
(1992) 10 PAT CK 0011

In the Patna High Court

Case No : C.W.J.C. No. 8367 and 8422 of 1991

Narsingh Shukla and Bharat Mishra

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 30-10-1992

Acts Referred:

Citation : (1992) 10 PAT CK 0011

Final Decision : Dismissed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—Both these matters involving common questions of fact and law were heard together and are being disposed of by this common judgment.

2. However, the fact relating to both the writ application would be noticed separately.

3. In CWJC No. 8367 of 1991 the petitioner thereof has prayed for quashing of an order dated 10-5-1991 whereby his claim for being treated as Headmaster of High School as contained in Annexure-6 to the writ application has been rejected.

4. The petitioner allegedly worked as an Assistant Teacher from 1-1-1970 to 31-12-1972 in Kalyan High School, Pandu district Palamu which is said to be a recognised institution. Thereafter a School opened in the village Belharobra and petitioner appointed as Headmaster of the said School on an offer of appointment dated 26-12-79, pursuant where to he joined the said school on 1-1-1979. The said School was granted permission for establishment on 22-11-1979. The matter relating to recognition of the said School was taken up by the Special Board and by a notification dated 13th March 1981 the said School was recognised as also nationalised. The said notification is contained in Annexure-3 to the writ application wherein the petitioner has been shown to be the Acting Headmaster.

5. In the counter affidavit, filed on behalf of the respondents, it has been pointed out that the School in question was granted permission for establishment on 22-1

1-79 and it was granted permanent recognition with effect from 13-3-1981 and as the petitioner, as on 2-10-1980 had an experience of one year two months and 22 days only and thus he could not have been appointed as Headmaster of the said School.

6. In CWJC No. 8422 of 1991 the petitioner thereof has prayed for quashing the order contained in Memo dated 27-2-1991 as contained in Annexure-1 thereto whereby the respondent No. 2 has rejected the claim of the petitioner for being treated as Headmaster of the Rajkiyakrit High School Ramuna, P. S. Nagar, District Palamau,

7. The petitioner was an Assistant Teacher of a recognised High School Meral, Palamu from 1-10-1969 to 31-1-1974 and he again worked as an Assistant Teacher from December, 1978 to July 1979 in a School at Latchar which is also said to be a recognised School.

8. The petitioner joined the school in question on 7-9-1979 as a Headmaster, in terms of an offer of appointment dated 25-8-1979 issued by the Managing Committee thereof which is contained in Annexure-3 to the writ application. The said School was granted permission for establishment on 31-3-1980 and thereafter the said School was taken upon grant of permanent recognition.

9. The petitioner filed a writ petition in this Court which was registered as CWJC No. 4985 of 1990 and by an order dated 8-11-1990 as contained in Annexure-4 to the writ application the said petition was disposed of with a direction that the representation tiled by the petitioner should be disposed of by the Director, Secondary Education within six months.

10. By reason of the impugned order as contained in Annexure-1 to the writ application the said representation of the petitioner has been rejected.

11. Mr. Rajendra Prasad Singh, learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that as the petitioners had in fact worked for more than 10 years as Assistant Teachers and/or Headmaster, the impugned orders must be held to be wholly illegal and without jurisdiction. It was further submitted that in any event the petitioners have admittedly gained more than 10 years" experience on the dates of passing of the impugned orders and thus they are liable to be quashed.

The learned Counsel in this connection has strongly relied upon a decision of the Supreme Court in Ram Sarup Vs. State of Haryana and Others, .

12. It is not in dispute that the School in question where the petitioners had allegedly been working had been taken over in terms of Section 3(3) of the Bihar Non-Government Secondary Education (Taking Over of Management and Control) Act, 1981, which came into force with effect from 2-10-1980.

13. A Full Bench of this Court in Ram Ballabh Pd. Singh and etc. Vs. State of

Bihar and Others, has that taking over of the services of the teachers is not an automatic in terms of Section 3 (3) of the said Act and a Headmaster of an unrecognised school does not become the Headmaster of the nationalised School upon such take over nor does he become automatically the Headmaster of the nationalised School.

The appointment of a teacher according to the Full Bench depends upon the possession of requisite qualification and suitability which is a pre-condition of his appointment to the Government service as teacher or Headmaster of the Nationalised School.

