

(2013) 08 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (S) . No. 1127 of 2004

Lutheran Middle School

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 4 AJR 197 : (2013) 4 JLJR 75

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sudharshan Shrivastava, for the Appellant; Bhola Nath Ojha and J.C. S.C. III for State, A.K. Sahani and Ajit Kumar, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the panics. The petitioner is aided minority school. which is aggrieved by the impugned order dated 29.11.2003 passed by the Director. Primary Education. Ranchi. Government of Jharkhand (Annexure-5) which inter alia held that appoint merit of respondent No. 4. Smt. Kripa Aind as teacher in the school from the date of her first appointment is continuous and she would be entitled for arrears of salary. It also held that the management of the school was not justified in appointing another teacher in place of the respondent No. 4 and the salary paid to the other person would be borne by the school management itself. It also recommended action against the District Superintendent of Education. Ranchi who gave concurrence to the illegal appointment of other person namely Smt. N. Hembrum in place of the respondent No. 4. He has further observed that the other teacher. Smt. N. Hembrum would be adjusted against any future vacancy. However, respondent No. 4 would continue as a teacher of the petitioner-Lutheran Middle School. Burju treating her appointment as valid since her first date of appointment.

2. The case of the parties in brief are that Smt. Kripa Aind. respondent No. 4 was appointed as Assistant Teacher in the Lutheran Middle School. Burju on 1.11.1979, She was transferred to another primary school in the same campus on 9.5.1989. She is said to have been relieved on 25.3.1989 by the management

of the school. However, she preferred a suit against the impugned order of transfer being Title Suit No. 12 of 1989 before the Competent Court of Civil jurisdiction, Ranchi. She also preferred injunction petition under Order 39 Rule 1 of the C.P.C. which, however was refused. Her Miscellaneous Appeal being Misc. Appeal No. 19 of 1989 against refusal of injunction was dismissed on 7.9.1990. Finally, the title suit stood dismissed on 12.10.1993. Thereafter, she preferred title appeal being T.A. No. 7 of 1994 which was also dismissed on 27.11.2002. The further fact which is also not in dispute, and is also evident from statement made in para-10 of the counter-affidavit filed on behalf of the respondent No. 4 is that second appeal preferred by the respondent No. 4 against the impugned judgments and decree also stood dismissed. In the meantime, the school management had appointed one Smt. N. Hembrum in place of the respondent No. 4 on 16.11.1993. However in the said Primary School. Burju where the petitioner was transferred one Smt. Ashiyana Purty was appointed on 14.2.1991. In these circumstances, respondent No. 4 had preferred the writ petition being C.W.J.C. No. 3439 of 1994(K). The said writ petition however was withdrawn with a liberty to avail the alternative remedy available to the said petitioner i.e. respondent No. 4. herein. The said judgment dated 22.2.1995 in C.W.J.C. No. 3439 of 1994(R) is annexed as Annexure-R/4-D to the counter-affidavit filed on behalf of the respondent No. 4. Thereafter, on the representation of the respondent No. 4 the impugned order contained at Annexure-5 to the writ petition has been passed by the Director. Primary Education on 29.11.2003 as contained in memo No. 3087.

3. Learned counsel for the petitioner-school has assailed the impugned order inter alia on the grounds that:--a) the question relating to transfer of respondent No. 4, had been agitated before the Competent Courts and had attained finality by dismissal of appeal, second appeal preferred against the judgments rendered by the Trial Court. The very question therefore. was not open for the respondent No. 4 to agitate before the Director. Primary Education. b) He also submitted that the question relating to illegal appointment as alleged on behalf of the respondent No. 4 in her place by the management of the petitioner's school could not have been decided by the Director, Primary Education as it amounted to interference in over all administration of the minority school which is in teeth of the Fundamental Rights under Articles 29 and 30 guaranteed to such minority institutions as also in view of the judgments rendered by the Hon'ble Supreme Court, one of them being in the case of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, c) Learned counsel for the petitioner has while ret erring to the contents of the impugned order also assailed it on the ground that as a matter of fact the Director, Primary Education has proceeded to assume that respondent No. 4 was dismissed from service, although there was no such order.

In the wake of aforesaid submissions the impugned order has been assailed as bad in law and in contravention of the guarantee given under the Fundamental Right to the petitioner-school.

