
(2003) 01 JH CK 0042
In the Jharkhand High Court

Ram Rakshpal Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 JCR 113

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Judgement

Vikramaditya Prasad, J.—Heard the parties.

This writ petition has been filed for twin reliefs:-(i) for quashing Annexure 10 whereby the representation of the petitioner for grant of B.A. Trained Scale as also of the post of Headmaster was refused by the District Superintendent of Education and (ii) for a direction upon the respondents to grant the petitioner the B.A. Trained Scale.

2. It appears that earlier the petitioner had filed CWJC No. 1049/2001 for a direction to the respondent-authorities to grant B.A. Trained Scale to him in terms of the recommendations of the Regional Deputy Director of Education. That writ petition was disposed of with a direction to the District Superintendent of Education to dispose of the representation of the petitioner and consequent thereto, the impugned order has been passed, which is under challenge in this writ petition.

3. Undisputedly, the DAV School is a minority institution. The question is whether the District Superintendent of Education or other authorities has any power to interfere with the functioning of the minority institutions. The learned Counsel appearing for the petitioner argued that the Institution concerned is a Government aided school and therefore, the District Superintendent of Education has power to interfere with the administration of the School and make certain orders even in respect of the promotion etc. In support of his argument, he

relied upon a decision reported in 2002(8) SC 62. He particularly referred to paragraph 73 in support of his contention. There may be two types of schools--one need not be a Minority School, yet it can be a Government aided School, i.e., what the Apex Court has distinguished in this judgment, and the other type is a pure and simple Minority School, which may be aided or may not be aided. Even if the Minority School is aided by the Government, basically it remains a Minority Institution and merely because it is aided by the Government, this character of the institution is not lost. Therefore, the internal administration of the School remains a prerogative of the School itself and not of the Government authorities. The authorities have a limited role to play because if the Government frames certain rules and regulations prescribing the qualifications etc then they have to see whether or not the School is performing or giving promotion etc. as per that rule, but that does not mean that the authorities become involved and assume the role of the administrative machinery of the School. For example, if a person institutes a School for poor boys of the locality, irrespective of its being aided by the Government, this does not get the status of the minority school. Therefore, the Government aids such schools, which have to be under the supervision and control of the Government Officials, whereas the School is a pure and simple minority one, the aforesaid principles will apply.

4. The learned Counsel appearing for the respondents has challenged this writ petition on two grounds that:--(i) the writ petition is not maintainable because no legal right has accrued to the petitioner, moreover, it is a minority institution, in which the Court has no jurisdiction to make order under Article 226 of the Constitution and (ii) the impugned order has been passed by the District Superintendent of Education under the authority of the Court and not under any statutory provisions. The further argument of the learned Counsel appearing for the respondents is that there were certain circumstances that the petitioner did not seek permission for appearing at the B.A. Examination or he did not take any leave for that purpose, rather he took the salary of the entire month in which the examination was held and therefore, doubt arose as to whether the degree was obtained or not. That matter is still under enquiry and till the enquiry is completed, no decision can be taken for recommending his name because it is doubtful whether he has obtained the degree or not. The learned Counsel appearing for the petitioner has countered this argument saying that the petitioner has taken permission but he has not refuted the claim of the respondents that he had not taken the salary of the relevant period when the examination had taken place. He is of the view that notwithstanding the enquiry, since the petitioner has obtained a Graduation degree, i.e., mere to defeat his claim, despite any enquiry he should have been recommended for the promotion. The learned Counsel appearing for the petitioner, relying on Annexure 21 of the supplementary affidavit, also submitted that there is mal-administration in that institution and in that circumstances, the authority should have acted and they are bound to act and as such, this writ petition is maintainable.

5. I do not find myself in agreement with the argument of the learned Counsel

appearing for the petitioner that on the basis of Annexure 21, any order could be passed by this Court if there was any mal-administration. It was a matter of concern of the District Superintendent of Education and he would have acted under that provisions but he has not acted. There is no prayer in this writ petition for a direction or command upon any of the authorities for acting under that provisions, then this Annexure is redundant for the purpose of the decision of this writ petition. Annexure-10 cannot be quashed for the pure and simple reason that it has been passed under the authority of the Court. So, the fact that whether or not it will amount to interference in the administration of the minority school as it has been passed under the authority of the Court cannot be viewed from that angle. Therefore, there is no reason to quash Annexure-10 because in the previous writ petition, the only order was that representation should be filed, which would be disposed of by the District Superintendent of Education. The District Superintendent of Education has disposed of the representation of the petitioner, rejecting his prayer. Now in that circumstances, since the matter is pending enquiry with regard to obtaining the degree of Graduation, the petitioner is directed to co-operate with the enquiry and the enquiry must be concluded within three months hereinafter and if in the enquiry, it is found that the petitioner has obtained the B.A. degree despite the fact that he had taken salary of the month in which the examination had taken place, then for that misconduct, he can be departmentally proceeded but his degree which he has obtained cannot be doubted and his name will be recommended for promotion accordingly and the benefit will be given from the date he became eligible for that promotion. The petitioner shall remain entitled to salary etc which he has already getting prior to his filing of the writ petition.

6. With the aforesaid observations/directions, this writ petition is disposed of.