
(2008) 01 PAT CK 0106
In the Patna High Court
Case No : CWJC No. 14458 of 2001

Mithileshwar Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 3, 4

Citation : (2008) 56 BLJR 1381

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Petitioner has prayed for quashing of Memo No. 195-3 dated 12.2.2000 (Annexure-5) whereby and where under the time bound promotion granted to the petitioner with effect from 23.2.1985 to 28.2.1989 and the senior selection grade granted with effect from 1.3.1989 has been cancelled and consequently order for recovery in 24 equal instalments has been made. By the impugned order the petitioner has been placed in Matric trained scale with effect from 18.4.1995 i.e. one day after 17.4.1995 when the petitioner passed training examination.

2. Petitioner's further prayer is for commanding the respondents to allow him to remain in the scale in which he was working prior to 12.2.2000 and to pay him salary in the scale in which he was continuing prior to 12.2.2000.

3. Petitioner was appointed as Assistant teacher by the Managing Committee of the Rukmini Girls School, Rakia on 8.1.1969 as matric untrained. The school was taken over by the State of Bihar on 5.2.1981 and accordingly the services of the petitioner was taken over by order dated 17.3.1981 as matric untrained teacher. Since the petitioner's service was taken over by the State Government with effect from 17.3.1981. He became entitled for first time bound promotion on completion of ten years of service in terms of Finance Department Resolution No.

6021 dated 18.12.1989 and on the basis of approved seniority list made up to 12.6.1992. The District Establishment Committee vide order dated 2.7.1992 recommended for first time bound promotion to the petitioner with effect from 17.3.1991. Petitioner thereafter represented before the District Superintendent of Education for revising his date of time bound promotion and the District Superintendent of Education by his order vide Memo No. 2490-2 dated 10.9.1992 revised and shifted the date of first time bound promotion with effect from 23.3.1985. The Director, Secondary Education, Bihar, Patna had issued letter No. 99 dated 7.6.1995 to all the District Superintendent of Education for re-fixation of the pay scale in view of the added qualification of the teachers. This circular was circulated to all the District Superintendent of Education vide Memo No. 1724-3000 dated 10.7.1995. As a consequence the petitioner was given graduate untrained scale of Rs. 1200-2040/-. Further case of the petitioner is that since he had already completed 12 years of his service as such he was given the scale of Rs. 1400-2600/- by the District Superintendent of Education and the same was confirmed by the Account officer, Saharsa on 3.2.1999. Petitioner was receiving his salary in the pay scale of Rs. 1400-2600 on 12.2.2000 without any show cause an office order contained in Memo No. 195-3 was issued by the District Superintendent of Education, Saharsa, whereby his time bound promotion with effect from 23.3.1985 to 28.2.1989 as well as senior scale of pay of Rs. 1400-2600/- has been cancelled and order of recovery has been passed.

4. Counter affidavit has been filed on behalf of respondent No. 5 the District Superintendent of Education, Saharsa where it has been stated that in view of letter No. 99 dated 7.6.1995 issued by the Director, Primary Education, Bihar, the petitioner was granted matric trained scale of Rs. 1200-2050/- on the basis of higher qualification with effect from 10.7.1995. Since the petitioner had passed training examination on 17.4.1995 as such he has been allowed matric trained scale with effect from 18.4.1995 one day after passing of the training examination. In this view there is no illegality in the impugned order. So far the first time bound promotion given to the petitioner in terms of Finance Department Resolution No. 6021 dated 18.12.1989 is concerned it was allowed to the petitioner on the recommendation of the District Establishment Committee on completion of ten years of service i.e. with effect from 17.3.1981. The school in question where the petitioner was appointed as Assistant teacher was earlier being managed by the Managing committee but subsequently taken over with effect from 17.3.1981.

