
(2012) 10 PAT CK 0046

In the Patna High Court

Case No : CWJC No's. 10291 of 2012, 8850 of 2011

Nilofar Nahid

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 PLJR 645

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Tara Nath Jha and Atul Kumar in 10291 and Mr. Onkar Kumar in 8850, for the Appellant; Rana B.N. Singh for the State, Mr. Ramakant Sharma in 10291 for Private Respondent and Mr. Dinbandhu Singh in 8850, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner, State and respondent no. 11. Both writ applications arise out of orders passed by the District Teachers Appointment Appellate Authority at Purnea dated 26.4.2011 and 17.5.2012 respectively in Case No. 803 of 2010 and 1071 filed by respondent no. 11.

2. The order dated 26.4.2011 terminates the appointment of the petitioner. The order dated 17.5.2012 directs consideration for appointment of respondent no. 11.

3. Learned counsel for the petitioner submits that the challenge in Case No. 803 of 2010 was to the appointment of Farhat Kausar, daughter of the petitioner. The Tribunal has wrongly ordered termination of the petitioner. During hearing fresh evidence by way of sale deeds and fresh certificate from the Madarsa Board mentioning the date of birth as 19.7.1967 had been submitted which has not been properly considered and appreciated by the Tribunal. No complaint was filed by respondent no. 11 within 30 days of the appointment before the Block Development Officer as required under Rule 18 of the Bihar Panchayat Primary

Teachers (Appointment and Service Conditions) Rules (hereafter referred to as the Rules). Even if the appointment of the petitioner was terminated the Tribunal had no jurisdiction to direct the appointment of respondent no. 11, as procedures for appointment are adequately provided for under Rule 9 and other analogous provisions.

4. Counsel for the State has supported the impugned orders.

5. Counsel for respondent no. 11 submitted that the order dated 26.4.2011 is well reasoned and considered disclosing full application of mind by the Tribunal to all the facts of the case and the writ court in judicial review may not interfere with the same as they cannot be held to be arbitrary, perverse or illogical.

6. The Tribunal has been created by a statutory order dated 25.8.2008 supplanting the Block Development Officer as appropriate forum under Rule 18. Orders passed by the Tribunal are final and there is no appellate forum provided. That does not exclude judicial review under Article 226, the order of the Tribunal being statutory in nature. But, this power of judicial review is not similar to a First Appellate Court. In judicial review, it has to be considered whether the decision making process suffered from illegality or irregularity. Whether parties were heard or not, relevant materials considered and irrelevant materials eschewed. Whether the findings are perverse or based on materials. These are some of the grounds for the power for judicial review to be invoked. Findings of fact arrived at by the Tribunal have to be given finality. If the view taken by the Tribunal is a possible view in the law, it shall not be proper exercise of jurisdiction under Article 226 to interfere with the same only because this Court, being superior, may have the power to do so. On these principles, the Court shall now proceed to examine the order dated 26.4.2011.

7. The petitioner alongwith her application submitted her Moulvi qualification from the Bihar State Madarsa Education Board bearing no. 8906 of 2006. It mentioned her date of birth as 19.7.1980. A similar certificate from the same authority furnished by her daughter bearing no. 8909 of 2006 mentioned the date of birth of the latter as 9.7.1987. Both mother and daughter passed the Moulvi examination conducted by the Madarsa in the same year. The Tribunal has expressed its surprise with the seven years age difference between mother and daughter a biological impossibility holding that it was not reasonably possible to conclude that the certificate of the petitioner was genuine. It is not possible for the Court to hold that this finding of the Tribunal is either arbitrary, perverse or illogical. During the hearing of the case, the petitioner put up a defence that her date of birth was wrongly entered in the register of the Madarsa Board at the time of Registration and the error continued in her Fauquania and Moulvi results. If the petitioner claims to have been born on 19.7.1967, obtained qualifications from the Madarsa in 2006, and for these long years never realized that her date of birth had wrongly been entered at the time of Registration she commenced education, secured appointment on basis of the same and realized her predicament only after institution of Case No. 803 of 2010 of respondent no. 11,

the Court finds it very difficult by ordinary common prudence and common sense to accept the explanation of the petitioner.

8. The Tribunal considers her defence from a sale deed and holds that she was approximately 44 years on the date of application. Without going into that question, the Tribunal also notices that the petitioner produced another certificate from the Madarsa Board during hearing that her date of birth was 19.7.1967. The conclusion of the Tribunal is that if her date of birth was 19.7.1967 as was now being contended, quite obviously the petitioner obtained the employment by furnishing a wrong date of birth as 19.7.1980 in her application for employment supported by a certificate of the Madarsa Board. The reasoning and conclusion of the Tribunal is flawless and cannot be faulted with.

9. If appointment is obtained by misrepresentation or incorrect presentation it has always been held a valid ground for termination. Even if the challenge was to her daughter's appointment and during the hearing it transpired that the petitioner had obtained an incorrect appointment which was held to be bad after full opportunity and the daughter's appointment has been saved, the Court finds no reason to interfere.

10. In the facts of the case, the question whether a complaint was filed before the competent authority under Rule 18 or not loses its relevance. Justice, equity and good conscience, as urged on behalf of the petitioner, cannot be invoked in the facts of the present case.

11. The last submission on behalf of the petitioner that issues with regard to her age based on fresh materials produced before the Tribunal have not been properly considered may have been good grounds for a First Appeal Court but not in the limited review jurisdiction under Article 226 for reasons already discussed.

12. When a Court of law or a Tribunal considers a claim for appointment, the direction is couched as to consider for appointment in accordance with law which means that if there is no other statutory impediment, the person concerned is entitled to the benefit of an adjudicatory order. Both writ applications are dismissed.