

(2018) 02 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4866 Of 2003

Mridula Palit

APPELLANT

Vs

State Of Bihar Through The Director And Ors

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2018) 2 PLJR 199

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Nagendra Kr. Singh, Zaki Haider

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following reliefs:

" (i) For issuance of an appropriate writ, order or direction to the District Education Officer, Patna respondent no. 2 to pay the monthly salary as well as the arrear of the salary to the petitioner which has been withheld since 1st April, 1999 without any cogent reason.

(ii) For issuance of an writ for quashing the memo no. 59 Patna dated 7.1.2003 of the Secretary, Vidyalaya Seva Board, Bihar, Patna contained in Annexure- 13 whereby and whereunder the clarification has been sought for from the District Education Officer, Patna in the matter of approval of the appointment of the petitioner on the post of Assistant Teacher (Trained Graduate) after her continuous service of 19 years as the advertisement was defective.

(iii) For issuance of writ in the nature of mandamus commanding the respondent no. 3 to approve the appointment of the petitioner on the post of Trained Graduate Assistant Teacher in English subject on the basis of the advertisement dated 12th Sept. 1984, earlier pay fixation by the then District Education Officer,

Patna respondent no. 2 in terms of letter No. 34, 318 dated 13.1.1986, 7.3.1986 of the District Secretary Education, Bihar, Patna, contained in Annexure-8, memo No. 1342 Patna dated 12.6.98 of the then District Education Officer, Patna contained in Annexure-9 and continuous service for 19 years.

(iv) For any other relief and reliefs as the Hon'ble Court deem fit and proper."

3. Basically the question is whether the State would be obliged to pay the salary of the petitioner who was appointed in a private minority school under a private Managing Committee. The petitioner was appointed pursuant to an advertisement in the year 1984. The said advertisement was issued on 12.09.1984 but neither did it disclose any post nor any qualification and only applications were invited for appointment of Graduate Trained Female Assistant Teacher. In terms thereof, the petitioner faced interview conducted by the Selection Committee on 22.11.1984 and in the merit list dated 22.11.1984, she was placed at serial number- 1 in the panel. Accordingly, she was issued appointment letter and joined on 27.11.1984. Even the appointment letter did not disclose any post on which the petitioner was appointed and rather it only mentions that the petitioner was being appointed on a temporary basis on the post of Assistant Teacher. The petitioner continued on the said post and was also getting the pay. From April, 1999, when the salary of the petitioner was stopped, the Vidyalaya Shiksha Board asked for clarification from the District Education Officer, Patna and the Secretary of the school on 01.06.2001. The Secretary of the school submitted a report on 10.08.2001 informing that the petitioner was appointed on 28.11.1984 on the post of Assistant Teacher against the vacant and sanctioned post in English subject and was continuing since then. The Secretary also issued a certificate on 15.05.2002 to this effect. The Vidyalaya Shiksha Board again asked for clarification from the District Education Officer, Patna on 17.01.2003 with regard to the defect in the advertisement published on 12.09.1984. The matter remained pending resulting in the petitioner approaching the Court in the present writ application.

4. Learned counsel for the petitioner submitted that even if there were defects in the advertisement, the petitioner having worked on the post for a long time, i.e., more than 15 years, is entitled to salary. It was submitted that she was appointed on a vacant sanctioned post and, thus, there is no impediment in paying salary for the post against which the petitioner has been appointed, as has been certified by the Secretary of the school in certificate dated 15.05.2002. He relied on the judgment of a Division Bench of this Court dated 27.01.2003 in L.P.A. No. 494 of 2002 in the case of Sarla Rohilla Vs. The State of Bihar & Ors. for the proposition that if a person is selected in terms of the advertisement, even if any illegality has been committed by the Selection Committee and not by the candidate, he cannot be made to suffer for the same. It was submitted that in the said case the person was appointed by the Selection Committee of a minority school on the post of Sanskrit Teacher but did not possess honours in Sanskrit and the Court held that as the advertisement did not specify that the

person had to be honours in Sanskrit, the defect in advertisement and illegality committed by the Selection Committee, which chose to appoint the said petitioner, it would be iniquitous to make the candidate suffer for such illegality committed by the Selection Committee and not by him.