5. In terms of Section 3 of the Bihar Non Government Elementary School (Taking over of Control) Act 1976, the date of taking over of the school by the State Government will be the date of publication of notification in the official gazette. Consequent upon the taking over of the school u/s 3 all the assets properties as well as service of its employee will be deemed to have been taken over in terms of Section 4 of the Act. Since the service of the petitioner was taken over on 17.3.1981 he will be deemed to be a government employee with effect from 17.3.1981 and only after completion of ten years of his service the petitioner

would have been entitled for first time bound promotion in terms of Finance Department resolution. The District Establishment Committee, Saharsa had rightly recommended for giving 1st time bound promotion to the petitioner with effect from 17.3.1991. Any recommendation, resolution of the Establishment Committee could not have been modified, altered or revised by the District Superintendent of Education by passing individual order. In case of the petitioner the recommendation of the District Establishment Committee was revised by the District Superintendent of Education, Saharsa Memo No. 2490-2 dated 10.8.1992 and the date of first time bound promotion of the petitioner was shifted from 17.3.1991 to 23.3.1985. On the basis of this illegal order the petitioner claimed for senior scale of Rs. 1400-2600/- in terms of Clause 13(ii) of Finance Department Resolution No. 6022 dated 18.12.1989. As provided under Finance Department Resolution No. 6022 dated 18.12.1989 Clause 13(ii) all those teachers who were in receipt of promotion/time bound promotion into the Junior Selection Grade and had completed 12 years of service in the basic grade prior to 1st January, 1986 shall have their pay fixed in the revised senior scale indicated in Schedule II. But those who were in receipt of promotion or time bound promotion into the junior selection grade prior to 1st January, 1986, but had not completed 12 years of service in the basic grade on that date shall also get benefit of promotion and revised senior scale with effect from the date they completed 12 years of service. Clause 13(iii) provided that those teachers who have received promotion into junior selection grade or 1st time bound promotion after 1st January, 1986 but before 1st March 1989 shall be given benefit of promotion for the purposes of fixation of their pay in the revised scale only with effect from the date they have received promotion or date on which they completed 12 years of service which ever is later.

6. Under Schedule II of this very letter list of the revised pay scale payable to different category of teachers, Assistant Teachers and Headmasters have been provided pay scale of the Matric trained/Intermediate untrained/Intermediate trained/Graduate untrained teachers in the revised pay scale is mentioned as 1200-2040/-. Such teachers have been allowed senior selection grade after completion of 12 years of service in the basic grade or from the date of promotion.

7. Petitioner's school was taken over in terms of Section 3 of the Bihar Non Government Elementary School (Taking over of control) Act 1976, with effect from 5.2.1981 and the services of the petitioner was taken over by an order issued vide Memo No. 1061-10 dated 17.3.1981 in the Matric untrained scale in terms of Section 4 of the Act. In this view the Establishment committee rightly recommended for giving benefit of 1st time bound promotion to the petitioner with effect from 17.3.1991. Since the petitioner had not been allowed time bound promotion or regular promotion in junior scale prior to 1.1.1986 as such he was not entitled for senior scale of Rs. 1400-2600/-. With effect from 1.3.1989. Petitioner had completed his ten years service on 17.3.1991 as such on 1.3.1989 he had not even completed 12 years of his service and was not

entitled for fixation of salary in the senior scale. Senior pay scale in terms of Clause 13(ii) of finance department resolution was allowed to the petitioner by the District Superintendent of Education considering the shifted date of time bound promotion with effect from 23.3.1985 i.e. prior to 1.1.1986. So far graduate untrained scale of Rs. 1200-2040/- is concerned for that petitioner was entitled and that has already been allowed to the petitioner even by the impugned order. But the question is with effect from which date? This is an admitted fact that the petitioner had not completed his 12 years of service in basic scale on 1.3.1989. He was granted 1st time bound promotion on recommendation of District Establishment Committee with effect from 7.3.1991 i.e. on completion of his ten years service. The date of 1st time bound promotion was illegally shifted to 23.3.1985. On account of this illegal shifting of the date of 1st time bound promotion, petitioner was allowed fixation, revision of pay scale in senior scale, though legally not entitled for the same.

