
(1998) 07 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 10486 of 1996

Ram Balak Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (1998) 3 PLJR 255

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, for the Appellant; Krishna Murari, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioner has filed the present writ application for quashing the order dated 14.9.96 passed by, the Director, Secondary Education, Government of Bihar, Respondent No. 2 by which he has rejected the claim of the Petitioner for appointment to the post of Headmaster of Adarsh Uchcha Vidyalaya, Tetarhat, in the district of Lakhisarai on the ground that the Petitioner did not possess the requisite experience on the relevant date for appointment to the said post and for further direction to accept the Petitioner as the Headmaster of the said school and grant all consequential benefits.

2. The permission to establish the school was granted by the erstwhile Bihar Secondary Education Board by its letter dated 7.12.1975. The school was recognised by the order of the competent authority on 31.12.1979. In the said letter at the time of recognition the Petitioner was shown as Acting Headmaster and one Gopal Sharan Sahu was shown as Assistant Teacher.

3. The Bihar Non-Government Secondary Schools (Taking Over Management and Control) Ordinance, 1980 (hereinafter referred to as "Ordinance") was promulgated which came into force on 2.10.80. The school in question was taken

over u/s 3(1) of the said Ordinance with effect from 2.10.80. The said Ordinance was substituted by the enactment of the Act having the same name. Section 4(3) of the Act providing that the age of superannuation of the Headmaster, teachers and other employees of the schools taken over by the State Government, shall be 58 years and other terms and conditions of their service shall be the same as were before the taking over of the Management and Control of the schools till an alteration is made by the State Government in the prescribed manner. Section 15 contains the provisions for framing of rules and Section 16 of the Act provides that in case of any difficulty arising in giving effect to the provision of the Act and Rules framed there under, the State Government will pass necessary order for removing the difficulty. The State Government in exercise of the power under the Act issued a Circular No. 510 dated 20th November, 1981 containing the provisions for promotion to the post of Headmaster of the nationalised schools which provided, inter alia, that where the vacancies had occurred prior to 2.10.80, the school has to be treated as a Unit and the vacancies to be filled up by promotion amongst the teachers having requisite qualification and experience as mentioned therein. It further provided that in case the vacancies to the post of Headmaster occurring on 2.10.80 or afterwards, the same should be filled up after preparation of a cadre of teachers on the basis of their seniority. The said Circular laid down the minimum qualification for promotion to the post of Headmaster where the vacancy has occurred prior to 2.10.80. It provided inter alia that for promotion to the post of Headmaster where the vacancies occurred on 2.10.80, the Assistant Teacher must have a ten years" teaching experience from a Secondary school recognised by the dissolved Secondary Education Board or the State Government. In case of S.C./S.T. and female candidates, only seven years" teaching experience was required.

4. In exercise of power u/s 15 of the Act the State Government framed a rule laying down service condition of the employee under notification No. 398 dated 9th June, 1983 which was published in the official gazettee on 26.9.83. The said Rule contains the provision for filling up the post of Headmaster by promotion as well as by direct recruitment.

5. In exercise of power under Rule 20(3) of the Rules the State Government issued a notification on 6th July, 1983 wherein a decision was taken that the Circular No. 510 dated 20.11.81 laying down the procedure for filling up the post of Headmaster where the vacancies has occurred prior to 2.10.80 shall remain effective till the disposal of the matters pending for filling up the said post. At this stage, it is to be mentioned that on the same date, Circular bearing No. 511 was issued containing the provisions for appointment of Founder Headmaster. The said Circular provided that apart from other qualification, the minimum qualification for Founder Headmaster was graduate from any recognised University and he must possess necessary training as mentioned therein and seven years" teaching experience of a recognised secondary school after graduation.

