
(2005) 02 PAT CK 0107
In the Patna High Court
Case No : CWJC No. 12178 of 1999

Phulena Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 21

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Shambhu Prasad, Krishna Murari Pd, for the Appellant; J.D. Singh for State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 21.6.1999 whereby the prayer made by the petitioner to recognise him as Headmaster of the School has been rejected. Short facts giving rise to the present application are that the petitioner was appointed as Assistant Teacher in Gandak High School, Tarwara, Siwan, hereinafter referred to as "the School" by order dated 20.1.1973. The School in question was given permission for establishment and recognition by Bihar Secondary Education Board under the provisions of Bihar Secondary Education Board Ordinance with effect from 16.2.1974 and 11.4.1978 respectively. According to the petitioner, he was lateron promoted as the Headmaster of the school by resolution of the then Managing Committee dated 9.1.1978. According to the petitioner, although he was functioning as the Headmaster on the date the recognition was given but in the order of recognition, he was described as Incharge Headmaster. Thereafter, several persons were attempted to be posted in the School but none of the orders could be implemented. One Habib Ansari was ultimately posted in the School by order dated 7.6.1980 and the petitioner challenged the said order by filing C.W.J.C. No. 2674 of 1990. However, during the pendency of the writ application, said Habib Ansari was posted elsewhere and in that view of the

matter, writ petition was disposed of by order dated 17.4.1985 with a direction to the Director, Secondary Education to consider the case of the petitioner for appointment as Headmaster of the School in the light of the Government Circular No. 510 dated 20.11.1981. In the light of the said order, case of the petitioner was considered and it was found that he having not possessing the minimum requisite experience of ten years in service on the relevant date, his claim for recognition as Headmaster is not fit to be granted.

2. Petitioner, aggrieved by the same, preferred C.W.J.C. No. 5928 of 1985 before this Court. A Division Bench of this Court, by its judgement dated 21.8.1991 reported in 1991 (2) PLJR 449 (Phulena Prasad Yadav vs The State of Bihar & Ors), dismissed the application, inter alia, observing as follows:

"9. In my considered view, therefore, the petitioner was not eligible either for his recognition as the founder Headmaster or for his promotion as the Headmaster in terms of the Government circular Nos. 511 and 510 dated 20.11.1981 respectively and, therefore, the impugned order (Annexure-5), does not suffer from any infirmity. Consequently, I do not also see any illegality in the order as contained in Annexure-6 by which respondent No. 5 is being brought to the school in question".

3. It seems that the petitioner accepted the said order. Lateron, petitioner represented for recognising him as the Headmaster on completion of seven years of service, inter alia contending that in similar situation, the Supreme Court in Civil Appeal No. 4032 of 1988, directed for regularisation to the post of Headmaster to similarly situated person. The prayer of the petitioner was considered and finding that the writ application filed by him has already been dismissed by this Court, respondent by the impugned order, did not accede to his prayer.

4. Mr. Chitranjan Sinha, Senior Advocate, appearing on behalf of the petitioner contends that in similar situation, the Supreme Court had given direction for regularisation to the post of Headmaster on completion of seven years of service reckoned from the date on which the Institution was taken over by the Government and as such, petitioner be given the same relief. In this connection, he has drawn my attention to the order passed in the aforesaid case which reads as follows:

"The fact.....remains that the appellant has since completed more than seven years of service and is now eligible for being considered for regularisation.

We, therefore, dispose of this appeal with the observation that the appellant, if not already regularised as Head Master, shall be considered for regularisation w.e.f. the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government. There will be no order as to cost."

5. He also submits that this Court also granted same relief to two of the

petitioners who had approached this Court in C.W.J.C. No. 7064 of 1989 and C.W.J.C. No. 312 of 1992 (Annexure-11) which were disposed of by common order on 19.2.1999. My attention has been drawn to the following passage from the said judgement which reads as follows:

"In the instant case also similar direction is passed upon respondent No. 2 to consider the cases of the petitioners for regularisation as Headmaster in the school in which they are working or in any other school after completion of their services for seven years from the date of take over of the school in question. Respondent No. 2 will, of course, verify whether the petitioners were continuously working as Headmaster of the school for all these years, and an order to this effect passed by respondent No. 2 within a period of three months from the date of service of copy of this order upon him."

6. My attention has also been drawn to the order dated 7.12.2001 passed by the Supreme Court in Special Leave to Appeal (C) No. 12107 and 12108 of 2001 which has been disposed of in the following terms:

"Delay condoned.

Learned Counsel for the respondents states that the petitioner's case would be considered by the concerned authorities on the basis of the directions issued by this Court in A.K. Pradhan vs. State of Bihar & Ors. (Civil) Appeal No. 4032/88 decided on 7.1.1998).

The special leave petitions stand disposed of accordingly."

7. Mr. J.D. Singh, G.P.I, however, submits that in the face of the dismissal of the writ application filed by the petitioner which had attained finality, the direction sought for by the petitioner is not fit to be granted. He points out that in the aforesaid case, the writ petitions filed by the employees were dismissed and the matter travelled to the Supreme Court and in that, the Supreme Court passed the said order. So far as the order passed by this Court is concerned, Mr. Singh points out that the writ petitions filed by them were not earlier dismissed as in the case of the petitioner and as such, the orders passed by this Court, shall not enure to the petitioner's benefit.

8. Having appreciated the rival submission, I find substance in the submission of Mr. Singh. Petitioner's writ application was dismissed by a Division Bench of this Court. He accepted the said order but later on, some persons were granted relief. He reagitated the matter again. In my opinion, as the case of the petitioner attained finality by dismissal of his writ application by the Division Bench, it shall be wholly in-appropriate for this Court to reopen the matter merely on the ground that in some other matter filed at the behest of some similarly situated persons, the Court has granted the relief. The view which I have taken, finds support from the judgment of the Supreme Court in the case of Md. Aziz Alam and Others Vs. Union of India (UOI) and Others, in which it has been held as follows:

"2. It is contended by the Learned Counsel for the appellants that the disposal of OA No. 327 of 1989 by the Tribunal filed by some other applicants gives a fresh cause of action to these appellants as they were similarly situated and therefore, the Tribunal committed error in refusing the relief sought for on the ground of limitation. According to the Learned Counsel, there is no justifiable reason to deny the relief to these appellants when similar relief has been given to some others who also did take the recruitment test along with the appellants in the year 1985 as already stated. We are unable to persuade ourselves to agree with this contention raised by the Learned Counsel appearing for the appellants, inasmuch as the appellants did approach this Court and this Court declined to grant special leave in the year 1990 and, therefore, so far as the question of the appellants' right of consideration to the post applied for has become final and would not be reopened merely on the ground that in some other matters filed at the behest of some similarly situated persons, the Tribunal or a Court has granted some relief. That apart, more than 15 years have elapsed from the date on which the appellants claim to have taken the test in question."

(Underlining mine)

9. To put the record straight, it is stated that an application for intervention has been filed by one Gautam Prasad claiming himself to be senior to the petitioner. As he has already retired, I am not inclined to enter into the inter se claim made by him.

10. For the reasons stated above, I am not inclined to interfere with the matter. In the result, I do not find any merit in this application and it is dismissed accordingly, but without any order as to cost.