
(2013) 11 PAT CK 0017
In the Patna High Court
Case No : Second Appeal No. 413 of 1991

Ram Sewak Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 PAT CK 0017

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Mr. Navjot Yesu, for the Appellant; J.N. Jha for G.P. 1, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—This appeal is directed against the judgment and decree dated 09.07.1991 passed by the 8th Additional District Judge, Patna and in Title Appeal No. 8 of 1989, whereby the appellate court below while allowing the appeal has reversed the judgment and decree dated 30.11.1988 passed by Munsif-3rd, Patna in Title Suit No. 50 of 1985, whereby the suit has been decreed. The plaintiff is in appeal before this Court. I shall be going by the status of the parties as it existed before the trial. Court.

2. Facts of the matter briefly stated is that the local villagers of village-Anandpur, P.S. Bihta, District-Patna decided to establish a high school in a meeting held on 18.11.1969 and also constituted a Managing Committee. The Managing Committee so constituted appointed the appellant to act as a founder Headmaster of the Bihar Raksha Bahini High School, Anandpur, P.S. Bihta, District-Patna. One Tej Narayan Sharma was appointed as a founder Assistant Teacher of the school which came into existence with effect from 19.01.1970. The plaintiff at the stage of joining the school on 19.01.1970 was a graduate. The school was given recognition on 01.01.1972. The plaintiff cleared his B.Ed. examination subsequently on 14.03.1975. The Managing Committee of the school appointed one Aditya Lal Sharma as a regular Headmaster of the school

and the plaintiff who was until then functioning as a founder Headmaster In-charge, was asked to work as an Assistant Teacher. It is the case of the plaintiff that as and when the post of Headmaster fell vacant, he was asked to discharge the duties of the Headmaster. The regularly appointed Headmaster, namely, Aditya Lal Sharma deceased on 10.08.1972 whereafter the plaintiff started discharging the duties of the Headmaster in the capacity of acting Headmaster with effect from 11.08.1982. Such information was also forwarded to the Education Department. However, the District Education Officer by order dated 01.09.1982 directed one Ramji Sharma to officiate as an acting Headmaster in place of the plaintiff. The plaintiff being aggrieved by the order dated 01.09.1982 of the District Education Officer moved this Court in CWJC No. 4811 of 1982 and the writ application was dismissed vide order passed on 20.01.1983. The plaintiff being aggrieved by the judgment and order passed by the learned single judge of this Court, filed L.P.A. No. 10 of 1983 and which was allowed by the Division Bench by judgment and order dated 14.05.1984 requiring the department to appoint the plaintiff as an acting Headmaster and accordingly, the plaintiff was appointed as an acting Headmaster vide Memo No. 2095 dated 10.07.1984. The plaintiff having been appointed as an acting Headmaster in the light of the directions passed by this Court in L.P.A. No. 10 of 1983, now sought a confirmation against the post of regular Headmaster and his request not having been accepted that the suit in question was filed giving rise to Title Suit No. 50 of 1985. The plaintiff prayed for his regular appointment as a Headmaster as also for payment of his salary against the said post w.e.f. 10.7.1984. The trial court on the basis of the rival pleadings and the evidence led by the parties, decreed the suit in part and while holding the plaintiff entitled for appointment to the post of Headmaster, rejected his relief for the salary attached to the post in the title suit. Whereas the State being aggrieved by the part of the decree requiring them to appoint the plaintiff as a regular Headmaster, preferred Title Appeal No. 8 of 1989, the plaintiff being aggrieved by his rejection of the claim for salary preferred Title Appeal No. 127 of 1989. The appeal filed by the State has been allowed by the judgment and decree impugned and hence this Second Appeal.

3. This appeal was admitted vide order dated 02.09.1992 to be heard on the following substantial questions of law:

(i) Whether the appellate court below committed illegality by deciding Title Appeal No. 8 of 1989 ignoring the cross Title Appeal No. 127 of 1989 filed by the plaintiff-appellant which is still pending for hearing?

(ii) Whether the court of appeal below ought to have decided the appeal and cross-appeal arising out of the same Title Suit No. 50 of 1985?

(iii) Whether the vacancy occurred prior to the commencement of Service Condition Rules, 1983 should be filled up treating the school as a unit?

(iv) Whether the law laid down by the Hon'ble High Court in P.L.J.R. 1985 page 107 applies in the instant case because vacancy occurred prior to the

commencement of 1983 Service Condition Rules?

(v) Whether the crucial date for the application of law/rule regarding appointment of Headmaster is 10.08.1982 the date on which vacancy occurred in the school and not 12.07.1982, the date from which the plaintiff claimed payment of salary treating him as Headmaster of the school?

(vi) Whether the finding of the Hon"ble High Court in L.P.A. 10 of 1982 is binding on the appellate court below so far as the eligibility of the plaintiff for appointment of Headmaster is concerned?

(vii) Whether the finding is vitiated in law and contrary to the admitted case of the parties?

