
(2010) 07 PAT CK 0104
In the Patna High Court

Meena Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 07 PAT CK 0104

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—Petitioner has filed this writ application for quashing of Annexure-17, an order of the School Inspectors-cum-Deputy Director of Education, Government of Bihar dated 17.12.2002, by which, her services have been ordered to be terminated, as also for quashing of Annexure-28, the follow up order of the Headmistress of the School (respondent No. 5) dated 23.12.2002 terminating her services.

2. As per the pleadings, by Annexure-1 dated 15.9.1982, the District School Inspectress (respondent No. 5), on the orders of the School Inspectress-cum-Deputy Director of Education, Government of Bihar (respondent No. 4), appointed the petitioner in Government Girls Middle School, Katihar, against a vacant post of I.A. trained scale teacher, in the pay scale of Matric trained, on provisional basis for three months or till a teacher was promoted to the said post, whichever was to be earlier. Accordingly, petitioner joined on the post on 20.9.1982. Vide Annexure-2 dated 20.12.1982 respondent No. 5 further extended her/services with the same conditions. Finally, as per her own admission, she was relieved with effect from 9.7.1983, as the post she was holding got filled up by promotion. Thereafter, by Annexure-3 dated 19.7.1983, under the orders of the respondent No. 4, she was transferred and adjusted in Government Girls Middle School, Buxar, with effect from 9.7.1983 itself, against a vacancy of assistant teacher created due to promotion of holder of the post.

Thereafter, by annexure-4 dated 18.2.1989, issued under the signature of respondent No. 4, the period between 10.7.1983 to 22.7.1983, when the petitioner had joined in Buxar School, was ordered to be treated as on duty and the Deputy Inspectress of the School, Buxar, was directed to release her salary of the period. Before that, by annexure-5 dated 31.12.1987, an office order of the office of respondent No. 4, petitioner was transferred back to the Government Girls Middle School, Katihar, and the holder of the post in the Katihar School was transferred to the post of petitioner in the Buxar School. Vide notification No. 683 dated 6.9.1990, as contained in Annexure-6, large number of teachers of Lower Subordinate Service (Women's Cadre) were promoted to Subordinate Education Service, on the recommendation of the Establishment Committee, which included the petitioner also. Subsequently by another notification vide Annexure-7 dated 26.4.1991 petitioner was posted as Headmistress in the same School at Katihar and other large number of teachers of women's cadre were also posted and transferred variously.

3. It appears that some controversy arose in respect of appointments made in the Lower Subordinate Service and with regard to promotions of the teachers of women's cadre of Lower Subordinate Service to Subordinate Education Service. Hence on 27.7.1992 Government decided to hold enquiry in respect of all such appointments/promotions made from 1980 onwards and the subordinate authorities of the Department in the Districts, namely, the District School Inspectress and Principals of Government Girls High School and Principals of Women's Primary Education Colleges were directed to conduct the enquiry in respect of such incumbents. As the petitioner was also appointed after 1980 she also fell within the zone of enquiry. Accordingly, she was noticed and in response she submitted all her papers to the District School Inspectress (respondent No. 5) in two copies. However, vide Annexure-8 dated 14.9.1992 she communicated to respondent No. 4 that she had apprehensions that respondent No. 5 may be prejudiced against her and, therefore, she was submitting another set of papers before her. The matter remained pending and after some time vide Annexure-9 dated 18.4.1995, 160 teachers were called upon for interview all over the State in respect of enquiry with regard to their illegal promotion to Lower Subordinate Service. Petitioner appeared in such an interview on 31.5.1995.