5. Learned counsel for the State submitted that the petitioner was appointed by the private Managing Committee of a private minority school and the advertisement was totally vague as no post was even mentioned. It was submitted that once the very advertisement was not for any post, there cannot be any question of a valid appointment and further the State cannot be fastened with the liability of having to pay the salary. Moreover, it was submitted that even as per the statutory rules relating to such appointment, the qualification of an Assistant Teacher has to be at least honours in the subject in which the person is appointed. It was submitted that in the present case the petitioner was not honours in English and if she has been appointed on the post of English teacher, the same is totally illegal and untenable. Learned counsel submitted that in the case of Sarla Rohilla (*supra*) the advertisement was for specific posts, including the post of Sanskrit teacher, whereas in the present case the advertisement was not for any post and rather it was stated that one Graduate Trained Female Assistant Teacher was required.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petition. The foremost point for consideration is as to whether the appointment of the petitioner itself was valid. From the admitted position, the advertisement, pursuant to which the petitioner claims to be appointed, was totally vague, which mentions that one Graduate Trained Female Assistant Teacher was required, but neither any post nor subject was ever mentioned. This is one basic difference from the case of Sarla Rohilla (*supra*). Thereafter, the appointment letter of the petitioner, copy of which has been brought as Annexure-6 to the writ petition, also does not disclose that she had been appointed on any specific post and rather it was only said that she is being appointed on a temporary basis on the post of Assistant Teacher. Once the appointment letter does not disclose that she is appointed on any sanctioned post in a particular subject, the State cannot be fastened with liability to pay the salary etc. to the petitioner. This is another major difference from the case of Sarla Rohilla (*supra*) where the advertisement was specifically for various sanctioned posts, including that of Sanskrit teacher. The issue in that case was whether the appointment on that post was valid and legal and the Court has held that after so many years, due to fault of the Selection Committee, the petitioner cannot be penalized, whereas in the present case neither the advertisement nor the appointment was ever on a sanctioned valid post and only such appointment which is on a sanctioned valid post, which has to be reflected in the advertisement, can saddle the State with the liability to pay. Thus, once the appointment itself was not on any sanctioned post, the advertisement becomes irrelevant for the purpose of a valid appointment for being entitled to payment of

salary by the State Government. A Full Bench of this Court in the case of Ram Sevak Yadav vs. State of Bihar (Full Bench) reported as 2013 (1) PLJR 964 has held, after considering various decisions of the Hon'ble Supreme Court including that in the case of Secretary, State of Karnataka v. Uma Devi reported as 2006 (2) PLJR 363 and also State of Karnataka v. M. L. Kesari reported as (2009) SCC 247, that the appointment, made contrary to the mandate of Article 14 of the Constitution of India without open competitive selection, is illegal. In the present case, there was no advertisement for any sanctioned post and further, even the appointment letter does not mention that she was being appointed on a valid sanctioned post and only much later in the year 2002, i.e., after 18 years, the certificate from the Secretary of the Managing Committee of the school that she was appointed on a vacant sanctioned post of English teacher does not inspire confidence and cannot be accepted. Thus, the judgment in the case of Sarla Rohilla (supra) is of no help to the petitioner of the present case. Coming to the issue, the Court is in agreement with the view of the Division Bench that for the illegality committed by the Selection Committee the candidate cannot be made to suffer. However, the advertisement in the present case and the Selection Committee was not a State Selection Committee and rather a purely private Selection Committee of the Private Management of a private minority school. The law is settled that the right to salary etc. including retiral benefits emanate only from an appointment which is valid in the eyes of law. In this connection, the Court is tempted to refer to the judgment of the Hon'ble Supreme Court in the case of R. Vishwanatha Pillai v. State of Kerala reported as 2004 (2) PLJR (SC) 106, which, though was considering the case of appointment on false caste certificate, has nonetheless held at paragraph no. 19 that the rights to salary, pension and other service benefits are entirely statutory in nature in public service and that the right to salary or pension after retirement flows from a valid and legal appointment. Thus, if any relief can be claimed by the petitioner, it is only against the said Managing Committee of the private school and not against the State, and that too, only before the appropriate forum, in accordance with law, where facts would be required to be gone into and not by the High Court in its writ jurisdiction under Article 226 of the Constitution of India.

7. For the reasons aforesaid, the writ petition stands dismissed.