
(2009) 07 JH CK 0132
In the Jharkhand High Court

Minakshi Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0132

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Sushil Harkauli, J

Bench : Division Bench

Judgement

1. This appeal has been preferred by the appellant Minakshi Kumari, against the Judgment and Order dated 03.12.2008 passed by the learned Single Judge in W.P. (S) No. 968 of 2008 by which the learned Single Judge has been pleased to dispose of the writ petition directing the respondent No. 3, the District Superintendent of Education, Dumka to consider the petitioner's/appellant's claim for her appointment as Para Teacher in a Primary School and pass appropriate orders after granting opportunity of hearing to the petitioner/appellant. This exercise was to be carried out by the District. Superintendent of Education, Dumka within three months from the date of the order.

2. The petitioner/appellant, in spite of the aforesaid liberty granted by the learned Single Judge, has not approached the respondent No. 3 for availing the opportunity of hearing to protect her appointment but she has preferred this appeal against the order of the learned Single in support of which it is contended that the petitioner/appellant in the first place was not granted the opportunity of hearing as a result of which she could not explain it to the authorities that she has a rightful claim to the post of Para Teacher as her residence was on the nearest point of the school where she was required to teach.

3. To explain the position further, it may be relevant to state that one of the conditions for appointment as Para Teacher in the school was that the applicants residence, as far as possible, should have been in the same village where the school is situated and as per the appellant's contention, her residence although was not in the same village, the residence of the other two applicants also was

not in that village. However, this hurdle was sought to be obviated by urging that the petitioner's/appellant's residence although was not in the village, she was residing at the nearest point of the school and the residence of other/applicants were at a much greater distance. Besides this, the other applicants did not even participate in the selection process and the challenge to the appellant's appointment at their instance ought not to have been entertained by the learned Single Judge.

4. Since the petitioner took the plea before the learned Single Judge that she did not get adequate opportunity of explaining her position due to which the order of cancellation of her appointment was passed, the learned Single Judge considered it appropriate to grant an opportunity to the petitioner to approach the District Superintendent of Education, Dumka where he was directed to examine her claim.

5. We fail to understand and appreciate as to why the petitioner/appellant has approached this Court by way of an appeal instead of approaching the District Superintendent of Education, Dumka where her factual plea in regard to her residence could be adequately examined. The Counsel for the appellant also could not offer any explanation as to why the appellant has filed this appeal instead of approaching the authority concerned although he emphasized that the appellant had a much superior claim of appointment as Para Teacher than the other two applicants. Even if this averment were to be treated as correct, the same cannot be examined at the stage of appeal as we do not find any mention of this plea of the appellant in the impugned judgment and even if it were to be inferred that this plea was raised and has not been discussed in the impugned order, the same could have been a ground for the appellant to file a petition for review before the learned Single Judge. The petitioner/appellant has neither done so, nor has approached the District Superintendent of Education, Dumka and yet it is expected that the Appellate Court should examine this plea of her claim in regard to her appointment.

6. It is well settled that if a point has been raised by the petitioner before the learned Single Judge and yet it has not been dealt with by the concerned Court, it might be a case for moving a petition for review of the order as the same cannot be allowed to be raised before the appellate forum. The appellant, therefore, could have approached the learned Single Judge either by way of review if her plea had not been taken care of or could have approached the District Superintendent of Education, Dumka where she has been allowed to support her claim for appointment after adequate opportunity of hearing.

7. The view taken by the learned Single Judge thus suffers from no infirmity for the reasons stated hereinbefore and hence, we see no reason to interfere with the impugned order. At this stage it could be noticed that the appellant has not yet filed any representation before the District Superintendent of Education, Dumka as she has preferred this appeal and therefore, she might be precluded from approaching the District Superintendent of Education, Dumka. In the

interest of equity we grant one more opportunity to the petitioner to file a representation before the District Superintendent of Education, Dumka in compliance to the order already passed in tier favour by the learned Single Judge within a period of four weeks and if the representation is filed, then respondent No. 3 i.e. the District Superintendent of Education, Dumka, as per the order of the learned Single Judge, shall examine her claim after affording opportunity to her and if her plea is found sustainable, the order of her reinstatement be passed. In the alternative if the plea of the appellant is not found to be sustainable and her representation is found fit for rejection, reasons for the same be also assigned by the District Superintendent of Education, Dumka.

8. If the appellant files the representation, it is expected of the District Superintendent of Education, Dumka to decide the same expeditiously but not later than a period of two months from the date of receipt of the representation.

9. This appeal, in view of the order above, be treated as disposed of.