

(2018) 07 JH CK 0056

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5158, 554, 555, 40 of 2017, 1027, 1032 of 2018, 6715 of 2016

Ranjeet Das And Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2018) 07 JH CK 0056

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Rajiv Ranjan, Piyush Chitresh, Indrajit Sinha, Arpan Mishra, Saurav Arun, Rajiv Anand, Nikhil Ranjan, Ruchi Rampuria, Bharti Singh, Shweta Singh

Final Decision : Allowed

Judgement

1. In this batch of writ petitions a common question, whether appointment of the petitioners who were working as Para Teachers in the non-Para

Teacher category is valid or not, is involved.

2. With consent of the learned counsels appearing for the parties all these writ petitions have been taken up for final disposal at this stage itself. In

some of the cases counter-affidavit has been filed by the respondents and a similar stand has been taken by the respondents in all the writ petitions.

3. Primarily order of termination of the petitioners from the service is founded on a decision by the learned Single Judge in W.P.(S) No.6031 of 2015

and W.P(S) No.173 of 2016.

4. In W.P.(S) No.5158 of 2017 there are 97 petitioners. They all have been terminated from service in a purported departmental enquiry by an order

dated 02.08.2017. In W.P.(S) No.1027 of 2018, Office Order dated 01.12.2017,

by which the petitioner and one Anu Kumar Ravi who is petitioner in W.P.(S) No.1032 of 2018 have been terminated from service on the ground that they have been appointed under non-Para Teacher category, is under challenge. Counter-affidavit filed in W.P.(S) No.1032 of 2018 has been adopted by the respondents in W.P.(S) No.1027 of 2018. In both these writ petitions prayer for a direction for payment of salary to the petitioners for the period during which they have actually worked has been also made.

In W.P.(S) No.40 of 2017 there are 3 petitioners. They have been terminated from service by Office Order dated 02.12.2016. These petitioners have also raised a claim for payment of salary for the period during which they have actually worked pursuant to their appointment on 31.12.2015.

However, counter-affidavits filed by the respondents in these writ petitions is silent on the claim of the petitioners for payment of salary to them. In

W.P.(S) No.554 of 2017 and W.P.(S) No.555 of 2017 both the petitioners have been terminated from service by Office Order dated 02.01.2017.

They were appointed on 05.01.2016 and both of them have been terminated from service on the ground that they have been appointed under non-Para

Teacher category, though they were working as Para Teachers. In W.P.(S) No.6715 of 2016 there are 4 petitioners. They were appointed on

29.12.2015 and they all have been terminated from service by an order dated 29.09.2016.

5. Before legality of the orders by which the petitioners have been terminated from service is examined, it would be necessary to record few facts.

Pursuant to the advertisements inviting applications for appointment on the post of Inter-trained Assistant Teachers and Inter-trained Urdu Teachers,

the petitioners submitted their applications for appointment under non-Para Teacher category. They all at that time were working as Para Teachers in

different schools. These petitioners have been appointed on different dates and it is stated that on verification of the records when it was found that

being Para Teachers they were not eligible for appointment under 50% seats reserved for the applicants under the non-Para Teacher category, they

were terminated from service. It appears that a decision was taken to reinstate some of the petitioners, particularly petitioners in W.P.(S) No.5158 of

2017, in service and initiate a departmental proceeding against them on the allegation that they have been wrongly appointed under non-Para

Teacher category. The order impugned by the petitioners in W.P.(S) No.5158 of 2017, however, reveals that subsequently departmental proceeding

against them was dispensed with and on the basis of order passed by the learned Single Judge in W.P.(S) No.6031 of 2015 and W.P.(S) No.173 of

2016 they have again been terminated from service.

6. The learned State counsel has contended that once 50% of the total advertised seats were reserved for Para Teacher category, the applicants who

at the time of submission of application were working as Para Teachers were not eligible to apply and get appointed under non-Para Teacher

category.

7. This precisely was the argument advanced on behalf of the respondents in L.P.A. No. 186 of 2017 and L.P.A. No.199 of 2017 . However, this

argument did not find favour with the Hon'ble Division Bench and by an order dated 11.05.2018 the Letters Patent Appeals have been allowed. The

Hon'ble Division Bench has held that under the rules or in the advertisement there is no stipulation under which an applicant working as Para Teacher

is not eligible to seek appointment under the general category. Even otherwise also such a stipulation would have been contrary to the constitutional

mandate under Article 14 and 16 of the Constitution of India. An applicant who is otherwise eligible, may be he is a reserved category candidate,

cannot be denied appointment under general category vacancy.

8. It is admitted at bar that these petitioners have been terminated from service on the ground that they are not entitled for appointment under non-

Para Teacher category. In view of the decision in L.P.A. No.186 of 2017 and L.P.A. No.199 of 2017, the orders terminating the petitioners from

service are held illegal. The petitioners are entitled for reinstatement in service forthwith. They shall appear before the respective District

Superintendent of Education on or before 10.08.2018 and tender their joining. Insofar as payment of salary to the petitioners for the period they have

actually worked, the District Superintendent of Education shall pass an order, after affording an opportunity to such petitioners to submit their

representation, on verification of the attendance register and other documents, if any, within a period of 4 weeks.

9. On account of illegal termination of the petitioners from service, in my opinion, they cannot be denied benefits of continuity in service. On their

reinstatement in service they shall be deemed to be continuing in service with effect from their initial date of appointment and whole of this period shall be included in their service. On payment of salary to the petitioners for the period during which they have been kept out of service, contention raised is that atleast 25% back-wages may be granted to the petitioners. On admitted facts, an inference that the petitioners have been prevented from discharging their duty can be justifiably drawn from the date of decision in the aforesaid Letters Patent Appeals. After 11.05.2018 when the order passed in W.P.(S) No.6031 of 2015 and W.P.(S) No.173 of 2016 was set-aside by the Hon'ble Division Bench, the petitioners were entitled for reinstatement in service and accordingly, it is ordered that they are entitled for salary between 12.05.2018 till they are actually reinstated in service.

10. All these writ petitions stand allowed, in the aforesaid terms.