
(2010) 03 JH CK 0061
In the Jharkhand High Court

Ravishankar Dubey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 16

Citation : (2010) 03 JH CK 0061

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly against an order, passed by respondent No. 4 dated 22nd May, 2008, which is at Annexure 18 to the memo of petition, whereby, the services of the petitioner have been terminated, only on the ground that the petitioner has not got his Teachers Training from a recognized institution by the National Council for Teachers Education under the National Council for Teachers Education Act, 1993 (hereinafter to be referred as "the Act, 1993"), though the Act, 1993 came into force with effect from 1st July, 1995 and the petitioner got appointment on 28th April, 1995, as per Annexure 6 to the memo of petition, and the petitioner actually joined the services as a Teacher with effect from 2nd May, 1995 (Annexure 7 to the memo of petition). Both these dates are prior to coming into force the Act, 1993 and, therefore, the petitioner is challenging the termination order at Annexure 18 to the memo of petition.

2. Learned Counsel for the petitioner submitted that the petitioner having obtained his Teachers Training on 16th August, 1994 (Annexure 2 series), applied for appointment to the post of a Teacher at C.P. Samittee Middle School, Jamshedpur, and, thereafter, the petitioner was interviewed and got appointment on 28th April, 1995 as a Teacher, as per Annexure 6 to the memo of petition. Thereafter, the petitioner actually joined his services on 2nd May, 1995 and the petitioner had been working as a Teacher from the said date with C.P. Samittee

Middle School, Jamshedpur, till he is terminated vide order dated 22nd May, 2008. It is further submitted by the learned Counsel for the petitioner that thereafter, the petitioner worked honestly, sincerely, diligently and to the satisfaction of the respondents for several years and after more than one decade, the respondents have issued a notice as to why the services of the petitioner be not terminated, because the petitioner has not obtained Teachers Training from a recognized college under the Act, 1993 and, ultimately, the services of the petitioner have been terminated on 22nd May, 2008 vide order at Annexure 18 to the memo of petition. Learned Counsel for the petitioner has relied upon a decision rendered by by this Court in the case of Kalpana Lodhiya v. State of Jharkhand and Ors. as reported in 2009 (1) J.L.J.R., and submitted that the very same type of termination letter of the same date i.e. 22nd May, 2008 was also given to one Smt. Kalpana Lodhiya, on the same very ground, and the matter has been decided by this Court in favour of that petitioner. The case of the present petitioner is alike the aforesaid petitioner, namely, Smt. Kalpana Lodhiya and, therefore, impugned order deserves to be quashed and set aside.

3. Learned Counsel for the petitioner is relying upon paragraph Nos. 6, 7, 9 and 10 of the aforesaid decision. It is, thus, submitted by the learned Counsel for the petitioner that the petitioner has cleared Teachers Training prior to enforcement of the Act, 1993 and likewise, the petitioner has also been selected as a Teacher prior to enforcement of the Act, 1993 and has actually joined the services also as a Teacher prior to enforcement of the Act, 1993. It is further submitted by the learned Counsel for the petitioner that the reason given by respondent No. 4 in the termination order of the petitioner, which is at Annexure 18 to the memo of petition, is no reason at all, in the eyes of law, and, thus, the termination order at Annexure 18 to the petition deserves to be quashed and set aside and the petitioner ought to be permitted to continue as a Teacher in C.P. Samittee Middle School, Jamshedpur.

4. I have heard the learned Counsel appearing on behalf of the respondents, who has mainly submitted that it is true that the petitioner has cleared his Teachers Training prior to enforcement of the Act, 1993 and likewise, the petitioner was also selected prior to enforcement of the Act, 1993, but, her appointment was confirmed/approved on 5th July, 1995 whereas the Act, 1993 came into force with effect from 1st July, 1995 and, therefore, a condition was attached with the approval letter dated 5th July, 1995 that if there is any irregularity in his appointment, the services of the petitioner can be terminated and, therefore, a show cause notice was given to the petitioner on 15th March, 2008 and, ultimately, the services of the petitioner were terminated on 22nd May, 2008, as the petitioner has not cleared his Teachers Training from a recognized institution and, therefore, this writ petition deserves to be dismissed and the termination order is absolutely in accordance with law.

