

(2009) 11 JH CK 0078
In the Jharkhand High Court

Madhu Bharti

APPELLANT

Vs

The State of Jharkhand, The Secretary, Human Resources Development Department, Government of Jharkhand, The Deputy Commissioner and The District Superintendent of Education

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0078

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner in this writ application has prayed for issuance of an appropriate writ in the nature of certiorari for quashing the part of the letter contained in Memo No. 944 dated 02.06.2006 (Annexure-3) as far as it relates to the petitioner, by which the petitioner's services along with a few other teachers, have been terminated. A further prayer has been made to direct the respondents to reinstate the petitioner in service with all consequential benefits.

3. In response to an advertisement issued by the State Government for filling up the vacant post of 9223 Assistant Teachers in the primary schools, the petitioner had submitted her application declaring therein that she does possess the prescribed qualifications including the teachers training, which she had obtained from a recognized institute affiliated to the Bihar School Examination Board.

4. The process of selection was conducted by the Jharkhand Public Service Commission. Upon the petitioner being selected and her name being recommended by the Commission, the petitioner was appointed on the post of Assistant Teacher by the Office Order dated 06.09.2004. 5. The petitioner's contention is that the documents including the certificate of her teachers training were verified by the concerned authorities including the Vigilance Department of

the Bihar School Examination Board and the same were confirmed to be correct and it was on that basis, that the petitioner was granted appointment.

6. The grievance of the petitioner is that having been appointed and having been allowed to continue discharging her services for a long time, the respondents, all of a sudden by the impugned order, had terminated the petitioner's services. The impugned order of termination has been assailed by the petitioner on the ground that the order has been passed without any prior notice to the petitioner and without giving any opportunity whatsoever to explain.

7. Learned Counsel for the petitioner submits that a few other teachers, against whom the identical orders of termination were issued, had approached this Court by filing writ applications after they had obtained informations under the Right to Information Act that their Roll Numbers and Code Numbers which were allotted to them by the Bihar School Examination Board while conducting the teachers training examinations, were genuine and correct and thereafter on the basis of such information, when they applied before the concerned authorities for their reinstatement, they were not allowed to do so. In the writ applications filed by them, this Court had directed the respondents to reinstate the teachers provisionally and to get the certificates re-examined and if found genuine, then to regularize the services of the teachers.

Learned Counsel submits that though the petitioner in the instant case has not obtained any such information under the Right to Information Act, but she does believe that the certificates issued to her by the Bihar School Examination Board are genuine and correct and even otherwise, the order of termination is illegal in view of the fact that she was not given any prior notice.

8. A counter affidavit has been filed on behalf of the respondent State. The stand taken by the respondents is that the appointment which was granted to the petitioner was infact conditional in as much as, it was declared in the letter of appointment itself that the appointment would be subject to the condition that the certificates and other documents filed by the petitioner are found to be genuine.

Learned Counsel for the respondents explains that at the time of Obtaining the applications, the certificates though were submitted by the respective candidates, but it was not possible for the concerned authorities to verify each of the certificates before filling up the vacancies and as such, a decision was taken to fill up the vacancies on the prima facie belief of genuineness of the certificates produced by the candidates, though such filling up was entirely made conditional. Learned Counsel argues further that since the petitioner's appointment was itself conditional as declared in the appointment letter and since in the vigilance enquiry it was detected that the certificate produced by the petitioner in respect of her teachers training was fake and forged, the petitioner's appointment which was given on the basis of such forged documents is deemed void ab initio and no right could have accrued to the petitioner for continuing on such appointment

and therefore the petitioner cannot raise any issue on the ground that no prior notice was issued to her.

9. As it appears from the pleadings of the parties, the petitioner's appointment was made conditional and she was given to understand that the certificates produced by her would be subjected to verification and the appointment would therefore be subject to the results of the verification. The certificates, according to the respondents, were found to be fake. In this view of the matter, as rightly pointed out by the counsel for the respondents, the appointment itself will be deemed to be void and would not give any right to the petitioner to hold to such appointment and to demand a prior notice before termination of her appointment.

10. If the petitioner was convinced in her belief that the certificates produced by her were genuine, she could, like the other teachers, obtain the requisite information from the concerned authorities of the Bihar School Examination Board and thereafter approach the concerned authorities of the respondents for re-consideration of her case.

11. Considering the above facts and circumstances, I dispose of this writ application with a liberty to the petitioner to obtain the requisite informations regarding the genuineness of her certificates pertaining to her teachers training, from the concerned authorities who had issued the certificate to her and thereafter file a fresh representation before the Respondent No. 4 namely the District Superintendent of Education, Giridih on the basis of the information received under the Right to Information Act. On receipt of such representation, the District Superintendent of Education shall consider the same in proper perspective and if satisfied that the certificates produced by the petitioner is genuine, then pass appropriate orders for reinstatement of the petitioner though without back wages. In the event the District Superintendent of Education is not satisfied about the genuineness of the documents, then he may pass appropriate orders on the representation by assigning reasons.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State.