
(2010) 06 PAT CK 0016

In the Patna High Court

Md. Abu Nasar Alam @ Md. Abu Nasar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Bihar Municipal Elementary Teachers (Employment and Service Conditions) Rules, 2006 — Rule 6, 8

Citation : (2010) 06 PAT CK 0016

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—Petitioner is a Moulvi. Having passed the examination, as conducted by the Bihar State Madarsa Education Board, Bihar, Patna in the year 2004, he applied for appointment as Panchayat Teacher. Petitioner was duly selected and appointed, but on a petition of one Rajesh Kumar and another he was removed and Rajesh Kumar was appointed. Petitioner against this action moved the District Panchayat Teachers Employment Appellate Tribunal, Purnea, who has refused to interfere in the matter. Hence, the petitioner has come to this Court.

2. Heard Mr. Ramakant Sharma, learned Senior Counsel appearing in support of the writ petition. In my view, the case does not call for any interference by this Court, the reasons are as follows:

In sum and substance, petitioner has been removed from the post of Primary Panchayat Teacher on the ground that he had only the qualification of a Moulvi, which as per Rule 6 of the Bihar Panchayat Primary Teachers (Employment and Service Condition) Rules, 2006 could entitle him to teach Urdu as an Urdu teacher alone and not as a general teacher. There being no vacant post for Urdu teacher, with the said qualification, he could not be selected as a general teacher. This is correct position in my view.

3. Mr. Sharma, learned Senior Counsel then alleges that there are conflicting decisions in this matter. He points out the two judgments being the case of Ribha Rani v. The State of Bihar and Ors. since reported in 2009(2) PLJR 866 and in the case of Md. Mansoor Alam v. The State of Bihar and Ors. since reported in 2010(1) PLJR 952 are in conflict on this issue.

4. Before proceeding further, I wish to clarify that it would be proper to say that two judgments are not in conflict. The later judgment Md. Mansoor (supra) has not been passed in ignorance of the first. It has taken note of the earlier judgment and distinguished it. That is permissible and would not lead to any conflict. However, at appropriate stage I will deal with the said two judgments, which, in my view, are not in conflict even otherwise.

5. Mr. Sharma submits that Rule 8 of the Rules aforesaid clearly stipulate that Up-Shastri degree and Moulvi degree are equivalent to Intermediate qualification. He is correct but it must be remembered that Rule 8 deals with eligibility criteria for the purpose of recruitment/appointment. In my view, what it provides is that the basic eligibility being Intermediate for the purposes of Panchayat Teacher, a Moulvi and Up-Shastri are both qualified to apply, but, whereas Rule 6 specifically provides that the services of Moulvi would be utilized for teaching Urdu at present there is no such restriction in respect of Up-Shastri. Thus, Up-Shastri can be taken in and employed as general teachers, whereas Moulvi has been restricted to teach Urdu. It is this way Rule 6 & 8 are to be read. Employing Moulvi as teacher generally is not contemplated because of Rule 6 being there.

6. In my view, this is the position that was also accepted by the State Government, when the circulars letters in the shape of Annexure-10 being communication No. 234 dated 23.01.2008 was issued by the Special Secretary-cum-Director, Primary Education, Government of Bihar as also by the Joint Secretary, Human Resources Department, Government of Bihar communication dated 09.09.2008 and 21.10.2008. In these communications, it is noted that Moulvi had to be appointed as Urdu teachers but those who had been appointed as general teachers should not be disturbed till the final decision in the matter are taken and proper sanctioned post for Urdu teachers are provided. This clearly brings out that the State also is of the opinion that Moulvi could not be employed as general teacher. Thus, the order of the Tribunal does not call for any interference.

7. Now, coming to the two judgments, as alleged by the learned Senior Counsel to be in conflict. So far as the judgment in the case of Ribha Rani (supra) is concerned, this case dealt with the degree of Up-Shastri. As noted above, Rule 8 has clearly declared that the Up-Shastri is equivalent to Intermediate. Thus, an Up-Shastri degree holder is eligible to apply for Panchayat Teacher meeting the minimum educational qualification. Once he is eligible to apply as teacher there being no other restriction in the Rules, his services would not be restricted to Sanskrit alone, much less, by an executive circular not could their services be terminated. That is the judgment in the case of Ribha Rani (supra). When we

come to the case of Md. Mansoor Alam (supra), it is just the opposite. That was a case dealing with Moulvi, though, as noticed above, Rule 8 provides that Moulvi degree would be equivalent to Intermediate for the purposes of seeking eligibility for employment yet Rule 6 restricts the employment of Moulvi to teach Urdu alone and not as a general teachers. Where Moulvi is employed as general teacher it would thus, be in conflict with the Rules and such appointment would be wrong and illegal. Thus, the factual and the legal position in the two cases are different. The later, in view of Rule 6, this Court is rightly held that Moulvi can only get employment as Panchayat Teachers for teaching Urdu, such a restriction is not there for Up-Shastri. Thus, the two decisions have been rendered on their facts and legal position and are in no way in conflict. The judgment in the case of Md. Mansoor Alam (supra) applies to the present case and, as such, the present case requires no interference and/or consideration and it is dismissed accordingly.