
(2014) 04 JH CK 0103
In the Jharkhand High Court
Case No : W.P.(S) No. 1358 of 2005

Meena Banerjee

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Citation : (2015) 1 JLJR 177

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Vaibhav Kumar, Advocates for the Appellant; Nehala Sharmin, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner in the third round of litigation has a grievance relating to grant of the benefit of the post of Headmistress, which she was first time conferred in the year 1988 and was withdrawn thereafter by an order passed on 15.7.1992 by the Director, Secondary Education, the erstwhile Government of Bihar. The petitioner agitated against the said reversion order in the writ petition being CWJC No. 6702/1992, which was quashed by the judgment dated 17.2.1995 by directing the concerned respondents to pass a fresh order after hearing the petitioner within a stipulated period and in the light of the observation made in the said judgment. The observation made relating to the eligibility of the petitioner to hold the post of headmistress as per the advertisement under which she was promoted as headmistress, is contained in para 11 of the said judgment, which is quoted hereunder:--

"11. From the facts stated above, it is clear that when the petitioner was selected and appointed on the post of Headmistress she had the requisite experience of seven years as per the application form issued by the Bihar School Service Board. The requisite form has also been brought on record by filing a supplementary affidavit and the same has been marked as Annexure-19, from which it appears that the candidates having requisite experience, either from a

recognised high school by the Government or a school, which has got permission for establishment, may apply. Since the petitioner was working as a teacher in Domchach Girls High School, which had the permission for establishment, it appears that the petitioner had the requisite experience for appointment on the post of Headmistress as per advertisement as contained in Annexure-5."

2. The respondent No. 2, however, chose to reject the petitioner's application by an order passed on 5.5.1995, which is Annexure-6 to the instant writ petition on the ground that she did not have the requisite teaching experience of 7 years in a recognised High School. The petitioner, therefore, went before the Patna High Court challenging the same in another writ petition, which was, however, dismissed. The petitioner preferred a letters patent appeal being LPA No. 311/1995(R), which was heard and decided upon transfer to this Court, after bifurcation of the parent State of Bihar, by judgment dated 22.1.2003. The letters patent appeal was allowed after hearing the rival parties in the following manner:--

"22.1.2003. Heard the learned counsel for the parties.

The petitioner-appellant has prayed for quashing the order dated 5.5.1995 passed by the Director, Secondary Education as contained in Memo No. 281 (legal) whereby her appointment as the Headmistress of the Project Girls' High Court, Koderma has been cancelled mainly on the ground that she did not possess the requisite experience of seven years for her appointment as the Headmistress. During the course of hearing of this case, the respondents were directed to file an affidavit regarding the present position of the petitioner. The said affidavit has been filed on 25.11.2002. Paragraph-4 of the said affidavit reads thus:--

"4. That the present affidavit is being filed to inform this Hon'ble Court that the appellant Smt. Meena Banerjee is working as an Assistant Teacher and drawing salary of Assistant Teacher, but by virtue of being seniormost Teacher in the Project Girls' High School, Koderma, she is officiating as In-charge Headmistress."

It is not in dispute that the petitioner is working on the post of Headmistress or as an officiating or in-charge Head Mistress since 1988 till date, may be on the basis of the orders passed by this Court. There is no dispute that the petitioner was qualified so far as the post of Headmistress is concerned. In our opinion, in the facts and circumstances mentioned above, the question of seven years' experience become redundant as on today so far as this case of the petitioner-appellant is concerned. The anxiety of the learned counsel appearing on behalf of the State is that this may not be treated as a precedent in other cases. Therefore, we make it clear that in the facts and circumstances of this particular case, we quash the impugned order dated 5.5.1995 as aforesaid, but this judgment shall not be treated as a precedent in other cases so far as the requirement of seven years' experience for appointment as Headmistress is

concerned."

3. Apparently, the Letters Patent Court also observed that there were no dispute that the petitioner was qualified as far as the post of Headmistress is concerned. It also observed that the question of seven years experience became redundant as on that day so far as the case of the petitioner-appellant is concerned. It was, however, made clear that the said judgment shall not be treated as a precedent in other cases, so far as the requirement of seven years experience for appointment as Headmistress is concerned. Thereafter, by an order dated 22nd December, 2004 issued by the Joint Secretary, Human Resources Development Department, (Annexure-11) the petitioner has been granted the post of Headmistress, however, w.e.f. 22nd January, 2003 i.e. the date of passing of the judgment in Letters Patent Appeal No. 311/1995(R). She has, therefore, approached this Court once again for direction upon the respondents to grant her the benefit of the post of Headmistress from 1988 itself.

4. Counsel for the petitioner has submitted that the respondents in their counter affidavit and supplementary counter affidavit have once again chosen to justify issuance of the said order on the ground that the petitioner had not completed teaching experience of seven years in a recognized school, which was must for a woman candidate.

5. The respondents apparently have taken the plea as is borne out from the counter affidavit and supplementary counter affidavit that she was appointed as an Assistant Teacher primarily in an establishment i.e. Girls High School, Domchach, Hazaribagh on 21.2.1975 and further appointed as an Assistant Teacher by the School Managing Committee of the Girls High School, Koderma in the year 1982 and discharged her duties from 20.1.1982 to 14.10.1988. The school has got establishment permission only on March, 1983 and was selected in Project School in 1985 by letter dated 13.2.1985. Therefore, prior to 13.2.1985 the petitioner had not worked in any recognized school. The School Service Board had advertised vacancy for the appointment of Headmistress with certain eligibility as is evident from the earlier order of respondent No. 2 dated 5.5.1995, Annexure-6 in which teaching experience of seven years in an recognized school is must.