4. It has been contended that petitioner's appointment and promotion was found valid. Hence as per the decision of the State Level Establishment Committee dated 29.11.1994, vide Annexure-10 dated 20.4.1995, she was transferred and posted as Assistant Teacher in Government Girls High School, Purnea. However, the Regional Deputy Director of Education, Purnea, vide Annexure-11 dated 21.9.1998, asked the petitioner and some other teachers to submit their papers in respect of their educational qualification and appointment, which the petitioner did through Annexure-12 dated 23.9.1998. It appears that the appointment of the petitioner was not found genuine by the Regional Deputy Director of Education. Therefore, vide Annexure-13 dated 30.10.1998, he asked her to show cause within one week as to why her services may not be terminated on account

of her appointment being illegal and forged. She was asked to show cause on 11 points as detailed in the said letter. Petitioner replied through Annexure-14 dated 7.11.1998. In this reply instead of explaining the circumstances in respect of the points raised in the notice, she merely stated that papers in respect of her appointment, promotion and transfer were available in the office of respondent No. 4 and he should contact the office of respondent No. 4 in this respect. The Regional Deputy Director of Education thereafter issued orders of termination of her services, vide Annexure-15 dated 3.12.1998, observing that she had not submitted any explanation in respect of the points raised in the show cause in connection with her appointment. Against the said order petitioner filed her representation to respondent No. 4, vide Annexure-16 dated 4.12.1998. Vide Annexure-17 dated 16.12.1998, the respondent No. 4 referred the matter to the Director and ordered that the order of the Regional Deputy Director of Education dated 3.12.1998 shall be given effect to only after receipt of guidelines from the Director. Thereafter pursuant to some orders of this Court in CWJC No. 3372 of 1998 and 518 of 1997 an advertisement was published in newspaper calling upon 160 teachers of women's cadre of Lower Subordinate Service promoted to Subordinate Education Service to submit their certificates and letters, duly attested, in respect of their appointment, educational qualification, promotion etc. Petitioner was also one of them in the list. Accordingly, vide Annexure-19 dated 3.9.2001, she submitted her show cause, along with the papers, addressed to the Director, in the office of the Principal of the School on 4.9.2001. A letter of the Department dated 28.9.1999 has been annexed as Annexure-20 to show that Regional Deputy Director of Education is not the competent authority to make appointment and terminate services of teachers of Government Girls High/Middle Schools, in which it was communicated by the Director to the Commissioner of Purnea Division that the orders of the Regional Deputy Director of Education terminating services of teachers of Girls High/School, Purnea, was not proper. Another letter of respondent No. 4 dated 7.12.1999, addressed to the Director, is annexed as Annexure-21 in which respondent No. 4 requested the Director that as the matter was being investigated by the CBI, a uniform action should be taken in the matter in respect of all the teachers covered by the investigation. However, vide Annexure-22 dated 9.8.2002, petitioner was asked to show cause within 15 days specifically in respect of her illegal appointment. Against the said show cause petitioner moved this Court through CWJC No. 10174 of 2002 which was dismissed by order dated 9.9.2002, as contained in Annexure-23, with liberty to the petitioner to approach this Court if any adverse order is passed against her. Petitioner thereafter submitted her show cause to respondent No. 4, vide Annexure-24 dated 24.09.2002, which was received in the office of respondent No. 4 on 27.09.2002. Respondent No. 4 did not find the show cause of the petitioner satisfactory. Therefore, she issued a fresh second show cause notice to the petitioner, vide Annexure-25 dated 14.11.2002. Petitioner submitted its reply, vide Annexure-26 dated 30.11.2002. The second show cause reply was also not found satisfactory. Therefore, the office order, as contained in Annexure-27 dated

17.12.2002, was issued by respondent No. 4 directing for termination of her services. Consequently order was issued by the Principal of the School, vide Annexure-28 dated 23.12.2002 terminating her services.

