
(2013) 06 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 18499 of 2012

Radhika Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2014) 1 PLJR 586

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Judgement

Mihir Kumar Jha, J.—Heard counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

(i) For issuance of appropriate writ/writs, order/orders, direction/directions commanding the respondents concerned to reinstate the services of the petitioner in view of the fact that the petitioner was selected as Panchayat Teacher on 7.7.2005 itself after fulfilling the requisite criteria and since 24.8.2005 discharging her duties with best of her abilities in the Primary School, Majhauri, Dhanarua till May 2012, when she was restrained from discharging her duties on the ground that she could not qualify in the efficiency test twice and further her salary etc., were stopped that too without any show-cause or notice.

(ii) For setting aside/quashing the order of termination of the petitioner (although never communicated to her) as contained in Letter No. 765/Dhanarua dated 19.5.2012 of the Respondent No. 5 addressed to the Respondent No. 7, whereby he has been asked to restrain the petitioner from discharging her duties and to stop her salary in light of the Letter No. 3511 dated 18.4.2012 of the Director, Primary Education, Govt. of Bihar.

(iii) For direction/directions to the respondents to allow the petitioner to discharge her duties, release her salaries regularly and to pay her the arrears of salary in view of the fact that she has been restrained from discharging her duties without any show-cause or notice and in view of the established principle

of law that eligibility for any service is to be ascertained at the time of appointment and cannot be determined in short intervals thereafter in the way the respondents did.

2. Learned counsel for the petitioner in support of the aforementioned prayer has submitted that though a direction was issued by the Block Education Officer, Dhanarua to the Panchayat Secretary of the respective Gram Panchayat for terminating the services of the petitioner, she was never given notice and/or opportunity to explain and as such the decision for termination of her services is in violation of the principles of natural justice. In this regard, he has also relied on an order of this Court dated 30.8.2012 passed in C.W.J.C. No. 11059 of 2012 and its analogous cases (Arun Kumar & Anr. vs. The State of Bihar).

3. Learned counsel for the State on the other hand has submitted that it is an admitted position that the petitioner did not pass the qualifying examination and as such her services were fit to be removed in terms of Rule 12(iii) of Bihar Panchayat Prarambhik Shikshak (Niyogan and Seva Start) Niyamawali, 2006. He has also submitted that the order passed by this Court on 30.8.2012 in the case of Arun Kumar (supra) in no way can be said to be a law laid down, inasmuch as, the same was by way of consent of the counsel for the State.

4. In the considered opinion of this Court, the impugned order by way of direction from the Block Education Officer, Dhanarua to the Panchayat Secretary of the Panchayat in question in which the petitioner was appointed and working as Panchayat Teacher is the implementation of Rule 12(iii) which lays down:--

5. These Rules have been framed under Article 243 of the Constitution of India read with Sections 47 and 48 of Bihar Panchayat Raj Act and thus have a statutory force. The framers of the Rule i.e. the State Government had found it that the persons who are being appointed as Panchayat Teacher will have to enhance their qualification and such enhancement was to be assessed by holding qualifying test. In fact the aforementioned quoted Rules also give incentive to those Panchayat Teachers who successfully pass out in the qualifying test. On the other hand the said Rule also requires that anyone not securing the pass marks even after appearing twice in the qualifying test would be liable to be removed by the employer. The validity of the Rules is not in question and therefore its implementation cannot be faulted on the ground of violation of the principles of natural justice. The application of Natural (sic-- Justice?) has to be made in the facts and circumstances of each case.

6. It is not the case of the petitioner that she was deprived from appearing in either of the two examinations or that even when she had appeared and obtained the marks as prescribed in the Rules, she was found to be ineligible and removed from service on a non est/non-existent ground. The petitioner simply claims to assail the instructions given by the Block Education Officer, Dhanarua on the ground that prior to issuance of the aforementioned direction to the Panchayat Secretary without her being removed from service, she was not given

any show cause notice and/or opportunity of hearing. That however, does not seem to be the intention of the Rule in question.

7. Assuming that the petitioner is given an opportunity even now what would be her answer? She cannot claim that she had passed the examination or that she was not allowed to appear in the examination. Obviously, therefore, issuance of show cause notice to her would be a mere formality. The principles of natural justice has not to be followed by an empty formality and in fact it has an avowed purpose that no person should be condemned without being heard.

8. This Court, therefore, had given an opportunity of hearing to the petitioner through her counsel but the counsel could not show anything beyond the statement made in paragraph No. 9 of the writ petition which reads as follows:--

That it is not out of place to mention that the said efficiency tests as held in 2009 and 2010 were much criticized for the wide scale favouritism and bungling and this petitioner refrained herself to satisfy illegal demands of the respondents concerned and such she was not made qualified.

9. As would be evident that the criticism of the petitioner of the examination by way of plea of mala fide is wholly vague and cannot be substantiated that who had demanded bribe or who had committed favoritism and bungling. All these questions have been left unanswered and therefore, such plea of mala fide "appears to be the last refuge of the loosing litigant", an expression frequently used for persons approaching the Court while assailing the order on the ground of mala fide.

10. In that view of the matter this Court does not find any error in the impugned order passed by the Block Education Officer, Dhanarua. Nonetheless the appointing authority of the petitioner is the Panchayat and a direction in fact had been issued to the Panchayat. If therefore petitioner has not assailed the main order by which her services were terminated by way of compliance of the order of the Block Education Officer, she cannot now make a grievance on this score inasmuch as, the observance of the principles of natural justice could have been made even at that stage.

11. In law there is also a concept of post facto approval and therefore, while this Court has found no error in the order of Block Education Officer, Dhanarua it would still give one opportunity to the petitioner to file her representation before the Panchayat Secretary, wherein, she may explain as to how she can be retained in service despite her not passing in the two qualifying examinations and thus being ineligible in terms of Rule 12(iii) of Bihar Panchayat Prarambhik Shikshak (Niyogan and Seva Start) Niyamawali 2006.

12. It goes without saying that if the petitioner files her representation the same shall be disposed of by the Panchayat strictly in accordance with law and by a reasoned order. With the aforementioned observations and direction, this application is disposed of.