
(2008) 04 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 7626 of 2007

Ram Krishna Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Citation : (2008) 3 PLJR 406

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Pramod Kumar and Ritesh Kumar, for the Appellant; Suneel Kumar for the State and Mr. Bijay Kumar Pandey for Private Respondent, for the Respondent

Final Decision : Allowed

Judgement

J.N. Singh, J.—Petitioner initially filed this writ application for a direction to the respondents to treat his promotion to the post of Headmaster as perfectly legal and valid giving him continuity from 11.4.1970 and for a direction to the respondents to pay his salary of the post of Headmaster, arrears as well as current. In view of the show cause notice issued to the petitioner, to which he replied, petitioner also prayed to restrain the respondents from interfering with his promotion order. However during the pendency of this writ application respondents came up with the final order as contained in Memo No. 2577 dated 4.7.2007 issued from the Human Resources Development Department, Government of Bihar by which the promotion granted to the petitioner to the post of Headmaster was cancelled. Therefore, petitioner filed I.A. No. 3733 of 2007 enclosing a copy of the said order cancelling his promotion and prayed for amendment of the prayer in the writ application by making a prayer for quashing of the said notification as contained in the said memo. Said I.A. was allowed by a Bench of this Court by order dated 11.9.2007. Thus the prayer of the petitioner stood amended by adding the prayer for quashing of the said notification. Short facts of the case are that petitioner was initially appointed as Assistant Teacher in

State Subsidized Higher Secondary School. Raidih in the district of Gumla where he joined on 11.4.1970. He continued in the said school till 22.5.1974. However, on being offered appointment as Assistant Teacher in Prayag Lal Sahu High School, Sohsarai in the district of Nalanda, petitioner resigned from the said school of Raidih on 22.5.1974 and joined the said school at Sohsarai on 23.5.1974 i.e. the very next day. By letter dated 22.6.1983 (Annexure-1) issued by the District Education Officer, Nalanda, petitioner was granted continuity of service with effect from 11.4.1970 i.e. initial date of his appointment in the School at Raidih.

2. Thereafter counting the services of the petitioner with effect from 11.4.1970, he was granted first time bound promotion by order of the Regional Deputy Director of Education, Patna Division vide Annexure-2. Petitioner continued in service and his case was thereafter considered for grant of promotion to the post of Headmaster by Human Resources Development Department. Government of Bihar, Patna. By dint of his seniority in the cadre and taking into account his length of service, petitioner was granted promotion to the post of Headmaster by notification dated 24.12.2006 of the Department vide Annexure-3 and he was posted on the vacant sanctioned post of Headmaster in High School, Sahokhar in the district of Nalanda. Petitioner submitted his joining in the said school at Sahokhar on 3.1.2007 vide Annexure-4 which was accepted and he started functioning as Headmaster there.

3. However, all of a sudden, a show cause notice was issued to the petitioner vide memo dated 31.1.2007, as contained in Annexure-5, under the signature of the Director, Secondary Education, Government of Bihar, Patna. In the said show cause notice petitioner was asked to submit his explanation on two grounds, namely (i) that he had joined the school at Raidih on 11.4.1970 but the said school was granted recognition on 27.2.1976 and he joined the school at Sohsarai in March, 1974 after resigning from Raidih, and (ii) that he claimed to have obtained P.G. Degree from Kanpur University; the instruction book of Kanpur University shows that for joining and obtaining P.G. Degree necessary requirement for a candidate was to be a resident student for at least six months. It was mentioned in the show cause notice that the appointment notification stipulated that if the informations furnished for the purpose of promotion are found to be incorrect, the promotion shall be cancelled. It was also mentioned in the show cause notice that in the circumstances the claim of appointment of the petitioner with effect from 11.4.1970 did not appear to be correct.

4. Petitioner replied to the show cause vide Annexure-6 in which he explained his position with regard to the points raised in the show cause notice. However, matter remained pending with the Department and the salary of the petitioner of the post of Headmaster was stopped.

5. Petitioner filed representations vide Annexures-9 and 10 before the District Education Officer for release of his salary. The District Education Officer, in turn, wrote to the Department vide Annexure-9/1 and Annexure-11 recommending the

case of the petitioner for release of his salary pointing out that in view of Government letter no. 519 dated 2.7.1983 petitioner had rightly been given seniority of service counting his services with effect from 11.4.1970 i.e. initial date of his appointment. As the respondents kept on sitting over the matter while stopping his salary of the post of Headmaster, petitioner apprehended that his promotion may be interfered with and therefore he filed writ application with the aforesaid prayer.