4. Learned counsel for the respondent No. 4 on the other hand has argued in defence of the impugned order. It is submitted on their behalf that petitioner-school is aided minority school which gets grant on regular basis for payment of salary of such teachers whose appointment has been approved by the Authority of the State Government under the Education Department. The order of transfer to the school in the same campus by the management of the petitioner-school was not proper in the eyes of law. Such appointment of teachers are made specially to the school in question and there is no jurisdiction of the management of the concerned school to transfer them elsewhere. Appointments to the minority aided school are made on the basis of advertisement regarding vacancy in the school in question and their services are not transferable to any other school. In any case though the present illegality may not have been interfered by the competent Court on being agitated by the respondent No. 4 but the management of the petitioner-school did not have any basis to appoint another teacher in her place on the alleged vacancy created on account of her transfer. In such circumstances, when the Director, Primary Education was appraised of the illegalities and improper conduct of the petitioner-school he had conducted a thorough inquiry into the matter, gave adequate opportunity to the parties to put forth their case and thereafter, passed the impugned order which is wholly proper and just in the eyes of law. Learned counsel for the respondent No. 4 also relied upon the statute i.e. Bihar Primary and Middle School Rules, 1961 which governs such aided minority school. He has relied on part IV of the said rule which relates to the specific rule for giving grants-in-aid to the minority schools out of District Education Fund. Rule 45 thereof makes provision of powers relating to posting, transfer, disciplinary action against the school staff. Learned counsel for the respondent No. 4 submitted that in view of the regulatory powers conferred upon the Authority of the State in the matter of posting, transfer, disciplinary action against the school staffs, the impugned action of the petitioner-school not only by transferring the respondent No. 4 but also in appointing another person in her place on the alleged vacancy has been found to be wholly without jurisdiction as well as had in law and on facts. In such circumstances, learned counsel for the Respondent No. 4 has also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, . According to learned counsel for the respondent No. 4 the judgment rendered by the Hon'ble Supreme Court in the aforesaid case are in context of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. which lays down clear proposition of law that in the disciplinary matter exercised by the managing committee of the minority school it is incumbent upon them to seek approval of the School Service Board who shall scrutinize whether disciplinary proceedings are in accordance with the rules and law framed by the management itself and whether they suffer from any illegality or infirmity. Paras 10, 17, 19 and 2) of the said judgment has been relied upon by the counsel for the respondent No. 4. According to them the impugned action taken by the Director, Primary Education does not amount to interference in the administration of the

minority school in question.

5. I have heard counsel for the parties at length and gone through the relevant materials on record including the impugned order. The facts which have been narrated earlier in respect of the appointment of respondent No. 4 and her transfer to another Primary School in the same campus by the management of the petitioner-school are not in dispute. Neither is there any dispute of the fact that challenge to the said transfer has been refused by the Trial Court and successive challenges before the first Appellate Court and second Appellate Court also failed. However, the respondent No. 4, had earlier approached the Patna High Court in C.W.J.C. No. 3439 of 1994(R) apparently for the grievances relating to her transfer as also the appointment made in her place during the interregnum. The writ petition was disposed of with a liberty to the petitioner-respondent No. 4, herein to avail alternative remedy as would appear from the judgment dated 22.2.1995 (Annexure-R/4-D). A perusal of the impugned order passed by the Director, Primary Education (Annexure-5) to the writ petition also corroborates this fact that not only the question of transfer but also the question relating to alleged illegal appointment in place of respondent No. 4 was raised before the Director, Primary Education on which he proceeded to hear the parties and decided the issue. He also ensured inspection of the school premises through Deputy Director of the Department.

6. So far as the first question relating to the transfer of the respondent No. 4 is concerned, though the respondent No. 4 has assailed it and certain findings have been recorded by the Director, Primary Education against the petitioner-school in question, but since the challenge to the said transfer of the respondent No. 4 had failed in the title suit as also in successive appeals before the competent Court, therefore that issue, of course, was not open to the Director, Primary Education to decide. However, the second part of the grievance raised by the respondent No. 4 was subsisting at the time when it was raised before the Director, Primary Education. The facts as has been stated herein above even are not in dispute that the respondent No. 4 was appointed as Assistant Teacher as back as in March, 1979 and was working in the petitioner-school. However, she was transferred to other primary school in the same campus by the management of the petitioner-school in the month of May, 1989. However, it is also evident from perusal of the impugned order that even after appearing several times, the petitioner-school management failed to produce any document in support of the alleged dismissal of respondent No. 4 or termination of her appointment in the petitioner-school.