6. Therefore, according to the respondents, since the petitioner did not have the requisite qualification and eligibility at the time of interview of the Vidyalaya Seva Board, Bihar, her selection as Headmistress of the School was not legal. Therefore, she was reverted to the post of Assistant Teacher by the then Director, Secondary Education, Bihar.

7. The aforesaid stand taken by the respondents apparently go in the teeth of the findings rendered by the learned Single Judge at the first instance in the petitioner's case in CWJC No. 6702/1992. Para 11 of the judgment passed in CWJC No. 6702/1992 is quoted herein-above. It also goes contrary to the findings arrived at by the learned Division Bench in its judgment quoted herein-

above rendered on 22.1.2003 in LPA No. 311/1995(R).

8. The petitioner as well as respondent-State were represented when the matters were decided on those two occasions with specific findings rendered in relation to the qualification of the petitioner for the post of Headmistress. In fact the learned Division Bench went on to observe that the requirement of teaching experience of seven years had become redundant as on that day in the case of the petitioner-appellant. The respondents, therefore, by granting her promotion to the post of Headmistress from the date of judgment i.e. 22.1.2003 and trying to support it on the same reason of requirement of seven years experience are obviously over-reaching the finality of the judgment rendered in the petitioner's case.

9. Examined independently also, going by the reason stated by the respondents as well, if the petitioner was serving in a school, which has got establishment permission on 20.3.1983 and was selected as Project School in the year 1985, even by the condition of seven years teaching experience, she must have acquired the same either in the year 1990 or in the year 1992. Therefore, there was no occasion for the respondents to grant her promotion to the post of Headmistress w.e.f. 2003 reckoning it from the date of judgment passed in LPA, in the circumstances discussed hereinabove.

10. The respondents are, therefore, duty bound to give the benefit of promotion to the petitioner from the due date on the post of Headmistress. In this context the erudite opinion of the Hon"ble Supreme Court in the case of Bhushan Power and Steel Ltd. vs. Rajesh Verma & Ors., Contempt Petition (C) No. 374 of 2012 in Civil Appeal No. 2790 of 2012 decided on 22.4.2014 on the issue that where a lis has attained finality, either of the parties cannot go beyond the import of the judgment, is illustrative to be quoted herein-below:--

21. First judgment which needs to be noticed is in the case of T.R. Dhananjaya Vs. J. Vasudevan, . The following discussion contained in the said judgment squarely applies here:--

"10. When this order was passed, what remained for the respondent was only implementation of the order passed by this Court in furtherance of the action taken thereunder by the Corporation. It is now clear that instead of implementing the order, an attempt has been made to circumvent the same and deny the benefits to the petitioner. As stated earlier, the petitioner is a Corporation employee and the stand of the Government appears to be to give benefit to their employees. So, an attempt has now been made to get into the rule position and to find whether the petitioner is eligible to be considered for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. It is now stated that according to the rules the petitioner would be eligible only as Superintending Engineer and not as Chief Engineer. When direction was given in I.A. 3 of 1993, Government was a party to the proceedings and it was never brought to our notice that the petitioner was not eligible. On the

other hand, the Division Bench of Karnataka High Court upheld the right of the petitioner which became final.

11. Question is whether it is open to the respondent to take at this stage this volte-face step. It is seen that all through Government was a party, when the direction was given in I.A. No. 3 filed by the petitioner, it was not brought to out notice that the petitioner was not eligible for promotion, in contradiction with Dasegowda, or any other. When the claim inter se had been adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the order and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court. Thus, it is clear that the concerned officers have deliberately made concerted effort to disobey the orders passed by this court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and willfully, with an intention to defeat the orders of this Court, passed the impugned order."

22. Another judgment cited at the bar is Prithawi Nath Ram Vs. State of Jharkhand and Others, . Para 8 of the said judgment makes the following reading:--

"8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings".

23. This very principle has been reiterated by in Bihar Finance Service H.C. Coop. Soc. Ltd. Vs. Gautam Goswami and Others, in the following words:--

"32. While exercising the said jurisdiction this Court does not intend to re-open the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for

consideration only in the original proceedings. The Court is not concerned with as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. In short, it will not do anything which would amount to exercise of its review jurisdiction".

24. We cannot lose sight of the fact that there is a judgment, inter parties, which has become final. Even when the Civil Appeal was being heard, certain other parties claiming their interest in these very lands had moved intervention applications which were dismissed. At that time also it was mentioned that there are 195 applicants. However, notwithstanding the same, this Court issued firm directions to the State Government to recommend the case of the petitioners for mining lease in both the areas. In view of such categorical and unambiguous directions given in the judgment which has attained finality, merely because another judgment has been delivered by this Court in Sandur Manganese case, cannot be a ground to undo the directions contained in the judgment dated 14.3.2012. In so far as law laid down in Sandur Manganese (supra) is concerned, that may be applied and followed by the State Government in respect of other applications which are still pending. However, that cannot be pressed into service qua the petitioner whose rights have been crystallized by the judgment rendered in its favour. It cannot be re-opened, that too at the stage of implementation of the said judgment."

11. The respondents appear to have compelled the petitioner to approach the Court one after another for a simple relief, which could have been considered properly even at the first instance in the year 1995 itself. The petitioner is said to have already superannuated on 30.6.2009. She would, therefore, be conferred the benefit of post of Headmistress reckoning it from the due date, as it is evident from the judgment dated 22.1.2003 passed in the petitioner's case in LPA No. 311/1995(R) itself that she had been working on the post of Headmistress as an officiating or Incharge Headmistress from 1988. This writ petition is, accordingly, allowed in the manner as indicated hereinabove.