the post of Headmaster on their completing seven years of teaching experience from the date of taking over of the school, the petitioner could not be discriminated and denied of the same benefit. Since admittedly, he being the senior most teacher of the school and having been appointed as an In-charge Headmaster of the School from 1986, he was certainly eligible for regularization on the post of Headmaster on his completing seven years of teaching experience since after 1986.

10. It is now informed that the petitioner has though prayed for his regularization on the post of Headmaster of the School but he has since retired from his service on 29.09.2008. Even though, the petitioner has now retired but he was entitled for being regularized to the post of Headmaster at least seven years from the date of his official appointment by the concerned authorities of

the respondents as In-charge Headmaster of the School since 20.08.1986.

11. In the light of the above discussions, the respondents are directed to treat the petitioner as regular Headmaster of the School from the date of his completing seven years from the date of his official appointment as In-charge Headmaster of the school on 20.08.1986 and to pay him all the consequential benefits on the post of Headmaster which accrue to him, till the date of his retirement.

12. With these above observations, this writ application is disposed of.