
(2014) 07 JH CK 0013
In the Jharkhand High Court
Case No : WP (S) No. 5125 of 2013

Lal Bihari Napit

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2014) 3 JLJR 571

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Advocate for the Appellant; Sumeer Prasad, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—The petitioner is said to have been appointed as an Assistant Teacher in Carmel Boys' Middle School, Chakradharpur, District-West Singhbhum, a Government Aided Minority School by the Managing Committee after advertisement and on fulfilling the necessary minimum qualification laid down for such post. According to the petitioner, District Superintendent of Education, West Singhbhum granted permission for issuance of advertisement for filling up sanctioned post of matric trained Assistant Teachers on 18.5.2011 also referring to the terms and conditions of the Circular dated 4.3.1993. The petitioner applied under the said advertisement having the qualification of B.Sc. and B.Ed. and he was appointed by letter dated 26.7.2011 after the interview and preparation of merit list, to which he submitted his joining on 1.8.2011. The District Superintendent of Education gave approval on 4.7.2012, Annexure-5, to his appointment, however, subject to the approval of the preposition statements by the Directorate. The matter has, however, remained pending since then leaving the petitioner no option but to approach this Court. According to him, he also has obtained the TET qualification on passing the TET Examination held by the Jharkhand Academic Council in April, 2013 after his appointment. However, counsel for the petitioner has submitted that the respondents through their counter affidavit have objected the approval of the petitioner's appointment on

the ground that he was not having the TET qualification in terms of the Right to Children to Free and Compulsory Education Act, 2009 and the Notification of NCTE dated 23.8.2010, which is mandatory requirement for appointment of a teacher in elementary school. Counsel for the petitioner, however, points out that in the judgment rendered by the Hon"ble Supreme Court in the case of Pramati Educational and Cultural Trust (r) and Others Vs. Union of India (UOI) and Others, , it has been categorically held by the Constitution Bench that the Act of 2009 is not applicable to the aided or unaided minority school, who are covered under the provisions of Article 30(1) of the Constitution of India. It is submitted that the respondents have also issued a letter on 22.5.2014 to all District Superintendent of Education in the light of the judgment rendered by the Apex Court as aforesaid for sending the proposal for approval of the appointment and preposition statement of such teachers appointed in the minority aided/unaided, Elementary/Secondary Schools within the State. Therefore, it is submitted that the matter should be remanded to the respondents to take a fresh decision in the matter.

2. Counsel for the State has relied upon contents of the counter affidavit in which stand was taken that the petitioner was not having the mandatory qualification as required under the Act of 2009 and the NCTE Guidelines for approval of his appointment. However, learned counsel has not been able to dispute that by the judgment rendered by the Apex Court, the Act of 2009 has been held inapplicable to the aided/unaided minority schools.

3. Having regard to the aforesaid facts and circumstances and upon hearing the counsel for the parties, it, therefore, appears that the Act of 2009 and the NCTE Guidelines is no longer applicable for appointment of teachers in an aided/unaided minority school in view of the judgment rendered by the Hon"ble Supreme Court. The respondents are, therefore, required to reconsider the matter in accordance with law, for which they have also issued a letter on 22.5.2014 seeking proposal from all District Superintendent of Education concerned in respect of appointment/preposition statements of teachers appointed in such minority schools.

4. In these circumstances, the matter is remanded to the respondent No. 2, Director, Primary Education to reconsider the whole issue and take a fresh decision in the matter in accordance with law after due verification of the relevant records of the appointment of the petitioner within 12 weeks from the date of receipt of a copy of this order along with petitioner"s representation made through proper channel. This writ petition stands disposed of accordingly.