

(2009) 06 JH CK 0032
In the Jharkhand High Court

Manesh Chandra Mandal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Citation : (2009) 06 JH CK 0032

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly for challenging an order passed by District Establishment Education Committee, Godda dated 5th of February, 2003 (Annexure-1 to the memo of the petition) alleging against him that educational certificate of Master of Arts degree of the present petitioner was fabricated and was never given by the concerned educational institution.

2. It is submitted by the Counsel for the petitioner that the petitioner was appointed as Teacher in the year 1962 with the respondent No. 6. Thereafter, he was promoted as Headmaster from 1st June, 1999 and he retired on 30th September, 2001. It is submitted by the Counsel for the petitioner that never during the course of his service any objection was raised by the respondents, after the retirement of the present petitioner vide order at Annexure-1 dated 5th February, 2003, a doubt has been raised by the respondents that M.A. certificate, which was presented by the petitioner after getting services in the year 1962, was fabricated. In fact, never any chargesheet was given nor any enquiry was conducted nor any opportunity of being heard was given to the petitioner otherwise, the petitioner would have pointed out that no fabricated documents were ever presented by the petitioner and the petitioner was having true and correct certificate of Master of Arts and the respondents could have been satisfied about the aforesaid aspect. The order at Annexure-1 of District Establishment Education Committee, Godda reveals that the promotion which was given to the petitioner on 1st June, 1999 was illegal and this order was

passed in the month of February, 2003. It is also submitted by the Counsel for the petitioner that criminal proceedings were instituted against the present petitioner as well as against two other persons namely Narottam Kumar Thakur and Niranjana Prasad Singh. The Superintendent of Education, Godda was informant and a case was instituted at Godda (T) P.S. Case No. 397 of 2001. It is submitted by the Counsel for the petitioner that in a rejoinder affidavit filed by the petitioner at Annexure-5 to the rejoinder affidavit, summary report has been filed by the police, in the criminal proceedings. Thus, summary report exonerates the present petitioner and other two persons namely Narottam Kumar Thakur and Niranjana Prasad Singh. Summary report has also been accepted by the concerned trial court. Looking to the Annexure-6 to the rejoinder affidavit, the District Superintendent of Education, Godda had also revoked the suspension of other two persons namely Narottam Kumar Thakur and Niranjana Prasad Singh and as the petitioner was already retired on 30th September, 2001, there was no need for revocation of suspension. Thus, in criminal proceedings, the petitioner and other two similarly situated Headmasters were not found guilty and their suspensions were also revoked and therefore, neither on civil side any enquiry was conducted nor any opportunity of being heard was given to the petitioner and on criminal side, summary report has been filed which was accepted by the court. Thus, the objection which was raised by District Establishment Education Committee, Godda vide order dated 5th February, 2003 at Annexure-1 to the memo of the present petition for holding promotion of the present petitioner is illegal is without any basis and without any material. There is not an iota of evidence that a promotion given to the petitioner on 1st June, 1999 was illegal and therefore, the order at Annexure-1 passed by the respondents dated 5th February, 2003 deserves to be quashed and set aside so far as the present petitioner is concerned and the petitioner is entitled to all the retirement benefits on the basis of last pay drawn as a Headmaster and treating the promotion of the present petitioner as valid and legal and in accordance with law.

3. I have heard Counsel for the respondents, who has submitted that looking to the order at Annexure-1 dated 5th February, 2003, the petitioner was not legally promoted on the post of Headmaster because M.A. certificate presented by the petitioner could not have been issued by the concerned institution. It is also submitted by the respondents that petitioner was not entitled for getting M.A. certificate and therefore, he could not be promoted as Headmaster because for the appointment of Headmaster, Master in Arts degree is necessary qualification. This aspect of the matter was properly appreciated by the District Establishment Education Committee, Godda and therefore, the order 5th February, 2003 at Annexure-1 was passed whereby promotion of the present petitioner was held as illegal and therefore, he is not entitled for the retrial benefits on the basis of pay scale of Headmaster and therefore, petition may not be entertained by this Court.

4. Having heard Counsel for both the sides and looking to the facts and circumstances of the case, it appears:

(i) that the petitioner was appointed as Teacher in the year, 1962 with the respondent No. 6 and thereafter, he was promoted on 1st June, 1999 as a Headmaster and he was retired on 30th September, 2001. During his long service from 1962-2001, never any objection was raised by the respondents about the educational qualification of the present petitioner. There is spotless career on the part of the petitioner as a Teacher as well as a Headmaster.

(ii) that after retirement of petitioner on 30th September, 2001, after lapse of approximately a period of more than fifteen months an order at Annexure-1 was passed by District Establishment Education Committee, Godda dated 5th February, 2003 whereby, they have concluded that the promotion given to the present petitioner on 1st June, 1999 was illegal. Admittedly, no chargesheet was given to the petitioner, no enquiry was conducted, much less an opportunity of being heard was given to the petitioner before arriving at a conclusion that the promotion given to the petitioner on 1st June, 1999 was illegal. There is a gross violation of principles of natural justice before coming to the conclusion as per order at Annexure-1 to the memo of the petition.

(iii) against the petitioner as well as one Narottam Kumar Thakur and one Niranjana Prasad Singh, an FIR was filed and was registered at Godda (T) P.S. Case No. 397 of 2001 about the fake and forged documents of M.A. degree. A report was filed in this FIR dated 10th February, 2005 which is at Annexure-5 to the rejoinder affidavit filed by the petitioner. This summary report was filed by the police, which was accepted by the concerned trial court. Thus, under the criminal proceedings also, no allegation levelled against the present petitioner was proved. Not only this, but, looking to the summary report accepted by the trial court as per order at Annexure-6 to the memo of rejoinder affidavit filed by the petitioner, it appears that the concerned respondent authorities have revoked the suspension of rest of the two Headmasters namely Narottam Kumar Thakur and Niranjana Prasad Singh. Thus, FIR initially filed was never concluded with the chargesheet, but, it was concluded with the summary report and ultimately suspension orders passed for the rest of the two Headmasters were also revoked.

(iv) thus, looking to these facts, it appears that neither on the civil side any enquiry was conducted nor on the criminal side any accusation is proved by the respondents against the present petitioner. It is also submitted by the counsel for the petitioner that the other two Headmasters namely Narottam Kumar Thakur and Niranjana Prasad Singh were taken in services and they are still working with the concerned respondent authorities, but, the petitioner is not paid the retiral benefits on the basis of last salary drawn by the petitioner as Headmaster. Looking to this aspect of the matter, nothing is against the present petitioner. Bare assertion cannot be equated with any evidence. Respondents are alleging that M.A. certificate presented by the petitioner was not true and was not correct, but, there is no evidence with the respondents on a civil side or a criminal side.

5. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and

set aside the order passed by the District Establishment Education Committee, Godda dated 5th February, 2008 at Annexure-1 to the memo of the present petition so far as it affects the present petitioner and I hereby direct the respondents to pay of all the retirement benefits to the petitioner on the basis of last salary drawn by the petitioner as a Headmaster. This exercise will be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order, failing which, the same will be paid with additional interest (5), 5 % per annum which will be initially paid by the respondent No. 1 - State and thereafter, it will be recovered by holding enquiry, from the erring officer.