
(1993) 09 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 2534 of 1993 (R)

Mohd. Sagir Ansari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Citation : (1994) 2 BLJR 1290

Hon'ble Judges : S.B. Sinha, J; Narayan Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sinha and Narayan Roy, JJ.—In this application the petitioner has prayed for a declaration that he is a permanent Head Master of S. S. High School, Kisko at Lohardaga and for quashing an order dated 4-5-1987 passed by respondent No. 3 not declaring him as a permanant Head Master.

2. The petitioner had filed a writ application in this Court earlier for self-same relief being C.W.J.C. No. 2060 of 1993(R) and by an order dated 5-8-1993. The said application was dismissed inter alia on the ground that the petitioner did not fulfil the requirement of the founder Head Master in terms of Government Notification No. 511 dated 20-11-1981. It was further held that all aspects of the matter have been considered by the competent authority in his order dated 4-5-1987 as contained in Annexure 7 to the writ application. The petitioner has now filed writ application alleging that he was appointed by the Managing Committee of the School. The petitioner has now contended that he was appointed in the year 1968 when the. school was established. He has further contended that although his representation was rejected by an order dated 4-5-1987, as contained in Annexure 8 to the present writ application the respondents are not taking into consideration the Circular No. 1072 (Vidhi), dated 9-11-1987 which is contained in Annexure 9 to the writ application to the effect that a Founder Head Master would be made permanent in case he completed seven years of service till the date of taking over of the school,

subject to the condition that the services of such teacher are without any break or interval.

3. The grievance of the petitioner is that the respondents as also this Court in earlier writ application did not take into consideration the aforementioned circular. Evidently, the question of consideration of the said circular by the Director, Secondary Education does not arise as the said circular had been issued subsequently to the passing of the said order.

4. In the year 1983 the State has framed rules known as Bihar Nationalised Schools (Condition of Service) Rules, 1983. After coming into the force of the said Rules, all the previous circulars issued by the State of Bihar, have ceased to operate except Government letter No. 510, dated 10-11-1981 which has been revived by the rules itself.

It is now well-known that all the posts of Head Masters have to be filled up in terms of the aforesaid rules. In *Smt. Madhuri Kumari v. The State of Bihar* reported in 1993 (1) PLJR 449 it has been held as follows:

However, it appears in the said counter-affidavit the State has not taken into consideration the Circular No. 1072 dated 9-11-1987, in terms of clause 2(ga) whereof the Government Order XV, dated 20-11-1981 was amended. In our opinion, therefore, the claim of the petitioner should be considered if the post of Head Master had fallen vacant keeping in view the aforementioned circular letters but subject to and in conformity with the statutory rules of 1983.

However, as the post of Head Master did not fall vacant prior to 2-10-1980, the same can now only be filled up in terms of the provisions of 1983 rules amended in 1988.

The matter relating to filling up of the post of Head Mistress of the said school should thus be governed by 1983 rules and thus the question of regularisation of the petitioner therein does not arise.

The said rules have been declared *intra vires* by a Full Bench of the Court in *Ram Odar Jha and Others, Ram Krishna Singh, Lalita Prasad Pandey and Hari Tiwari Vs. State of Bihar and Others*

Keeping in view the statutory provisions, there cannot be any doubt that the matter of promotion of the petitioner who is a teacher in a nationalised secondary School has to be considered in terms of the aforementioned rules and it is for the appropriate authorities of the State of Bihar to take effective steps for filling up of the post by promotion and/or direct appointments in accordance with the statutory provisions as enforced at the time when effective steps had been taken for filling up of those posts.

However, it may be clarified that Government order contained in letter No. 510 dated 10-11-1981 refers to filling up of vacancy existing prior to 2-10-1980.

In *Jagdish Pandit Vs. State of Bihar and Others* it has been held as follows:

After having heard the rival contentions, I am of the considered view that the case of the petitioner is to be governed by the decision of the Government as contained in Annexure 3 to this writ application and the Government is bound to take a decision in respect of granting promotion to the petitioner in accordance with the criteria laid down therein. The petitioner, if he was eligible and otherwise fit and qualified for being promoted to the post of Head Master on 2-10-1980, then he will be deemed to have acquired a right to be considered for being promoted to a post in the cadre of Head Master as envisaged under the rules. But in my opinion the right of promotion so acquired does not vest any further right in the petitioner to claim a posting as Head Master in the school in which he was an assistant teacher on or before 2-10-1980. It is so because after the nationalisation the Head Master and the assistant teachers all became Government servants and their posts are transferable. Therefore, under the circumstances, it will be reasonable to construe that once promotion is accorded to the petitioner to a post in the cadre of Head Master, he can be posted in any school in accordance with the rules framed in this regard. Therefore, the prayer of the petitioner for quashing of the appointment of the Respondent No. 3 as Head Master of the school in question does not merit any consideration and it is accordingly, rejected.

It was further observed:

The promotion to the post of Head Master can be effected both under the Circular No. 510, dated 20-11-1981 (Annexure 2) as also under the rules only the basis of recommendations of the School Services Board keeping in view the eligibility and fitness of the candidates as prescribed under the above said Circular, Therefore, for this reason as well as held by the Supreme Court, the promotion can take effect only from a date subsequent to the recommendations of the Board.

5. In any event, the plea of the petitioner is barred under the principles of constructive res judicata. However, it will be noticed that a Division Bench of this Court recently in Phulena Prasad Yadav v. The State of Bihar and Ors. reported in 1993 BBCJ 82 has held as follows:

Adverting again to the Circular No. 511, so far as the claim of recognition as founder Headmaster is concerned, a bare perusal of Clause (Ga) of its Paragraph 2 would show that 7 years teaching experience after graduation has to be calculated as on the date of recognition. The minimum qualifications for the founder Head Master as prescribed in Paragraph 2 of the said circular are that the person concerned must be a graduate from any recognised University : must possess the necessary training as mentioned therein and must also possess 7 years teaching experience of recognised secondary school (including the school in question) after graduation as on the date of recognition of the schools. Therefore, so far as the claim for recognition as founder Head Master is concerned, in my opinion, on plain and unambiguous language of the relevant circular, there can be no doubt that the person concerned for the purpose of his

recognition as founder Head Master, besides other qualifications, must have 7 years teaching experience of a recognised school to his credit on the date of recognition of the school in question.

6. This aspect of the matter has recently also been considered by a Division Bench of this Court in *Deobansh Pandey v. The State of Bihar* and Ors. 1993 (1) PLJR 221 wherein it has been stated as follows:

In my opinion, neither the petitioner nor the respondent No. 4 who lay their claims on the basis of the said Government letter, for seeking promotion on the post of Head Master of the school, are entitled to claim such promotion nor it was competent on the part of the respondent authorities to accord any benefit to the respondent No. 4 pursuant to the said Government letters because of following reasons : (i) after coming into force of the rules, the promotion/appointment could have been made only in accordance with the provisions contained in the Rules, (ii) the Government letter in question stood repealed in view of Rule 21 of the Rules, and (iii) under the Rules a teacher could be deemed to be a founder Head Master, who, apart from other requirements is also, possessed with requisite educational qualifications as eligibilities right from the beginning of his joining the service in the school, which neither the petitioner nor the respondent No. 4 had inasmuch as they passed their B. Ed. Examination and Diploma in teaching much after their joining the service.

The Service conditions of the petitioner are therefore now governed by 1983 Rules and not by any circular letter.

7. In view of the aforementioned decision, evidently, the petitioner cannot be considered to be the founder Head Master for the purpose of appointment as a Head Master.

8. This application is, therefore, dismissed.