6. The Petitioner's case is that he was appointed as Assistant Teacher on 24.4.1967 in High School, Khutaha in the district of Munger, a recognised High School and continued in the said school till 29.10.70 and thereafter he worked in Samaya High School, a recognised school in the district of Nawada from 11.1.1971 and he continued on the said post till 29.3.1973. On 29.9.78 he was appointed as Assistant Teacher in the school in question and on 1.1.79 he was appointed as Founder Headmaster by the Managing Committee. At that time the qualification possessed by the Petitioner was B.A.B. Ed, and latter on he enhanced his qualification as M.A.B. Ed. The total experience acquired by the Petitioner before 2.10.80 is eight years and as such he should be treated as Founder Headmaster of the school. Alternatively, the stand of the Petitioner is that the period of his experience should have been counted on the date when the matter for promotion to the post of Headmaster was being considered and not on the date of nationalisation of the school. If the period up to the date of consideration for promotion should have been counted then the Petitioner possessed the requisite experience as provided under the relevant circular for promotion as Founder Headmaster or Headmaster by treating the school as a Unit.

7. It appears that the Petitioner and one Gopal Sharan Sahu claimed the post of Headmaster of the said School but the authority did not decide the matter and thereafter the Petitioner came to this Court in C.W.J.C. No. 1441/85 for a direction to the authorities to consider his case for promotion to the post of Headmaster in terms of Circular contained in letter No. 510 dated 20th November, 1981. A division bench of this Court disposed of the said matter with a direction to the authorities to fill up the post of Headmaster in accordance with law. A copy of the said order has been annexed as Annexure-4 to this writ application. Thereafter the Director, Secondary Education by order dated 11.11.85 directed that one. of the Assistant Teacher be promoted to the post of the Headmaster and should be posted in that school and in pursuance of that order on 25.11.85 a Notification was issued posting Shyam Sundar Jha as the Headmaster of the school. Thereafter, the Petitioner filed C.W.J.C. No. 382/85 challenging the order dated 11.11.85 passed by the Director. The other claimant Gopal Saran Sahu filed C.W.J.C. No. 6107/85 challenging the order dated 25.11.85 posting Shyam Sundar Jha as Headmaster. The said writ application was dismissed by this Court on 10.1.86. In the writ application filed by the Petitioner this Court held that as the vacancy has occurred prior to 2.10.80, the case of the Petitioner should have been considered in terms of the letter No. 510 dated 20.11.84 and accordingly this Court quashed the order dated 11.11.85 and remitted back the matter to the Director Secondary Education with a direction to fill up the post of Headmaster of the school treating it as a Unit in terms of the provisions contained in letter No. 510 dated 20.11.81. The Director was also directed to consider the case of Petitioner, Gopal Sharan Sahu and other eligible teachers of the school. It was further directed that if any Assistant Teacher is found suitable for promotion to the post of Headmaster, it will be open to the

authorities to shift him from that school in the light of the decision of this Court in the case of Jagdish Pandit Vs. State of Bihar and Others .

8. The Director, Secondary Education, in pursuance of the aforesaid order, passed the impugned order rejecting the claim of the Petitioner as well as Gopal Sharan Sahu, as stated above. With regard to the Petitioner, the Director found that the school in question was recognised on 31.12.79 and as such he has only nine months two days" of experience of the school in question. With regard to his claim for experience in Khutaha School from 24.4.67 to 29.10.70 and in Samaya School from 11.1.70 to 29.3.73, he held that no paper was produced by the Petitioner to show that he was appointed and was working in the said - school at the relevant time. As such, he did not possess the requisite experience of ten years" up to the date of nationalisation which is one of the requisite requirements for promotion to the post of Headmaster by treating the school as a Unit In terms of letter No. 510 dated 20.11.81. At this stage, I would like to mention that in this case the Petitioner has based his claim for the post of Headmaster of that school either by treating him as Founder Headmaster in terms of the Circular No. 511 dated 20.11.81 or Headmaster in terms of Circular No. 510 of the same date. So far as his claim, of regularising his service as Founder Headmaster is concerned, that has to be rejected outright for the reason that no such claim was made by the Petitioner on two earlier occasions when he came to this Court and his only claim was that he should be prompted to the post of Headmaster by treating the school as a Unit in terms of letter No. 510 dated 20.11.81 which is evident from the orders of this Court contained in Annexures-4 and 5. However, the discussions herein will show that his claim for promotion as Founder Headmaster is also not tenable in law.

9. Learned Counsel appearing for the Petitioner submitted that the Petitioner possessed the requisite eligibility including the experience for promotion to the post of Headmaster in the school in question where the vacancy had occurred prior to 2.10.80 in terms of letter No. 510 dated 20.11.81. He further contended that even if he has no such requisite experience up to the date of nationalisation, now he has requisite qualification/experience and as such he should be promoted to the post of Headmaster. In support of his last submission he has relied upon the judgment of the Supreme Court in the case of A.K. Pradhan v. The State of Bihar reported in 1998(2) P.L.J.R. S.C. 2.

