
(2018) 08 JH CK 0049

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2709, 6782, 266, 1739, 2385, 362, 537, 622 of 2017

Manoj Kumar Verma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Primary School Teachers Appointment Rules, 2012 — Rule 4(kha)(i)
Constitution of India, 1950 — Article 14, 16

Citation : (2018) 08 JH CK 0049

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Manoj Tandon, Shiv Shankar Kumar, Kumari Rashmi, Razaullah Ansari, Purnendu Sharan, Shray Mishra, Shadab Bin Haque, Rahul Kamlesh, Jai Prakash, Yogesh Modi, L.C.N. Shahdeo, Sandeep Verma, Bharti Singh, Shahid Khan, Razaullah Ansari

Final Decision : Allowed

Judgement

1. Orders of termination from service, on the ground that they continued to work as Para-Teacher even after the cut-off date for submitting their

resignation from the post of Para-Teacher or on the ground that they have suppressed material informations in their applications, have been challenged

in this batch of writ petitions.

2. In essence, the main question involved in this batch of writ petitions is whether a Para-Teacher is entitled for appointment against the vacancies

earmarked for non Para-Teacher category.

3. In W.P.(S) No. 2709 of 2017 termination order dated 01.04.2017 is under challenge. Allegation against the petitioner is that though he continued to

work as Para-Teacher even after the cut-off date, he did not furnish this

information in his application and, thus, has secured appointment fraudulently.

In W.P.(S) No. 6782 of 2017 the petitioner who was appointed as Assistant Teacher has been terminated from service on the ground that he has not

tendered his resignation from the post of Para-Teacher before the cut-off date and, thus, has secured appointment by suppressing material facts in his

application. In W.P.(S) No. 266 of 2017 there are 9 petitioners who have been terminated from service by an order dated 20.03.2017 on the ground

that they have tendered their resignation after the cut-off date for submitting applications for appointment on the post of Assistant Teacher. In W.P.

(S) No. 1739 of 2017 there are 16 petitioners who have been terminated from service by an order dated 20.03.2017 on a similar ground. In W.P.(S)

No. 2385 of 2017 there are 12 petitioners who were appointed as Assistant Teachers pursuant to Advertisement No. 4 of 2015 dated 09.07.2015

published in daily newspapers inviting applications for the district of Deoghar. These petitioners have been terminated from service on the ground that

they were not eligible for appointment against the vacancies reserved for non Para-Teacher candidates. Petitioners in W.P.(S) No. 362 of 2017, W.P.

(S) No. 537 of 2017 and W.P.(S) No. 622 of 2017 are identically situated to the petitioners in W.P.(S) No. 554 of 2017 and W.P.(S) No. 555 of

2017; these writ petitions were allowed by order dated 25.07.2018 with a direction to the respondent-District Superintendent of Education to reinstate

them in service.

4. With consent of the learned counsels appearing for the parties all these writ petitions have been taken up for final disposal at this stage itself. In

some of the writ petitions counter-affidavits have been filed, stand taken in which has been reiterated by the learned State counsels while opposing the

challenge thrown by the petitioners in this batch of writ petitions to the order of their termination from service.

5. In some of the writ petitions a prayer has been made for payment of salary for the period the petitioners have worked after their appointment as

Assistant Teacher. The petitioners in this batch of writ petitions have also claimed consequential benefits such as continuity in service and back-wages

for the period they have remained terminated from service.

6. All these petitioners have been appointed pursuant to advertisements issued in different districts in the Jharkhand inviting applications for

appointment on the post of Inter-Trained Teachers and Inter-Trained Urdu Teachers. Under the advertisement candidates are required to possess

qualifications as prescribed under Rule 4(k)(i) of Primary School Teachers Appointment Rules, 2012; they should have 50% marks in higher

secondary or its equivalent and two years diploma in Primary Education, or minimum 45% marks in higher secondary or its equivalent with two years

diploma in Education Training, or in the alternative other qualifications as prescribed under Clause-3 of the advertisement. There was no restriction in

submitting applications in more than one district. Clause-12 of the advertisement provides that 50% of the advertised posts shall be reserved for direct

appointment of such Para-Teachers who as on 1st August of the year in which the advertisement has been issued has completed two years of

continuous service as Para-Teacher under Sarv Siksha Abhiyan. Other 50% posts were open for appointment under non Para-Teacher category. In

Clause 20 of the performa-application the applicants were required to fill-up details of their appointment as Para-Teacher, if applicable.

7. The aforesaid Clause-12 of the advertisement and Clause-20 of the application form have been taken as ground for terminating these petitioners

from service.

Clause-12 of the Advertisement No. 04/2015 : >kj[k.M izkfHkd fo|ky; f'k{kd fu;qfDr (izFke la'kks/ku) fu;ekoyh] 2014 ds vuqlkj f'k{kd ds in ij

lh/kh fu;qfDr gsrq fpfUgr~ fjfDr;ksa esa ls 50 izfr'kr in >kj[k.M f'k{kk ifj;kstuk ifj'kn~ }kjk lapkfyf loZ f'k{kk vfHk;ku vUrxZr dk;Zjr ,sls vgrkZ/kkjH

ikjk f'k{kd] ftudh lsok ml iapx o'k]Z ftlesa fu;qfDr gsrq foKfIr izdkf'kr dh tk;sxh] dh igyh vxLr dks U;wure nks o'kZ ;k mlls vf/kd dh gks] esa ls rFkk

'ks'k 50 izfr'kr in xSj&ikjk f'k{kd vgrkZ/kkjH vkosndksa esa ls Hkjk tk;sxk ds vuq:i fjfDr dk dksfVokj fooj.k fuEuor~ gSAâ? Clause-20 of the

Application:

â?;fn ikjk f'k{kd ds :i esa dk;Zjr gks rks :&

i. fo|ky; dk uke ,oa irk tgka dk;Zjr gks :&

ii. xkze f'k{kk lfefr }kjk p;u dh frfFk :&

iii. fo|ky; esa dk;Z ikzjaHk djus dh frfFk :&â?

