
(2009) 04 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 10748 of 2008

Mamta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 4 PLJR 874

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Arun Kumar, Hans Lal Kumar and Sanjay Kumar Sharma, for the Appellant; Amaresh Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State. The petitioner claims to have acquired the qualification of Madhyama (Visharad) from Hindi Sahitya Sammelan, Allahabad in 2006. In response to an advertisement by the State of Bihar for appointment of Teachers in the Primary, Middle and High Schools under the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter called "the Rules"). She was also an applicant. After consideration she was appointed 26.2.2007 and started to discharge her duties. Her services have been terminated by an order dated 18.4.2007 in pursuance of an order dated 23.2.2007 issued by the Department of Human Resources on the ground that her certificate from the Hindi Sahitya Sammelan, Allahabad was not recognised.

2. Learned Counsel for the petitioner submits that under Rule 8(2) a candidate was required to possess qualification of Secondary/Intermediate or its equivalent from a recognised School. He submits that the State Government by a notification dated 15.6.1973 letter No. 1672 had resolved with reference to an earlier order of the State Government dated 16.8.1965 that the qualification of Madhyama from Hindi Sahitya Sammelan, Prayag was equivalent to B.A. Part-I or Intermediate. Any subsequent decision by the respondents with regard to the

Madhyama qualification from Hindi Sahitya Sammelan, Allahabad can only be with prospective effect including a revision or overturning of the earlier decision of the State Government in context of the same issue taken in 1965 reiterated in 1973.

3. Learned counsel for the State relies upon a decision of this Court in CWJC No. 14222 of 2008 disposed on 22.1.2009 declining interference on a policy decision of the State Government dated 20.11.2008 declining to grant equivalence to a qualification of Shiksha Visharad from Hindi Sahitya Sammelan, Prayag, Allahabad to a degree of B.Ed, for the purpose of appointment.

4. Learned Counsel for the petitioner rightly points out that the facts in CWJC No. 14222 of 2008 were a claim for the right to be considered for appointment based on the aforesaid qualification and not where appointment had already been provided and the qualifications were sought to be questioned thereafter. He further submits that this Court was dealing with a case of Shiksha (Visharad) degree as equivalent to B.Ed. While the present case relates to Madhyama degree as equivalent to Intermediate based on earlier policy decision of the State Government itself.

5. This Court has held in more than one case that issues of eligibility, qualifications equivalence etc. for appointment are for the employer to decide. But these have to be decided by the employer before the process of selection commences. If the employer was callous in not being cautious about its own duties and left a grey area in pursuance of which the employer himself granted certain benefits and provided employment, this Court is afraid that it shall not permit the employer to now re-write or explain the advertisement to exclude persons whom the employer had earlier found fit for employment. Of course this shall not include cases where qualifications itself be wanting as distinct from the issue of equivalence. In this case, it appears that the employer had already taken decision in 1965 and 1973 and only whereafter employment was provided to the petitioner. Had the respondents been a little more careful in discharge of their duties and believed in thinking first and acting later rather than vice versa, they would not have found themselves in the present predicament.

6. This Court finds substance in the submissions of the petitioner that when her initial qualification for appointment is not wanting the only issue is one of equivalence which appears to have been decided on 20.11.2008, if it be applicable, the petitioner cannot be denied the benefits of the appointment for the aforesaid reason.

7. Any such decision can have only prospective effect.

8. This Court therefore finds it difficult to sustain the impugned order of termination dated 18.4.2007 in its present form. It is accordingly set aside with all consequential benefits.

9. This shall be without prejudice to the rights of the respondents, if there be any

policy decision on the issue of equivalence of Madhyama qualification at variance with subsequent decision of 1965 reiterated in 1973 on which premise the present order is based, but prior to the appointment of the petitioner. The writ application stands allowed.