6. As stated above, during the pendency of this application, orders were issued by the Department vide notification contained in memo no. 2577 dated 4.7.2007 cancelling the promotion of the petitioner and reverting him to the post of Assistant Teacher. Therefore, petitioner assailed the same by amending his prayer through the said I.A. No. 3733 of 2007.

7. Learned Senior Counsel for the petitioner has relied on circular no. 519 dated 2.7.1983, a copy whereof has been annexed as Annexure-7 to the writ application, and has submitted that the circular clearly laid down that if there was a gap of more than fifteen days in leaving one school and joining another school, the incumbent shall not be given seniority of service rendered in the previous school. Learned Senior Counsel for the petitioner has submitted that in view of the said circular if joining" time is less than fifteen days, then obviously services rendered in the previous school shall be counted for the purpose of seniority. Learned Senior Counsel for the petitioner has also submitted that the said circular of the Government was relied upon by the District Education Officer while recommending his case to the higher authority for grant of continuity of service with effect from 11.4.1970.

8. Learned Senior Counsel for the petitioner has further submitted that from the letter contained in memo no. 489 dated 31.1.1965, as contained in Annexure-12 to the writ application, it is apparent that the said school at Raidih had been granted partial recognition with effect from 1.1.1964 which matured into full and final recognition with effect from 1976.

9. Learned Senior Counsel for the petitioner further submitted that the petitioner had got himself admitted in Kanpur University and had completed his P.G. Course as a private candidate and therefore the requirement of being a resident student in the University for six months did not apply to him.

10. Learned Senior Counsel for the petitioner has also submitted that from the show cause it is apparent that the petitioner was asked to submit his show cause on two points, namely, that the State Subsidised Higher Secondary School, Raidih had been granted recognition on 27.2.1976 whereas he joined there on 11.4.1970 and that he was not the resident student of Kanpur University while he had undergone P.G. Course from there. However, from the impugned order it is apparent that the petitioner's promotion to the post of Headmaster has been cancelled on the ground that before 2.10.1980 every school was treated as an independent unit, and therefore, services rendered in one school could not be

taken into account for determining seniority of the petitioner. Learned Senior Counsel for the petitioner has submitted that no show cause notice was issued to the petitioner on the specific ground that he could not be granted continuity of service for his working as Assistant Teacher at Raidih. The two grounds mentioned in the show cause notice issued to the petitioner were not relied upon by the respondents while cancelling the promotion of the petitioner and the ground relied upon by the respondents for cancelling his promotion was not mentioned in the show cause notice. In the circumstances, learned Senior Counsel for the petitioner has submitted that there has been complete violation of the principle of natural justice in the case as no opportunity at all was given to the petitioner at any point of time before cancelling his promotion on the ground relied upon by the respondents for such cancellation.

11. A counter affidavit has been filed in this case on behalf of the respondents. In the counter affidavit it is stated that after issuance of the notification of promotion of the petitioner, a complaint was received in the Department and as such show cause notice was issued to the petitioner. It is further stated that each and every Non-Government High Schools were treated as separate unit before 2.10.1980 and therefore the services rendered by the petitioner in the earlier school in Raidih could not be taken into account for the purpose of fixing up his seniority.

12. Petitioner has filed reply to the counter affidavit in which the petitioner has stated that the said circular of the Government has been annexed as Annexure-7 to the writ application clearly shows that he was entitled for grant of continuity of service. Alongwith the reply to the counter affidavit, an order of this Court passed in C.W.J.C. No. 2090 of 1981 dated 17.12.1985 rendered in the case of one Vidya Bhushan Chaudhary has also been annexed. Learned Senior Counsel for the petitioner has submitted that the said order of this Court in the case of Vidya Bhushan Chaudhary was passed in identical circumstances, a copy whereof is contained in Annexure-15, wherein this Court directed the respondents to consider the claim of the said writ petitioner" for granting him continuity in service from the date of his initial appointment and consequential payment of salary etc.

13. From the said order it appears that the order passed in another case earlier was relied upon by this Court. Thereafter respondents considered the case of aforesaid writ petitioner Vidya Bhushan Chaudhary and the Department passed consequential order, as contained in Annexures-16, 17 and 17/1 granting continuity of service, seniority and salary to said Vidya Bhushan Chaudhary.

