
(2009) 02 PAT CK 0150
In the Patna High Court
Case No : CWJC No. 6535 of 2006

Ram Nandan Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 2 PLJR 496

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : G.G. Mishra, for the Appellant; Saket Tiwary, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the State. Prayer of the petitioner, in this writ application, is for quashing the order, dated 9.12.2005, passed by the Secretary-cum-Education Commissioner, Patna, vide Memo No. 225, dated 31.1.2006, and to direct for approval of his service from the date of confirmation of School, i.e.. 25.6.1977. From the pleadings the admitted facts are that the petitioner was appointed as Assistant Teacher in High School, Dhrubdiha, Bhojpur, Ara, which was established on 28th January, 1968. Petitioner was appointed as I.A. untrained teachers on 19.1.1974. Subsequently, the school was taken over by the Government and it was recognized as a Government school with effect from 25.6.1977. The services of petitioner and other I.A. untrained teachers were not included in the recognition letter of the school in spite of the fact that they were shown as teacher working in the school in the inspection report submitted by Special Board constituted by the Government for inspection of the school prior to approval. Petitioner's case is that letter No. 757, dated 2.4.1980. of the Government provided that such untrained teachers would be taken into Government service who were appointed by the Managing Committee prior to 5.1.1974 in case they will improve their qualification as B.A. trained. In case of enhancement of their qualification recognition of the service will be given with effect from 15.10.1977. Petitioner's

case is that after obtaining orders of the Managing Committee he had taken leave improving his qualification. He passed B.A. examination in the year 1978 and B.Ed, examination in the year 1982. Thereafter, when he came to join in the school the then Principal of the School was not allowing him to join, as such, he represented before the District Superintendent of Education, Ara. Under his orders he joined and as per his direction he started signing attendance in a separate register. Subsequently, when he represented for recognition of his service with effect from the date the school was recognized it was not allowed by the Director, Secondary Education, Bihar, rather his services was recognized with effect from 21.3.1997 vide office order, contained in Memo No. 395, dated 21.3.1997. Against this order he filed an appeal before the Secretary-cum-Education Commissioner, Bihar, but, the same has been rejected vide order, dated 9.12.2005. Counsel for the petitioner has, further, submitted that similarly situated teachers, who were also appointed as I.A. untrained, in similar situation moved before this Court and filed C.W.J.C. No. 2840 of 1981. The writ application was allowed and a direction was issued to the respondent authorities to recognize the services of the petitioner with effect from the date the school in question was recognized.

2. Two counter affidavits have been filed by respondent No. 3. The reason for not recognizing the service of the petitioner with effect from 25.6.1977 is that petitioner himself had represented before the Department that he is not being allowed to join the school. It means that for all these periods he has not worked. Subsequently, petitioner produced a separate attendance register in which except his signature no other teachers' signature was present. On perusal of such attendance sheet the Department did not approve it as an evidence that petitioner was continuously discharging his duty as an Assistant Teacher in the school on completion of his teachers training.

3. The counter affidavit has been filed without taking into consideration letter No. 301, dated 18.3.2003, of the District Superintendent of Education, Bhojpur, Ara, where it has been stated that under the order of the District Superintendent of Education the petitioner was signing such attendance register. Similarly, the Principal of the School has also corroborated the statement of the petitioner in the writ application that continuously he discharged his duty after completion of his training though at the earlier occasion the then Headmaster was not allowing him to join the school. The District Superintendent of Education and the Headmaster of the School are the competent persons to certify this fact that petitioner has been continuously working in the school and his case is similar to the case of those persons in whose favour already this Court has passed order in C.W.J.C. No. 2840 of 1981.

4. Considering all these facts the order passed by the Secretary-cum-Commissioner, dated 9.12.2008, is quashed. Respondent No. 2 is directed to recognize the service of the petitioner with effect from 25.6.1977, i.e., the date on which the school was recognized. In case of such recognition all consequential

benefits for which petitioner is entitled should be allowed to him. The orders, in this regard, be passed by the respondents within eight weeks from the date of production/communication of the order. With these observations and directions, this application is allowed.