

(2020) 10 JH CK 0053

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5870 Of 2019, 1845 Of 2020

Rajan Sanga And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Jharkhand Primary School Teachers Appointment Rules, 2012 — Rule 11

Citation : (2020) 10 JH CK 0053

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ravi Kerketta, Munna Lal Yadav

Final Decision : Dismissed

Judgement

1. Heard Mr. Arun Kumar, learned counsel for the petitioners, Mr. Ravi Kerketta and Mr. Munna Lal Yadav, learned counsel for the respondent-State.

2. These writ petitions have been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. In both the writ petitions there are common question of facts and law that is why both the writ petitions have been heard together.

4. The petitioners have preferred these writ petitions for quashing of order dated 18.10.2019 and 13.06.2020 respectively whereby the petitioners' appointment has been declared illegal stating therein that on the date of their compassionate appointment, they were not having required qualification for the post of I.A. & I.Sc. trained teacher as per rule 2012.

5. Learned counsel for the petitioners submits that the petitioners applied for compassionate appointment in place of their deceased- mother and father respectively and they were appointed as Assistant Teacher on compassionate

ground on 23.12.2013 in Middle School, Kolhar, Ramgarh and in High School, Chainpur, Ramgarh respectively by appointment letter dated 23.12.2013. Subsequently, an amendment in the provision of Rule 11 of the Jharkhand Primary School Teachers Appointment Rules, 2012 was brought vide notification no. 1533 dated 31.07.2014 whereby the grade pay scale of the teachers who were appointed for teaching Class I-V and the teachers who were appointed for teaching of Class VI-VIII has been isolated and basic scale of the teachers who were appointed for Class I-V was fixed as Rs. 9300-34800 and grade pay scale of Rs. 4200 and the basic scale of the teachers who were appointed for Class VI-VIII was fixed as Rs. 9300-34800 and grade pay scale of Rs. 4600. The petitioners completed B.Ed. in the year, 2012 & 2010 respectively from Vinoba Bhave University, Hazaribagh. The petitioners have qualified the Teachers Eligibility Test-2013 & 2012 respectively however, they are working as I.Sc. and I.A. Trained Teacher. Learned counsel for the petitioners further submits that the petitioners have been appointed as compassionate ground after considering their qualification and the petitioners are getting salary of basic scale of Rs. 9300-34800 grade pay of Rs. 4200. The petitioners made representation before the authorities The petitioners moved before this Court in W.P.(S) No. 4347 of 2016 which was disposed of with direction to the respondents to consider the case of the petitioners and pass appropriate order. Thereafter, the petitioners have been demoted from the post of Assistant Teacher.

6. Mr. Arun Kumar, learned counsel for the petitioners submits that only after direction of this Court to consider the case of the petitioners, the petitioners have been demoted. The petitioners have already worked on that post for six years and in that view of the matter the impugned order cannot be sustained in the eye of law. He submits that the petitioners are qualified for the said post and worked, therefore, impugned order has been passed without considering the entire aspect of the matter. He relied on judgment in the case of "Shreejith L. Vs. Deputy Director (Education), Kerala & Ors." reported in 2012 (4) JLJR (SC) 15. The relevant para of the said judgement is quoted here-in-below:

" 12. It is true that the appellant had worked for nearly five years after his appointment against the vacancy but it is equally true that he could not legally oppose or grudge the claim made by respondent no. 5 in the light of the provisions of the scheme and the statutory rules on the subject. That was particularly so when the appointment of the appellant itself was not made on the basis of the any fair or competitive selection process or any other transparent method aimed at evaluating the comparative merit of all those qualified & interested in taking the job. The appointment of the appellant, it was fairly conceded by Mr. Rajan, had been made entirely at the discretion of the Manager of the institution, and was not proceeded by any public notice or advertisement inviting candidates from the open market to apply for appointment against the available vacancy. Be that as it may, we are not so much concerned with the validity of the appointment of the appellant in these proceedings as we are with the entitlement of respondent no. 5 to seek an appointment in terms of the

Statutory Rules and the prevalent scheme. We, therefore, see no reason to interfere with the view taken by the High Court. The appeal filed by the appellant must consequently fail."

Relying on the aforesaid judgment, learned counsel for the petitioners submits that the writ petitions are fit to be allowed.

7. Per contra, Mr. Ravi Kerketta and Mr. Muna Lal Yadav, learned counsel appearing for the respondent-State submit that petitioners were appointed on compassionate ground by the District Superintendent of Education, Ramgarh vide letter dated 23.12.2013 on the post of Inter Trained Teacher in Middle School, Kothar, Ramgarh and in High School, Chainpur, Ramgarh respectively. The petitioners completed their B.Ed. examination in the year, 2012 & 2009 along with TET examination for class 1 to 5 in the year, 2013. The case of the petitioners was considered in the light of judgment passed by this Hon'ble High Court and it was found that there is no provision to be appointed for Class VI to VIII (Trained Graduate Teacher) on compassionate ground and it was also found that the petitioners were illegally appointed on that post.

8. Learned counsel for the respondent-State further submit that the persons for appointment on Class I to V were required to at least having 50% marks in Intermediate Examination and two years Diploma and it was also requirement to pass TET examination for Class I to V. Learned counsel for the respondent-State further submit that these qualifications, petitioners were not having and in that view of the matter, Director has passed the order. They submit that thereafter, the matter was again placed before the Establishment Committee of the District and the Establishment Committee after examining the entire facts, on 26.05.2020 came to the conclusion that petitioners were not having required qualification that is why, they have been adjusted to the post of clerical cadre. They submit that in view of the fact that the petitioners have already worked and recovery order has not been passed and their continuity in service was also taken care of. They submit that there is no illegality in the impugned order.

9. Having heard the learned counsel for the parties, the Court has perused the impugned order wherein the qualification is described for Teacher Class I to V. Admittedly, the petitioners were not having the said qualification which is disclosed in the impugned order. The Establishment Committee has considered the entire aspect of the matter and thereafter, it has been decided to re-adjust the petitioners and not to recover any amount which has already been paid to the petitioners and their continuity in service has also been taken care of. The Court further finds that in the impugned order it has been recorded that the then District Superintendent of Education and District Education Officer were found to be guilty and departmental proceeding against them were also recommended. Thus, it appears that there is no illegality in the impugned order as interest of the petitioners has also been protected, no relief can be extended to the petitioners. The judgment relied by the petitioners is also not helping the petitioners as fact of that case was different to the present case. Accordingly,

these writ petitions are dismissed. Pending I.A, if any, stands disposed of.