10. The learned Counsel appearing for the State on the other hand contended that according to the relevant circular the vacancy occurring prior to 2.10.80 are required to be filled up by treating the school as a unit from amongst the eligible and qualified teachers of the said school. It further provides ten years" teaching experience from a recognised school. The relevant date when the Assistant teacher should possess the requisite qualification and experience is 2.10.80 and as on that date the Petitioner did not possess the requisite experience, the Director has rightly rejected his claim for promotion to the post of Headmaster.

11. As stated above the school in question was recognised on 31.12.79. The

school was taken over under the provisions of ordinance on 2.10.80. The said ordinance was later on substituted by the Act. The Act contained the provision for framing of rules including the rules laying down the terms and conditions of the services of the teacher etc. As there was a delay in framing the rules, the Government came out with a policy decision contained in Letter No. 510 dated 20.11.81 wherein it laid down the mode of promotion to the post of Headmaster by treating the school as a Unit where the vacancies has occurred prior to 2.10.80. It provided ten years" teaching experience of recognised school for the promotion to the post of Headmaster (seven years with regard to certain categories). The circular does not provide a cut off date for counting experience for promotion to the post of Headmaster and taking benefit of the same, the learned Counsel for the Petitioner vehemently submitted that 2.10.80 cannot be fixed as cut off date and as and when the Assistant teacher acquires requisite teaching experience he should be considered for promotion to the post of Headmaster, in case of vacancies occurring prior to 2.10.80.

12. The Rule framed under the Act now provides for filling up the post of Headmaster by promotion as well as by direct recruitment. The detailed modes have been prescribed for the same. In terms of the Rule there is State Cadre of the Headmasters. To fill up the vacancies occurring prior to 2.10.80 the policy decision was taken as contained in Letter No. 510 which has been reiterated subsequently by issuance of Notification u/s 20(3) of the Rules as stated above. As the vacancies on the post of Headmaster occurring prior to 2.10.80 (date of notification) has to be filled up, experience acquired up to that date has only to be counted for the purpose of promotion to the post of Headmaster and that appears to be the intention of the government while issuing the aforesaid letter No. 510. Any other interpretation will frustrate the purpose for which the aforesaid circular has been issued. The vacancies to the post of Headmaster occurring prior to 2.10.80 have to be filled up by eligible teachers of the said school and the relevant date of judging the eligibility is the said date when the school was nationalised. If the teacher has no requisite experience on 2.10.80, then he cannot claim promotion to the post of Headmaster by treating the school as a Unit. In terms of the provisions of the Act and Rules the post of Headmaster is not filled up by treating the school as a Unit on the other hand the posts vacant in schools, are filled up by promotion and direct recruitment. This is a State Cadre of Headmasters. If the submission of the Petitioner is accepted, then a very peculiar position will arise. If the vacancy has occurred prior to 2.10.80 and no Assistant Teacher having requisite teaching experience counted up to 2.10.80, is available in school in question, then the vacancy has to be kept pending till Assistant teacher of that school acquires the requisite teaching experience and thereafter the case for filling up the post of Headmaster of that school will be considered. Such is not the intention of the law makers. If no teacher having eligibility and experience is available to fill up the vacancy prior to 2.10.80, in that case the vacancy has to be filled up in accordance with the relevant Rules and Circular No. 510 dated 20.11.81.