8. Stand taken by the respondent-State is that a Para-Teacher who has failed to submit his resignation before the cut-off date for submitting

application for appointment as Assistant Teacher is not eligible for appointment under non Para-Teacher category. Another ground raised by the respondents is that if a candidate has failed to furnish details of his appointment as Para-Teacher in the application form it would amount to suppression of material facts and, therefore, their appointment can be terminated on this ground alone.

9. Legality of the impugned orders which have been challenged in this batch of writ petitions, however, has to be examined in the context of the constitutional mandate under Article 14 and 16 of the Constitution of India. On admitted facts, there was no restriction for a Para-Teacher submitting his application for appointment as an Assistant Teacher under non Para-Teacher category. Moreover, had such a restriction been there it would have been in the teeth of Article 14 and 16 of the Constitution of India. The issue whether a Para-Teacher can seek appointment against 50% posts earmarked for non Para-Teacher candidates was initially decided against the applicants in W.P.(S) Nos. 6031 of 2015 and 173 of 2016, wherein it was held that a Para-Teacher who has continued to work as Para-Teacher even on the last date for submission of application cannot seek appointment under non Para-Teacher category. However, now this issue has been settled by a decision of the Hon'ble Division Bench in L.P.A. No. 186 of 2017 and L.P.A. No. 199 of 2017. The Hon'ble Division Bench has held that under the Rules or in the advertisement there is no stipulation under which an applicant working as Para-Teacher is not eligible to seek appointment under the open category, that is, under non Para-Teacher category.

10. On the plea that a candidate has failed to furnish details of his appointment as Para-Teacher under Clause-20 of the application form, it needs to be indicated that such incomplete applications were liable to be rejected, however, the respondents entertained such applications and offered appointment to the candidates. Now, when it has been held that a Para-Teacher can seek appointment under open category, on the ground that one has failed to furnish informations under Clause-20 of the application form, in my opinion, an applicant cannot be terminated from service. All these candidates fulfill the essential educational as well as training qualifications. Their eligibility has been assessed by the respondents and finding them

eligible for appointment they were appointed as Assistant Teacher. No benefit of their continuance in service as Para-Teacher has been availed by

them. Allegation of suppression of material facts must demonstrate suppression of such fact which, if not disclosed, would materially affect the

decision of the authority [refer : *Arunima Baruah vs. Union of India and Others* reported in (2007) 6 SCC 120]. Had the petitioners furnished

informations regarding their appointment/continuance as Para-Teacher, in view of decision by the Hon'ble Division Bench in L.P.A. No. 186 of 2017

and L.P.A. No. 199 of 2017, such information would not have materially affected candidature of these petitioners and while so, I am inclined to hold

that not furnishing details in Clause-20 of the application form would not amount to suppression of material facts.

11. Accordingly, it is held that the order of termination of selected eligible petitioners from service on the ground that they did not furnish informations

in Clause 20 of the application-form is illegal.

12. These petitioners on account of illegal order of termination from service have been prevented from discharging their duty as Assistant Teacher

and therefore on their reinstatement in service they are entitled to claim continuity in service. On the claim for payment of back-wages to these

petitioners, I think, it would serve the interest of justice if a similar benefit which has been granted to the writ petitioners in W.P.(S) No. 5158 of 2017

and batch cases is granted to them. In W.P.(S) No. 5158 of 2017 and batch cases this Court has observed as under :

9. On account of illegal termination of the petitioners from service, in my opinion, they cannot be denied benefits of continuity in service. On their

reinstatement in service they shall be deemed to be continuing in service with effect from their initial date of appointment and whole of this period shall

be included in their service. On payment of salary to the petitioners for the period during which they have been kept out of service, contention raised is

that atleast 25% back-wages may be granted to the petitioners. On admitted facts, an inference that the petitioners have been prevented from

discharging their duty can be justifiably drawn from the date of decision in the aforesaid Letters Patent Appeals. After 11.05.2018 when the order

passed in W.P.(S) No.6031 of 2015 and W.P.(S) No.173 of 2016 was set-aside by the Hon'ble Division Bench, the petitioners were entitled for

reinstatement in service and accordingly, it is ordered that they are entitled for salary between 12.05.2018 till they are actually reinstated in service.

13. In view of the aforesaid facts and for the reasons indicated hereinabove, impugned orders dated 01.04.2017 in W.P.(S) Nos. 2709 of 2017, 2385

of 2017, 19.08.2017 in W.P.(S) No. 6782 of 2017, 20.03.2017 in W.P.(S) Nos. 266 of 2017, 1739 of 2017 and 02.01.2017 in W.P.(S) Nos. 362 of

2017, 537 of 2017, 622 of 2017 are quashed. The petitioners are entitled for their reinstatement in service forthwith. They shall appear before the

respective District Superintendent of Education within two weeks and tender their joining. The petitioners are entitled for back-wages as indicated

hereinabove. They are also held entitled for salary for the period during which they have actually worked as Assistant Teacher. The District

Superintendent of Education shall pass an order on examination of the records including the attendance register on the aforesaid claim for payment of

salary to the petitioners.

14. These writ petitions are allowed in the aforesaid terms.