5. In view of the stipulations made in Annexure-20, the letter of the Director to the Commissioner, which clarified that the Inspectress of the Schools, Bihar, had the power to terminating the services of teachers of women's cadre of Lower Subordinate Service, learned senior counsel for the petitioner did not challenge the powers of respondent No. 4 to issue impugned order of termination of the petitioner as contained in Annexure-27. In view of the first show cause notice vide Annexure-22 and second show cause notice vide Annexure-25 issued by respondent No. 4 and the reply of the petitioner to the same, learned senior counsel for the petitioner also fairly did not challenge the impugned orders on the ground of denial of Principles of Natural Justice. In view of the detailed discussion made by respondent No. 4 in her order of termination of services of the petitioner, he also fairly did not challenge the impugned Annexure-27 on the ground of its being a non-speaking order. In view of obvious nature of appointment of the petitioner, he also did not claim the initial appointment of the petitioner as perfectly legal and valid and satisfying the requirements of Articles 14 and 16 of the Constitution of India and in accordance with the rules prescribed for regular appointment of teachers in the schools in the State of Bihar. The only submission which he advanced in support of the case of the petitioner was that initially her/provisional appointment on the leave vacancy for three months was not illegal and was made in the exigencies of the situation and in the interest of the institution and the students studying therein. He submitted that thereafter the respondents had time to time issued orders for continuance of the petitioner in one capacity or another and in one school or another as the need arose. This continuance of the petitioner was without any representation or approach by the petitioner to the respondents. In such manner she had continued for almost 20 years. Therefore, at this stage it was not appropriate and equitable for the respondents to terminate her services. Since the petitioner had continued with the respondents so long in all propriety the respondents should have allowed her to continue for the rest of her service career.

6. The submissions of learned senior counsel for the petitioner are at the first glance very attractive and attempts to invite humanitarian and equitable considerations by this Court in the matter. The submissions of learned senior counsel for the petitioner attempts to create a picture that the initial appointment of the petitioner for three months against leave vacancy and her continuance thereafter was a very bona fide act on the part of the respondents and in the larger interest of institutions and students studying therein. Had it been actually so, this Court would have been compelled to consider whether any relief, was possible be granted to the petitioner in the facts and circumstances of the case, or not. But the facts speak otherwise. Vide Annexure-1, under the orders of the respondent No. 4, petitioner was appointed on a vacant post of I.A. trained scale, in Matric trained scale in the School at Katihar. Admittedly the post

got filled up on promotion and, therefore, the petitioner was relieved on 9.7.1983. After 10 days, another office order dated 19.07.1983 was issued by the respondent No. 4 transferring and posting the petitioner with effect from 9.7.1983 itself to a post in Buxar. Question arises, if the petitioner had already been relieved 10 days back where was the question of her transfer and adjustment with retrospective effect? Another question will be that why the petitioner was transferred and adjusted from one end of the State i.e. from a School in Katihar to another end of the State i.e. in a School in Buxar This was surely not in the interest of the institution and the students studying therein.

7. Clearly this was for the benefit of the petitioner only and the then respondent No. 4 had gone out of the way to somehow keep the petitioner in the Government service by sending her from Katihar to Buxar. Not only this, vide Annexure-5 petitioner brought back to the same school in Katihar and vacancy was created there by transferring one teacher from there to Buxar, on the post of petitioner. Surely these were not in the interest of the institution and the students. Since, vide Annexure-3, she had been transferred and adjusted in the School at Buxar from retrospective effect, respondent No. 4 issued another letter directing the Deputy Inspectress of the School Buxar to release her/salary of the period between 10.7.1983 to 22.7.1983 when she joined in Buxar. For these 121 days petitioner was not in service and had not worked any where, which cannot be denied. Still she was given benefit of the period and continuity. Not only this vide Annexure-7, and soon after petitioner was brought back to the School at Katihar, she was made Headmistress of the school, on the basis of her promotion in a batch from Lower Subordinate Service (women's cadre) to Subordinate Education Service. However, within two years of this promotion enquiry started which culminated in order of termination of the petitioner by impugned order Annexure-27.

8. The facts clearly demonstrate that it was solely for the benefit of the petitioner that her appointment was made and orders were issued of her adjustment and transfers. It cannot be an innocuous and bona fide act of the respondents and cannot be without the petitioner making efforts and approach for the same. On the basis of such illegal orders, issued by the respondents, may be at the behest and approach of the petitioner, she has remained in Government service and enjoyed its fruits, fighting out to save her illegal-appointment and continuance for almost 20 years. Now she should take a rest and be satisfied with what she managed to get so far.

9. The writ application is dismissed.