
(2011) 10 JH CK 0066
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4102 of 2005

Murli Mohan Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Citation : (2012) 1 JCR 126

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State.

2. Learned counsel appearing for the petitioner submits that the petitioner had earlier been appointed as Assistant Teacher by the Managing Committee of the Jhikar-hati Middle School. Pakur on 26.7.1970. Subsequently, when the private schools were taken over by the State of Bihar, petitioner's school was also taken over. But in terms of the rules, petitioner's services were not recognized from the date when the petitioner had been appointed by the Managing Committee. There fore, the petitioner moved before the Patna High Court in C.W.J.C. No. 1891 of 1976 whereby the order under which petitioner's services were recognized with effect from March, 1974 was quashed and a direction was issued to treat the petitioner as recognized teacher with effect from the date of his initial appointment. Pursuant to the order passed by the Patna High Court, District Superintendent of Education, Dumka vide its order dated 24.8.1977 as contained in memo No. 77 recognized the services of the petitioner with effect from 26.7.1970. In course of time, petitioner became B.A trained on 2.8.1973 and the B.A trained scale was given to the petitioner but it was given with effect from 1.4.1981 whereas junior to the petitioner, namely, Bijay Kumar Ghose was given B.A trained scale with effect from 10.6.1974. Under that situation, the petitioner moved to the Patna High Court by filing C.W.J.C. No. 778 of 1990

which was disposed of directing the District Education Establishment Committee, Sahibganj to consider the claim of the petitioner with respect to the shifting of effective date of B.A trained scale with effect from 2.8.1973 or any other date in accordance with law. Pursuant to that order, District Education Establishment Committee, Pakur passed an order as contained in memo No. 483 dated 28.4.2005 whereby the committee refused to grant B.A. trained scale with effect from 2.8.1973 on the ground that the case of the petitioner is not similar to that of junior to the petitioner. That order as contained in Annexure 1 has been challenged to be bad.

3. A counter-affidavit has been filed wherein stand which has been taken in support of Annexure 1 is as follows:

That with regard to the statements made in paragraph 32 of the writ application, it is stated and submitted that the matter of granting promotion of the writ petitioner is not similar with the matter of other persons as the petitioner mentioned. The writ petitioner appointed by the Managing Committee and the other persons have been appointed by the then D.S.E. Santhal Par-ganas, Dumka and senior to him, hence, it is denied.

4. Virtually on the same ground, the impugned order has been passed whereby District Education Establishment Committee has denied B.A trained scale to the petitioner with effect from 2.8.1973.

5. It be stated that when the petitioner's services were not recognized from the date of the appointment made by the Managing Committee, the petitioner had moved before the Patna High Court in C.W.J.C No. 1891 of 1976 and the Patna High Court quashed that order by which the petitioner's services had been recognized with effect from March, 1974. Consequently, direction was given to the State authority to treat the petitioner to be a recognized teacher with effect from the date of appointment of the teacher by the Managing Committee.

6. Under that situation, the stand which has been taken by the State authority towards denial of the claim that the petitioner was appointed by the Managing Committee whereas junior to the petitioner who was given B.A trained scale with effect from 10.6.1974 has been appointed by the D.S.E is quite irrelevant as it is the date of vacancy which would be material for the purpose of grant of B.A trained scale and not the authority who made appointment. There has been no denial of the fact that Bijoy Kumar Ghose who has been given B.A trained scale with effect from 10.6.1974 was junior to the petitioner.

7. In that view of the matter, the petitioner is entitled to B.A trained scale at least with effect from 10.6.1974.

8. Accordingly, the order dated 28.4.2005 passed by the District Education Establishment Committee, Pakur as contained in Annexure 1 is hereby quashed.

9. In the result, this application is allowed.

10. Accordingly, consequential benefits be given to the petitioner within a period of two months from the date of receipt/ production of a copy of this order.