
(2012) 07 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 15262 of 2009

Md. Mokhtar Alam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 4 PLJR 937

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Md. Rashid Alam, for the Appellant; Chandra Shekhar Singh for the State and Mr. Vipin Kumar for the Respondent Nos. 8 to 10, for the Respondent

Judgement

Ravi Ranjan, J.—Heard learned counsel for the petitioner, the State and the respondent nos. 8 to 10. Petitioner seeks quashing of part of the Annexure-5 which is a letter dated 5.8.2005 issued by the Joint Secretary, Bihar Staff Selection Commission, Patna to the District Education Officer, Banka, whereby approval of the appointment of the petitioner has been granted in light of the amended Rules with a condition that the petitioner would not get salary rather he would be granted salary in accordance with the provisions contained in Bihar Madhayamik Shikshak Niyukti Niyam, 2004.

2. It is admitted position that the school is minority school which was taken over by the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1982. Petitioner claims to have been appointed vide Annexure-1 dated 18.7.1999 alongwith three other persons by the concerned management of the school. Petitioner, thereafter, joined the school vide Annexure-1/A. It is claimed by the petitioner that the names of petitioner and other teachers were sent for approval. Though, approval was granted to the other persons vide letter dated 3.4.2000, however, due to some reason the petitioner's matter could not be considered at that point of time. Ultimately, the approval has been granted vide the impugned order as contained in Annexure-5. Learned counsel has submitted that the petitioner was appointed alongwith the

persons whose appointment has been shown to approve in the letter as contained in Annexure-3/B on the terms and conditions that the concerned school will ensure their training expeditiously, but, in case of the petitioner a stand has been taken that his salary would be given in accordance with new Rule, namely, Bihar Madhayamik Shikshak Niyukti Niyam, 2004 (hereinafter referred to as "the Rules"). It is submitted that according to Rule 10(2) of the said Rule the petitioner, being untrained teacher, would be entitled only for a stipend of Rs. 4,000/- and not the salary which is being given to the other persons who were appointed alongwith the petitioner but whose appointment was approved earlier by the authority as mentioned above.

3. Counter affidavit and supplementary counter affidavit have been filed on behalf of the State taking a stand that the issue of approval of the service of the petitioner had remained pending due to some reason till 2005 and finally vide Annexure-5 approval has been granted with the condition that the salary would be paid in accordance with the new amended Rules.

4. However, the aforesaid Rule appears to have been framed with regard to fresh appointments. Petitioner's grievance is that the other persons who have been appointed alongwith him are getting salary, however, he would only be entitled for stipend in view of the new Rules only for the reason that the approval of the petitioner had remained pending before the authorities for about five years without any fault on part of the petitioner.

5. In my considered opinion it will not be proper to grant different salary and emoluments and impose different terms and conditions to different persons, who have been appointed together, on the ground that the matter of approval of one person had remained pending for approval for five years without any fault on his part.

6. Thus, I find substance in the submission raised on behalf of the petitioner. It is not in dispute that the management of the school had appointed the petitioner alongwith the persons who have been shown in Annexure-3/B but the issue of the petitioner's approval had remained pending and eventually the same was granted in the year 2005 after coming of the new Rules. The fact that the persons who have been accorded approval vide Annexure-3/B were also appointed alongwith the petitioner, has not been disputed by the State. Therefore, in my opinion, the petitioner would be entitled for the salary and emoluments at par with the teachers who have been shown in Annexure-3/B and under the same terms and conditions. Therefore, without going into the question of applicability of 2004 Rules in the case of the petitioner, this Court would direct the respondents to consider the case of the petitioner in view of the observation of this Court as above and ensure that his salary, emoluments and other terms and conditions are approved in parity with the teachers who are on similar footing as of the petitioner as discussed above. Let a decision be taken by the authorities within two months from the date of receipt/production of a certified copy of this order. Accordingly, this writ application stands disposed of with the

aforesaid observations and direction.