4. I have heard Mr. Rajendra Prasad Singh, Sr. Advocate and Mr. Navjot Yesu, learned counsel on behalf of the appellant and learned counsel for the State.

5. Learned counsel for the appellant while questioning the appellate decree contended that the vacancy having occasioned as back as on 11.08.1982 upon the death of Aditya Lal Sharma, it had to be filled up on the basis of the stipulations provided in the Circular dated 25.07.1977 and not in the light of the Circular dated 09.06.1983 prescribing qualifications for appointment against such post. In fact this appeal is founded on the said very substantial questions of law as to whether the claim of the appellant would be tested against the Circular dated 25.07.1977 or would be considered on the basis of the qualifications/stipulations provided in the Circular dated 09.06.1983. The sequence of events has already been detailed hereinabove by this Court and it is no more in contest that even when the plaintiff chose to question the action of the respondent authorities in making appointment against the post of acting Headmaster by appointment of one Ramji Sharma by filing a writ petition bearing C.W.J.C. No. 8411 of 1982, no prayer was made for appointment as a regular Headmaster rather the appellant sought appointment as Incharge Headmaster while questioning the appointment of Ramji Sharma as acting Headmaster. Though his prayer was rejected by the writ Court, it found substance by the Division Bench when the Letters Patent Appeal No. 10 of 1983 was allowed on 14.05.1984 requiring the respondents to appoint him as an acting Headmaster. Meaning thereby as on 14.05.1984, the plaintiff only claimed appointment as an acting Headmaster and not a regular Headmaster and was allowed the same. In fact having achieved that position by virtue of the order of the Division Bench, it now dawned upon the plaintiff to make a quest for the post of regular Headmaster when he raised such issue on the basis of the vacancy occurring on 10.02.1982 consequent upon the death of the regular Headmaster Aditya Lal Sharma. According to the plaintiff since he was the senior most teacher in the school hence he should have been appointed as a regular headmaster.

6. The fact remains that the death of the regular Headmaster occurred on 10.02.1982 and the writ application was preferred by the plaintiff thereafter before this Court, but he never chose to stake his claim for appointment as a

regular Headmaster. Even otherwise, the plaintiff seeks to claim his right from the Circular bearing No. 2305 dated 25.07.1977, which merely provides that a school would be treated as a unit for the purpose of appointment of a Headmaster subject to fulfillment of qualifications. According to the plaintiff, since the regular Headmaster had expired on 10.08.1982 and since the plaintiff was the senior most teacher, hence treating the school as a unit, he ought to have been appointed as a regular Headmaster from that date. The request of the plaintiff was considered by the Department and in view of the stipulations provided in the Circular dated 09.06.1983, since the plaintiff did not fulfill the eligibility qualifications for appointment as a regular headmaster his request was rejected.

7. According to the defendants a regular headmaster is to be appointed from the senior most teacher in the selection grade and since the plaintiff at the relevant time held the post of an Assistant Teacher and had not even been promoted in the selection grade hence he could not be considered against such post. It was the case of the defendants that the plaintiff cannot stake his claim on solitary ground of being the senior most teacher and the acting headmaster of the school. Whereas the trial court accepted the prayer of the plaintiff simply relying upon the Circular dated 25.7.1977, the issue was tested by the appellate court as against the Circular dated 09.06.1983, the full bench judgment of this Court reported in *Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others*,) and the judgment reported in *Madan Kant Mishra Vs. The State of Bihar and Others*, . The appellate court did not find the judgment and decree passed by the trial court in consonance with the stipulations of the circular dated 9.6.1983 as well as the law laid down by this Court in its full bench judgment reported in *Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others*, and thus allowed the appeal of the State while reversing the judgment and decree of the trial court on the issue of appointment as headmaster. The reliance by the appellant on the Circular dated 25.07.1977 and the judgment of *Madan Kant Mishra* (supra) in no manner comes to the aid of the plaintiff. The circular merely provides that a school would be treated as a unit. It neither provides for qualifications nor provides the manner of appointment to the post of Headmaster and the judgment rendered in the case of *Madan Kant Mishra* (supra) while taking note of the circular dated 25.7.1977 categorically holds that the appointment is to be made by treating the school as unit and subject to fulfillment of the qualification as laid down in this regard. Besides even on the principle of issue estoppel, no such prayer having been made by the plaintiff while seeking his remedy before this Court in the writ application for appointment as acting headmaster and in view of the order passed by the Division Bench on 14.05.1984 directing for appointment of the plaintiff as acting headmaster, any prayer of the plaintiff for appointment as a regular Headmaster has to be considered from a date subsequent thereto and on the basis of the Circulars prevalent on the said date. The appellate court has considered all these aspects and has passed the judgment and decree impugned which suffers from no legal infirmity.

8. The substantial questions of law framed at the stage of admission are answered accordingly. For the reasons aforementioned, this appeal failing to raise any substantial questions of law, is dismissed accordingly. Let the Lower Court records received in connection with T.A. No. 8 of 1989 and T.S. No. 50 of 1985 be returned to the court below forthwith.