13. A Division Bench of this Court considered the question as to what is the cut off date for the purpose of counting the teaching experience in terms of letter No. 510 dated 20.11.81 in the case of Phulena Prasad Yadav v. The State of Bihar 1991 (2) P.L.J.R. 449. This Court held that the case of persons for promotion in terms of the aforesaid letter has to be with reference to the state of affairs as existing on 2.10.80 and, therefore, it is with reference to that very date that the teaching experience has also to be counted apart from that. However, learned Counsel for the Petitioner submitted that this Division Bench judgment is no longer a good law in view of the Supreme Court judgment in the case of A.K. Pradhan (supra). It appears that A.K. Pradhan was the Headmaster of an unrecognised High School which was taken over under the provisions of the Ordinance. He represented to the State Government for regularisation of his service which was not accepted on the ground that he has not completed seven years" of service after taking over of the institution. He approached this Court and this Court dismissed the writ application relying upon the Full Court judgment of this Court in the case of Ram Ballabh Prasad Singh v. The State of Bihar and Ors. reported in 1986 P.L.J.R. 373. Thereafter, he filed Civil Appeal before the Supreme Court. The Apex Court having noticed that the Full Bench judgment in the aforesaid case was upheld by it (Ram Ballabh Pd. Singh v. The State of Bihar and Ors. 1988 P.L.J.R. S.C. 70), held that the services of the employees working in unrecognised school are not automatically taken over by the Government and thereafter it directed to consider the case of the Appellant for regularisation on the ground that he has completed more than seven years" of service and is now eligible for regularisation. The relevant part of the order of the Supreme Court is reproduced below:

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

We, therefore dispose of this appeal with the observation that the appellant, if not already regularised as Headmaster, 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 costs.

14. The judgment of the Supreme Court is binding on this Court. Even obiter is expected to be obeyed. If the point in controversy has been decided by the Apex Court then any contrary view taken by the court shall stand overruled.

15. Every statement contained in the judgment of the Supreme Court is not binding under Article 141 of the Constitution of India. Statements and matters other than law has no binding force. The decision of the Supreme Court on the question of facts cannot be relied upon as binding. It is only the principle or ratio decidendi which is binding as precedent. A decision is available as precedent only if it decides the question of law.

16. In the case of *State of Punjab v. Samrendra Kumar and Ors.* AIR 1992 S.C. 1593, the Apex Court held that the decision of Apex Court is available as precedent only if it decides a question of law. Order of the Supreme Court granting certain relief in exercise of power u/s 142 does not empower the High Court to pass the similar order. In the case of *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, , the Apex Court "considered as to what is the precedent. It was held that it is the ratio decidendi/principle upon which the case is decided is binding under Article 141 of the Constitution of India. The judgment cannot be read as statute nor a word or clause in the said judgment can be recorded as full exposition of law. It was held in paragraph 9 of the said judgment as follows:

Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that *Hari Krishan Khosla* case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the wellsettled theory of precedents, every decision contains three basic postulates- (1) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statement of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expresions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding law under Article 141 of the Constitution. A deliberate Judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its

ratio decidendi.

17. In the light of the aforesaid proposition of law, it has to be seen as to whether the question involved in this case has been considered and decided by the Apex Court. The question involved in this case is as to what would be the cut off date for the purpose of counting the teaching experience of a teacher for the purpose of promotion to the post of Headmaster of the school in question by treating it as a Unit with regard to the vacancy occurring prior to 2.10.80. This point was neither raised nor decided by the Apex Court. No principle or ratio decidendi has been laid down for the purpose of filling of the post of Headmaster occurring prior to 2.10.80 in a particular school after counting experience, as has been submitted by the learned Counsel for the Petitioner. The Apex Court in the said case after taking into consideration the facts and circumstances and for doing complete justice between the parties, has issued a direction for regularisation under Article 142 of the Constitution of India and the said case is not an authority on the point that the requisite experience for promotion to the post of Headmaster of a nationalised school where the vacancy has occurred prior to 2.10.80 is to be counted on the date when the promotion is being considered. Thus, the law laid down by the Division Bench of this Court does not stand overruled by the Supreme Court as submitted by the learned Counsel for the Petitioner. In my view, the decision of the Division Bench still holds the field. Apart from the fact that the said judgment is binding upon me, I am in full agreement with the view expressed by the Division Bench. The cut off date for counting, the experience for filling up the post of the Headmaster of a nationalised school where the vacancy has occurred prior to 2.10.80 is the date of nationalisation and any experience gained thereafter cannot be counted for the said purpose.

18. In the present case, the Director has found after consideration of the material on record that the Petitioner has only nine months two days" teaching experience up to 2.10.80 and in that view of the matter, the Petitioner did not possess the required teaching experience either to be appointed as Founder Headmaster or to be promoted as Headmaster.

19. Thus, there is no merit in this application and the same is dismissed.