

(2008) 07 PAT CK 0029

In the Patna High Court

Case No : CWJC No"s. 4195 of 2003; 13036 of 2006

Mahadev Lal Karmakar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Citation : (2008) 4 PLJR 444

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Abhay Shankar Singh and Upendra Prasad, for the Appellant; P.K. Singh (in 4195) and Mr. Ranjeet Kumar Pandey (in 13036), for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioners and Learned Counsel for the respondents in both the writ applications. C.W.J.C. No. 4195/03 has been filed for release of arrears of salary and current salary while C.W.J.C. No. 13036/06 assails the order of his termination dated 21.7.2006 issued during the pendency of the former.

2. The State Government, under the Bihar Non-Government Primary Teachers Regulation and Control Act, 1976 qualified the eligibility and requirement for appointment of teachers, inter alia, for minority schools. The minimum qualification prescribed for appointment of teachers after 1.1.1971 was Matriculate and trained. The appointment of untrained teachers was not permissible.

3. The petitioner, who was a graduate, completed his teacher's training in B.Ed. course in the session "1987-1988" from the Milia Fakhruddin Ali Ahmed B.Ed. Teachers Training College at Ram Bagh, Pumea. However, his examinations for the B.Ed. course were held only in 1991 when the results were published on 22.11.1992. He qualified in the first division. The petitioner applied for and was appointed as an Assistant Teacher in the Bhatta Minority School, at Bengali Tola

at Pumea, a minority school, by a resolution dated 16.7.1989 as an Assistant Teacher. The District Superintendent of Education on 1.9.1989 granted provisional approval to the appointment of the petitioner in an untrained scale. After the results of the petitioner were declared on 22.11.1992 by an order dated 27.5.1994 he has been given the Matric Trained Scale with effect from 23.11.1992. The petitioner continued to discharge his duties as an Assistant Teacher in the aforesaid minority school and received his salary till it came to be stopped on 1.5.1998 without any orders to that effect. He came to this Court in April, 2003 with a grievance that he was not being paid his salary: While this writ petition remained pending before this Court, on 30.2.2006 the respondents issued him a show cause notice as to why the approval for his appointment be not cancelled inasmuch as at the time of his appointment he had not passed the teacher's training examination. The petitioner showed cause whereafter the impugned order dated 21.7.2006 canceling the approval of his appointment given as far back as 1.9.1989 came to be passed.

4. It was contended on behalf of the petitioner that the factum of his having completed the training course on the date of his appointment is not disputed. Satisfied with the same provisional approval in the untrained scale was granted. That, therefore, there was no justification to now cancel the approval of the appointment, more so, when after his results of the teacher's training programme was published he has been given the trained scale. That there has been no concealment or misrepresentation by the petitioner and, therefore, after having served as a teacher since July, 1989 there was no justification for annulling his appointment.

5. Learned Counsel for the State, with reference to the rules regulating the appointment, emphasized that the petitioner could not have been appointed as an untrained teacher, which was prohibited. Mere long continuance was of no avail when the very initial appointment itself was invalid. That, therefore, there was no infirmity in the impugned order of termination. The appointment being illegal, the question of benefit of any salary against it did not arise.

6. Every case throws up its own peculiarity of facts on which the matter has to be tested. The mandatory requirement for appointment of a trained teacher by the minority school in question is not in controversy. Likewise, it is also not in controversy that the petitioner on the date that he was appointed by the minority school i.e. 16.7.1989 was not a novice from the street, but had admittedly completed the B.Ed. teacher's training course and was a graduate. A minority institution would be undoubtedly concerned about its own reputation while appointing teachers and this Court finds it difficult to believe that it deliberately made an illegal appointment. The facts of the case point to the satisfaction of the minority school that the petitioner had completed the B.Ed. teacher's training course and was a qualified personnel. The Minority School, satisfied of his capability, appointed him and recommended his case for approval. Quite obviously, the District Superintendent of Education was also satisfied that it was

not a per se, recommendation for an illegal appointment. The fact that the petitioner had completed his B.Ed. teacher's training course, quite obviously weighed heavily in the mind of the authorities when they granted provisional approval to the appointment of the petitioner on 1.9.1989 in the untrained scale awaiting his results. This reasoning is further fortified by the subsequent approval granted to the appointment of the petitioner on 27.5.1994 in the Matric Trained Scale with effect from 23.11.1992. At this stage it is significant to note that the examination for the B.Ed. Teacher's Training Course attended by the petitioner was held in 1991 and the results were published on 22.11.1992 in which he is stated to have secured first division. this Court has no hesitation in holding that the moment the petitioner successfully cleared the B.Ed. examination, he shall be deemed to be a trained teacher in pursuance of the training course of session "1987-1988". This observation is, however, qualified only for the purposes of discussion and shall not vest in the petitioner any claim better than that given to him after 27.5.1994 only. this Court finds it difficult to penalize the petitioner for reasons beyond his control. The delay in holding of the examination and publication of the results were certainly not attributable to the petitioner.

7. Had the petitioner not completed the B.Ed. course in the session "1987-1988" or had he failed in the ensuing examination for the same in 1991, the matter would have been entirely different. When the basic fact of his having attended the B.Ed. Training Course for the session "1987-1988" successfully is not disputed by the State this Court finds it difficult to uphold the action of the respondents in either denying him salary or terminating his services. The impugned order of termination quite simply states that since he came to be appointed in an untrained capacity, the same being contrary to Government instructions, his services were being terminated. The facts of the case, as noticed above, culled out from the pleadings of the parties, find no reference in the order of termination.

8. The petitioner has been discharging duties as a teacher since 16th of July, 1989 till the impugned order of termination came to be issued on 21.7.2006. Noticing the facts of the case with regard to his training and the expertise that he must have acquired by now, in the qualities and capabilities of a teacher shall definitely place him better than a new entrant as a teacher who may merely be having a training certificate. This is an aspect which cannot be lost sight of. To uphold the objection of the respondents and to reject the application of the petitioner or to deny him salary shall clearly be a case of wastage of resources and talent, especially in education [n this State where it is so dearly required.

9. In the facts and circumstances of the case, this Court holds that the petitioner has been wrongly denied his salary after 1.5.1998. For reasons of the discussion as aforesaid, this Court further holds that the cancellation of the approval of the appointment of the petitioner dated 21.7.2006 is likewise not sustainable and is accordingly set aside. The petitioner stands reinstated, and shall be entitled to all

arrears of salary from 1.5.1998 till 20.7.2006 payable by the State-respondents. Both the writ applications stand allowed to the extent indicated above.