14. It is not in dispute that rules for recognition of School has been prescribed by the State of Bihar by reason of a notification bearing No. 129 dated 30-11-1981. The said notification in Ram Ballabh Prasad Singh's case (supra) has been held to have the force of law. In terms of the said notification the minimum qualification prescribed for appointment to the post of Headmaster is 10 years' teaching experience in a recognized School within the territory of the Indian Republic. For that purpose it is further necessary to get the certificate of teaching experience in the School recognised by the State, counter signed by the District Education Officer. The appointment of Headmaster has also to be made by the Officer authorised for that purpose and upon recommendations of the Education Service Board.

15. In Ram Ballabh Prasad Singh's case (supra) it has been held:

To mind, u/s 3 (3) the plain power of not appointing or taking over the services of such employees includes the power to appoint them to a lower rank or to determine a designation of its choice. It bears repetition that the stand of automatic appointment taken on behalf of the petitioners would render nugatory a substantive portion of Section 4(2) and as would be shown later, may well be brought with public mischief.

16. The aforementioned full Bench decision has been affirmed by the Supreme Court in Special Leave to Appeal (Civil) No. 4538-30 of 1986.

17. The Director Secondary Education in his order dated 10-5-1 91 as contained in Annexure-6 to the CWJC No. 8637 of 1991 has upon taking into consideration the fact that the school in question obtained the permission for establishment on 22-11-1979 and it was recognised on 30th March, 1981 came to the conclusion that the teaching experience of the petitioner on the date of take over of the school was only for a period of one year three months and 11 days. Even assuming that the petitioner had also obtained teaching experience while working as Assistant Teacher in Kalyan High School Pandu district Palamau from 1-1-1970 to 31-12-1972, still then he does not fulfill the criteria of having the minimum teaching experience of the recognised school for a period of ten years.

18. Similarly the Director of Secondary Education in his order dated 27th February, 1991 as contained in Annexure-1 to the CWJC No. 8422 of 1991 has

pointed out that the petitioner's total teaching experience in recognised institution was about five years. It is pertinent to mention that from a perusal of the impugned order it transpires that the petitioner merely claimed his teaching experience in Meral School at Palamau and did not put forth any claim of having obtained any teaching experience in the school at Latehar.

19. It has further been pointed out that although the certificate of teaching experience produced by him had not been counter signed by the District Superintendent of Education but in any event the same was less than the minimum requirement of ten years' teaching experience, even if the assertions of the petitioner are taken to be correct.

20. It may be mentioned that permission for establishment of the school was granted on 31-3-1980 and the same was recognised and taken over on 24-3-1981 and thus the petitioner obtained the teaching experience in the school in question only for a period of 11 months and 24 days. Even if his previous teaching experience as mentioned herein before be accepted as correct, he also did not acquire the minimum teaching experience of ten years as required in terms of the notification bearing No. 129 dated 30-11-1981.

21. Mr. Rajendra Prasad Singh, however, submitted that although the petitioner may not have any minimum teaching experience of ten years as on the date of the take over of the said school their services should be treated to be Headmaster as they have completed the minimum requirement of ten years teaching experience on the date of passing of the impugned order. The submission of the learned Counsel cannot be accepted in view of the statutory provisions contained in Section 3(3) of the Act read with notification bearing No. 129 dated 30-11-1981 as has been interpreted by the full Bench of this Court in Ram Ballabh Prasad Singh's case (supra). Admittedly the petitioners were not appointed as Headmasters of the said schools and thus the question of considering their subsequent teaching experience for the purpose of their appointment as the Headmaster of the School in question does not arise.

22. The decision of the Supreme Court in Ram Swamp's case has no application in the facts of the case. In that case the appellant before the Supreme Court was appointed as Chief Inspector of Shops although at the time of his appointment he did not have the requisite experience. He continued in the said post for about nine years and in that peculiar situation the Supreme Court held that he would be taken to have been appointed after completion of 5 years' service which was the minimum requisite experience for being appointed in the post of Chief Inspector of Shops.

In this case as noticed hereinbefore, the petitioners were not appointed as Headmasters by any competent authority nor their cases for appointment were considered by the Board. In this situation the question of their automatic absorption in the State Service upon completion of ten years as teacher does not arise.

23. For the reasons aforementioned, there is no merit in these applications which are accordingly dismissed, but in the facts and circumstances of the case, there will be no order as to costs.