14. Learned Senior Counsel for the petitioner has submitted that the case of the present petitioner is identical to that of the said Vidya Bhushan Choudhary and therefore the petitioner is entitled for grant of continuity in service and seniority, and the promotion granted to the petitioner to the post of Headmaster is perfectly legal and valid.

15. A rejoinder has been filed by the respondents to the reply of the petitioner. In the said rejoinder it is asserted that the circular has to be read in continuation of Resolution No. 581 dated 15.1.1982 from which it appears that continuity of service has to be granted only for the purpose of pensionary benefits and not for seniority etc. Copies of certain Government circulars have been annexed with the said rejoinder. It has also been asserted that the order impugned was issued after giving full opportunity to the petitioner. It has further been asserted that on facts case of Vidya Bhushan Chaudhary was distinguishable and therefore petitioner could not derive any benefit out of the order passed in that case.

16. Having considered the rival submissions, this court finds that the controversy in the present case revolves around grant of continuity of service to the petitioner for services rendered in Raidih School before joining the school at Sohsarai. However, from the notice issued to the petitioner vide Annexure-5, it is apparent that the petitioner was not asked to show cause in the matter as to why continuity of service should not be granted to the petitioner for services rendered in Raidih School. From the notice it is apparent that the petitioner was asked to show cause only on two grounds, namely, Raidih School had been granted recognition on 27.2.1976 whereas petitioner had been appointed in the said school on 11.4.1970, and secondly, that he was not a resident student while pursuing his P.G. Course under Kanpur University. From the order impugned (Annexure-14), it is apparent that both these grounds of show cause were given a good-bye and not taken into account for cancelling the promotion of the petitioner on the post of Headmaster of the School.

17. On the other hand, from the impugned order Annexure-14 it is clear that the solitary grounds which was relied upon by the respondents for cancelling the promotion of the petitioner on the post of Headmaster and denying his seniority from initial date of appointment was that prior to 1980 each school was taken into account as independent unit and therefore the services rendered in previous school could not be counted for over all seniority and consequent promotion. Apparently this ground was not mentioned in the show cause notice and no opportunity was given to the petitioner in support of his claim for counting his services from initial date of appointment i.e., 11.4.1970 for seniority and consequent promotion. As this ground was not mentioned in the show cause notice issued to the petitioner, petitioner did not get an opportunity to place the relevant circulars and orders of the Government and the applicable law in this regard before the respondents in support of his claim for continuity of service.

18. In the circumstances, it is apparent that there has been denial of opportunity to the petitioner and therefore there has been violation of principle of natural justice in issuing the order of cancellation of promotion of the petitioner and denying him continuity of service and seniority in the matter. Accordingly the impugned order Annexure-14 is hereby quashed. Respondents are directed to allow the petitioner to join his post with consequential benefits of payments and salary, arrears as well as current.

19. However, it is made clear that quashing of Annexure-14 will not preclude the respondents from examining the legal position as to whether services rendered in the previous school could be taken into account for grant of continuity of service and consequential seniority in case an incumbent resigns from one school and join another. The facts of the case of Vidya Bhushan Chaudhary is not available on record and the details of circumstances under which petitioner resigned from Raidih School and joined at Sohسرائ on the very next day have also not been brought on record by either of the parties.

20. In the circumstances, respondents will be at liberty to examine the issue by referring to over all legal position as may be applicable in different facts and circumstances of a particular case. If this exercise is taken, respondents shall give adequate opportunity to the petitioner and, if necessary, shall give a personal hearing to him and then come to a conclusion. It is made clear that in case the respondents decide to undertake such an exercise, they shall take a uniform decision to be applicable in specific set of cases with identical facts and circumstances and shall not confine their decision to individual cases only.

21. Before parting with the case, it may be noticed that I.A. No. 4670 of 2007 has been filed by one Janardan Prasad claiming to be the acting Headmaster of the said school at Sahokhar where the writ petitioner was posted as Headmaster. Since acting Headmaster has no right to a post and he acts only in the capacity of stop-gap arrangement, this Court finds that said Janardan Prasad has no locus standi to intervene in the matter. Therefore the said I.A. is rejected. In the result this writ application is allowed. There shall be no order as to costs.