8. The petitioner for challenging the impugned order has taken the ground that the District Superintendent of Education has no jurisdiction to amend or revise any recommendation of the District Establishment Committee and in that view the impugned order is bad. What I find that while making such submission the petitioner completely overlooked that this illegality had been committed by the District Superintendent of Education when he shifted the date of 1st time bound promotion of the petitioner from 17.3.1991 to 23.3.1985. The District Establishment Committee had recommended for first time bound promotion to the petitioner with effect from 17.3.1981 but that was revised and shifted to 23.3.1985 by the District Superintendent of Education on the basis of his individual order contained in Memo No. 2490-2 dated 10.9.1992. Because of shifting of the date of 1st time bound promotion subsequent illegalities were perpetuated and the petitioner was allowed revised senior scale of Rs. 1400-2600/- though entitled for matric trained revised scale of Rs. 1200-2040/-. On perusal of the impugned order I find that the petitioner has been allowed the matric trained scale with effect from one day after completion of his training i.e. 18.4.1995.

9. Counsel for the petitioner has made alternative submission that in view of the Finance Department resolution No. 6022 dated 8.12.1989 the basic scale fixed for Matric trained/Intermediate untrained/Intermediate trained, Graduate untrained teachers was at Rs. 1200-2040/- In view of the finance department resolution dated 18.1.1989 as provided under Clause 13(ii) at least the petitioner should have been allowed this basic revised pay scale with effect from 18.12.1989 and revised senior scale on completion of 12 years of his service, instead of fixing basic scale with effect from 18.4.1995 i.e. the date of completion of training. The basic scale mentioned under Schedule II of the Finance department resolution being Rs. 1200-2040/-, the petitioner could not have been denied this scale on completion of 12 years of his service in the basic scale in terms of Clause 13(ii) of the finance department resolution; he should have been allowed benefit of revised senior scale of Rs. 1400-2600/-. I find no

substance in the submission of the petitioner. The senior pay scale which was allowed to the petitioner by the District Superintendent of Education and subsequently confirmed by the District Accounts Officer, Saharsa in the senior scale of Rs. 1400-2600 on 3.2.1999 was not in conformity with Clause 13(ii) or 13(iii) of Finance Department resolution No. 6022 dated 18.12.1989. Petitioner has annexed a letter issued by the Director, Primary Education, Bihar contained in Letter No. 995 dated 2.6.1995 circulated to all the District Superintendent of Education vide Memo No. 1724 dated 10.7.1995 (Annexure-4). From this letter it is apparent that the Finance department vide resolution No. 6022 dated 18.12.1989 as per Clause 13(ii) has allowed matric trained scale of Rs. 1200-2040 to all such teachers who were working as untrained Intermediate or untrained Graduate teachers working against Matric trained posts from the date of their training. In Clause 13 of letter dated 18.12.1989 it has specifically been mentioned that principles which have been laid down for fixation of pay in the revised scale, shall be applicable to all teachers except those having matric (untrained) qualification I find that by the impugned order petitioner has been rightly allowed Matric trained scale with effect from the date of completion of his training in view of Clause 13 of the Finance Department resolution No. 6022 dated 18.12.1989. The submission made by the petitioner's counsel that this is the basic scale and petitioner is entitled for this scale with effect from 18.12.1989 in terms of finance department resolution No. 6022 dated 18.12.1989 is not correct. The petitioner being untrained Matric teacher is entitled for revised Matric trained scale with effect from the date of his training and that has rightly been allowed to him by the impugned order.

10. Now the question arises whether payment made to the petitioner on account of shifting of his date of 1st time bound promotion as well as fixation of pay in the senior scale of Rs. 1400-2600 can be recovered. Counsel for the petitioner submits that there are several decisions of the Supreme Court and High Court where it has been held that any payment made to a government employee, if not made on the basis of misrepresentation or fraud of the concerned employee, in such cases the recovery is not permissible. This controversial question has finally been decided by the High Court in the Full Bench decision in the case of Bihar State Electricity Board and Others Vs. Ram Kumar Bharti @ R.K. Bharti and Others in which the Full Bench has considered all relevant decisions of the Supreme Court and the High Court and finally it has been decided that if entitlement is not there in that case an order of recovery can be passed. In the present case the time bound promotion of the petitioner was shifted on representation of the petitioner, he himself has been a party for shifting of his time bound promotion. On account of this shifting of the date of first time bound promotion he was allowed the senior scale though not entitled in terms of Finance department resolution No. 6022 dated 18.12.1989. In such case it cannot be held that the recovery cannot be allowed.

11. Considering the facts and circumstances of the case I do not find any illegality in the impugned order. This application is dismissed.