The matter was inspected through Deputy Director of the Respondent-Department on direction of the Director in view of the non-co-operative attitude of the management of the petitioner-school. Such physical inspection was carried out on 4.2.2001. The relevant Rule 45 of the 1961 Rules were also taken note of by the Director, Primary Education in which there is a requirement to obtain proper sanction of the District Superintendent of Education before any such

posting, transfer or any disciplinary action is taken against the school Staff. In the instant case it has also been noticed by the Director, Primary Education that each such aided minority school is treated as unit and proposition statement of the teachers and consequent grant are released by approval of the Directorate of Primary/Higher Education as the case may be. It is also evident that without any dismissal of Respondent No. 4 or termination of her appointment, on the alleged vacancy created because of her transfer, one Smt. N. Hembrum was appointed in the interregnum on 16.11.1993 in the petitioner-school and one Ashiyana Purty was appointed on 14.2.1991 in the Primary school. It has also been noticed by the Director, Primary Education in the impugned order that till date the appointment of respondent No. 4 had not been terminated. Such written information was also furnished by Mr. Izrail Tirkey, Secretary of the managing committee of the petitioner-school. In such circumstances, the Director, Primary Education came to a conclusion that appointments made on the alleged vacant post before any such termination of the appointment of the respondent No. 4 was not proper and had no justification.

7. In these background of facts and circumstances, therefore, the Director, Primary Education came to a conclusion after giving adequate opportunity to both the parties that since there was no order of dismissal or termination of appointment of the respondent No. 4, her services as teacher shall be treated as continuous from the date of her initial appointment in the petitioner-school. The Director, Primary Education also took care of the development which had taken place in the interregnum by observing that the person appointed in place of respondent No. 4 could be adjusted against any future vacancy that might occur. In the wake of such circumstances, the Director, Primary Education found that the action of the District Superintendent of Education is not proper in the eye of law. Under Rule 44 of 1961 Rules in question, the duties of the District Superintendent of Education are subject to the general control of the Director where under he shall be responsible for the distribution of grant-in-aid, exercise general supervision over all matters connected with the finances, accounts, maintenance and management of all aided schools and may issue instruction from time to time to the managing committee or headmasters or teachers incharge. In the background of facts and circumstances, which were brought to the notice of the Director, Primary Education in respect of the conduct of the management of the petitioner-school, in exercise of such power of supervision and general control as provided under the rules in question, he rightly interfered with the illegal action of the petitioner - school by passing the impugned order.

8. However, part of the impugned order which relates to the observation in relation to the transfer of respondent No. 4 are totally uncalled for in view of the fact that such issue had already attained finality before the Competent Court after dismissal of the suit, appeal and second appeal preferred by the respondent No. 4. In the judgment relied upon by the petitioner in the case of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, the issue for consideration was whether the respondent-State Authority

were justified in insisting upon following reservation policy in aided minority school as precondition for grant-in-aid. In such circumstances, the Hon''ble Supreme Court after taking note of the judgment rendered by a larger Bench at para-69 appears to have summarized the regulatory powers which can be exercised by the State in the matter of administration of minority educational institutions. Para 21 of the judgment rendered in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has been taken note in the said para 69. On perusal of the said quoted paragraph it appears that the State can prescribe the minimum qualification, experience and other criteria bearing on merit, for making such appointment. It also can prescribe for the service condition of employees without interfering with the overall administrative control by the management over the staff. The opinion of the Hon''ble Supreme Court on the question as contained in para 94 of the judgment in the case of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, is appropriate to be quoted and is being extracted hereunder:--

Para 94:--It is also equally true that the right to administer does not amount to the right to maladminister and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent maladministration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books, etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institutions, by introduction of outside authority either directly or through its nominees in the governing body or the managing committee of a minority institution to conduct its affairs, etc. These have been illustrated by this Court in the State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, And T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

9. In the present case, the petitioner-school is an aided minority school in which grant-in-aid are released in favour of the school for the purpose of disbursement of salary of the teachers whose service have been approved by the respondent-authorities of the State on approval of proposition Statement. In such circumstances, the exercise contemplated under the provision of the Rules of 1961, does not appear to have been observed in proper manner by the petitioner-management of the school or the District Superintendent of Education before appointment was made in place of respondent No. 4 by the petitioner-school.

10. Therefore, the impugned order, as has been discussed herein above cannot

be said to be suffer from any errors of law or facts or want of jurisdiction. However, observations made in respect of transfer of respondent No. 4 in the impugned order will have no effect as has been held hereinabove. The writ petition is dismissed with the aforesaid observations.