
(1977) 01 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 1293 of 1975

Mangal Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-01-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1978) 26 BLJR 222

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Jha, J.—In an application under Articles 226 and 227 of the Constitution, of india, the petitioner prays for quashing the order curtained in annexure 7. By in the of the order contained in annexure 1, the Chairman of the Bihar Secondary Education Board directed that Jagdish Pd. Sinha respondent No. 6) shall act as headmaster incharge of the S.S. High School, Bhagwanpur.

2. The relevant facts are these : The petitioner Was appointed headmaster of the S. S. High School Bhagwanpur, by a resolution of the managing committee of the school, dated 1st September, 1973 (annexure 2) His appointment was approved by the District Education Officer, Saran, by his letter dated 20th September, 1973 annexure 3. The Secretary, S. S. High School, Bhagwanpur, by his letter dated 23rd September, 1973, contained in annexure 4 appointed the petitioner as headmaster of the school on probation for two years. Later on, his appointment was cancelled by the Regional Deputy Director of Education. Tirhut Division, by virtue of annexure 5, by virtue of annexure 6, the Under Secretary, Education Department, Government of Bihar, cancelled the order contained in annexure 5 which was issued by the Regional Deputy Director, Tirhut Division.

3. By virtue of annexure 7, the Chairman, Bihar Secondary Education Board, appointed respondent No. 6 as the acting headmaster of the S. S. High School,

Bhagwanpur. It is this order which has been challenged before this court.

4. Learned Counsel for the petitioner contends that the Chairman, Bihar Secondary Education Board, acted illegally in appointing respondent No. 6 as the acting headmaster of the school. In this connection, learned Counsel for the petitioner refers to annexure 2, 3 and 4. By virtue of annexure 2, the managing committee passed a resolution appointing the petitioner as headmaster of the S. S. High School, Bhagwanpur. It is dated 1st September, 1973. On that date, the Bihar High School Service Condition Rules, 1972 hereinafter referred to as the Rules were in force. These rules have the statutory force of law as they have been framed u/s 8(2) of the Bihar High Schools (Control and Regulation of Administration) Act, 1960. Under Clause 4 of the Rules the managing committee of the High School is authorized to appoint the headmaster, teacher or assistant teachers of the High School. By virtue of Clause 4 of the Rules, the managing committee of the S. S. High School, Bhagwanpur, duly appointed the petitioner as headmaster of the S. S. High School, Bhagwanpur, on probation for two years by passing a resolution on 1st September, 1973. His name was duly approved by the order of the District Education Officer vide annexure 3, under Sub-clause (8) of Clause 4 of the Rules. On a perusal of Clause 4 of the Rules. It is clear that the petitioner was duly appointed as headmaster of the school on probation for two years.

5. Learned counsel appearing for the Bihar Secondary Education Board attacks the validity of the appointment of the petitioner on the ground that the provisions contained in Clause 4 of the Rules have not been strictly followed by the managing committee. In the present case, the admitted position is that the post was duly advertised in the Indian Nation. In other words, learned Counsel for the Board contends that by issuing the advertisement, the managing committee intended to fill the post of headmaster from amongst the general public and not from the teachers of the school. In this connection, he refers to Sub-clause (2) of Clause 4 of the Rules. Sub-clause (2) of Clause 4 provides that the managing committee will have to decide as to whether it intends to fill the vacancy of the headmaster from amongst the teachers or by advertisement. The intention of the Legislaturc is that if the managing committee intends to fill the post from amongst the teachers, then a resolution to that effect shall be passed by the managing committee. But if the appointment is made by advertisement, then outsiders can also apply. In the ease of advertisement, outsiders as well as teachers of the school also can apply for the post. After the advertisement is made, appointment can be made from amongst the teachers or from the outsiders. In the present case, on the basis of the advertisement, twenty persons were called for interview. Jagdish Pd. Sinha (respondent No. 6) was also called for interview. After holding the interview, the managing committee thought it fit to appoint petitioner Mangal Pd. Sinha, who was an assistant teacher in the school, as the headmaster. In my opinion, there was no illegality committed in appointing Mangal Pd. Sinha as the headmaster after the post was advertised in the Indian Nation. If the managing committee intended to fill the vacancy from

amongst the teachers only, then in that case no advertisement was needed. The post having been advertised, the managing committee is not precluded from appointing a headmaster from amongst the teachers. In this circumstances, I hold that the appointment of the petitioner as headmaster of the S. S. High School, Bhagwanpur, was valid.

6. The next argument of learned Counsel 1 for the Board is that the managing committee ought to have recommended three names to the District Education Officer for approval as contained in Sub-clause (6) of Clause 4 of the Rules. In my opinion, there is force in the contention of learned Counsel, but I shall not allow him to raise this point at this stage after a lapse of three years when the District Education Officer has duly approved the appointment of the petitioner under Sub-clause (8) of Clause 4 of the Rules, by his letter dated 20th September, 1973, as contained in annexure 3. The District Education Officer, before approval could have raised such an objection as is raised by learned Counsel for the Board. As the District Education Officer did not raise such an objection, I shall not allow learned Counsel for the Board to raise it now after a lapse of three years. I, therefore, reject his contention.

7. The appointment of the petitioner was challenged by Jagdish Pd. Sinha (respondent No. 6) in C.W.J.C. No. 1354 of 1973. The writ application was dismissed in limine by this court on 23rd October, 1973. Against that order respondent No. 6 moved in letters Patent Appeal No. 44 of 1973 and the same was also dismissed by an order dated 26th June, 1974, passed by a Division Bench of this Court. I have been informed by learned Counsel for the petitioner that in that writ application respondent No. 6 challenged the validity of annexures 2, 3 and 4. In this circumstance, learned Counsel 1 for the petitioner contends that the appointment of the petitioner was upheld by the High Court. If it is so, the appointment of the petitioner cannot be set aside or annulled by the Chairman of the Bihar Secondary Education Board. Annexure 7 was issued on the direction of the Chairman of the Board virtually cancelling the appointment of the petitioner as headmaster. In view of the order of the High Court, I hold that the Chairman, Bihar Secondary Education Board, had no authority in law to set aside the appointment of the petitioner by the letter dated 16th May, 1975 contained in annexure 7.

8. Learned counsel for the Board contends that the Board can make fresh appointment after the expiry of two years, i. e. the probationary period. In my opinion, there is force in the contention of learned Counsel for the Board. The appointment of the petitioner was on probation for two years as contained in annexure 4. It is therefore clear that the managing committee appointed the petitioner on probation on 1st September, 1973, and as such the Board had no power to interfere with the appointment of the petitioner till 1st September, 1975, i. e. for two years. Hence I quash annexure 7 which was issued on 16th May, 1975. I have been informed by learned Counsel for the petitioner that the Board maintained the appointment of the petitioner by its letter dated 23rd

January, 1976, as contained in annexure 13. Learned Counsel for the Board contends that the Board was compelled to maintain the status quo in view of the direction of the court dated 3rd June, 1975. By virtue of the order dated 3rd June, 1975 this court had directed that status quo should be maintained.

9. On the facts of this case, it is clear that the managing committee appointed the petitioner on probation for two years. After 1st September, 1975, no doubt, the Board could have proceeded in accordance with law but, in my opinion propriety requires that the appointment of the petitioner should not be interfered with.

10. In the result, the petition is allowed and annexure 7 is quashed.