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order, passed by

respondent No. 4, dated 22nd May, 2008, which is at Annexure 18 to the memo of petition, mainly for the following facts and reasons:

(i) The present petitioner after clearing his Graduation (Commerce) Examination, has joined for Teachers Training at Sister Nivedita College, situated at Kolkata, and cleared his Teachers Training on 16th August, 1994, which is requirement for appointment as a Teacher in a Middle School. Thereafter, the petitioner applied for appointment to the post of Teacher in C.P. Samittee Middle School, Jamshedpur, upon a public advertisement. Thereafter, upon proper clearance of the tests and the interview by the C.P. Samittee, the petitioner was appointed as a Teacher on 28th April, 1995 (Annexure 6 to the memo of petition) at C.P. Samittee Middle School, Jamshedpur. The petitioner actually resumed the services or joined the services as a Teacher with effect from 2nd May, 1995.

(ii) It also appears from the facts of the case that, thereafter, National Council for Teachers Education Act, 1993, came into effect with effect from 1st July, 1995. As per this Act, a candidate, who has cleared Teachers Training from a recognized institution, can be appointed as a Teacher. Looking to the aforesaid dates, it appears that the petitioner has cleared Teachers Training Examination on 16th August, 1994 and thereafter, selected as a Teacher on 28th April, 1995 and also joined the services as a Teacher on 2nd May, 1995 and, therefore, the requirement, which has been brought into effect from 1st July, 1995, is not applicable to the petitioner.

(iii) It is submitted by the learned Counsel for the respondents that the appointment of the petitioner was approved on 5th July, 1995 and, therefore, the petitioner must have obtained Teachers Training Certificate from a recognized institution. This contention is not accepted by this Court, mainly for the reason that the petitioner got Teachers Training Certificate on 16th August, 1994 and was selected as a Teacher on 28th April, 1995 and actually appointed as a Teacher on 2nd May, 1995. Ratification of the appointment may be dated 5th July, 1995, but, always ratification has retrospective effect. It is an admitted fact even by the respondents that the petitioner has already been selected as a Teacher on 28th April, 1995 and has been working as a Teacher with effect from 2nd May, 1995. These two dates are not disputed by the learned Counsel for the respondents and, therefore, subsequent ratification dated 5th July, 1995 cannot impose a new condition upon the petitioner that the petitioner must have cleared his Teachers Training from a recognized institution under the Act, 1993, which has been brought into effect with effect from 1st July, 1995. It has been decided by this Court in the case of Sarbani Bose v. The State of Jharkhand and Ors. [W.P. (S) No. 5412 of 2005], which is at Annexure 19 to the memo of petition, at paragraph Nos. 5, 6, 7, 8 and 9, as under:

5. In the case of Dilip Kumar Gupta & analogous cases (supra) the judgment was delivered by a Division Bench of this Court on 30th March, 2005. The said case related to appointment of Trained Teachers, pursuant to an advertisement, published by the State of Jharkhand on 28th August, 2002. Many of the

candidates applied for appointment; appeared at the competitive test; declared successful but were not granted letters of appointment on the ground that the institutions from which they had obtained Teachers Training Certificate/B. Ed. Certificates are not approved by the National Council for Teachers Education. Having noticed the rival contentions and gone through the enclosures on record, the Court held as follows:

(a) "Recognized Institute" means an institution recognized or established by State government or Union government or by Statutory Bodies Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting education (training herein);

(b) After 1st July, 1995 or at best for another period of six months i.e. after 1st January, 1996 nobody, offering a course or training in Teachers Education, can run the institute without prior recognition by the N.C.T.E., there being bar to run such institute under Sub-section (1) to Section 14 of the N.C.T.E. Act, 1993;

(c) Even if a Teacher Training Institute is affiliated to a University, recognized by the University Grant Commission, no Teachers Training Examination can be held by the University whether provisional or otherwise for the students of such Teachers Training College after 1st January, 1996, if the Institute is not recognized by the N.C.T.E., in view of Clause (b) to Section 16 of the N.C.T.E. Act, 1993;

(d) A person, who has completed and obtained a Degree/Diploma Certificate in Teachers Training Course prior to 31st January, 1996 i.e. six months after promulgation of the N.C.T.E. Act, 1993 from an institute, recognized or established by the State Government or Union Government or by Statutory bodies Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting Teachers Training Education, is eligible for appointment to the post of Primary Teacher if otherwise found fit and

(e) Since 4th September, 2001 i.e. the date N.C.T.E. (Department of Qualification & Recruitment of Teachers) Regulation, 2001 came into force, no untrained person can be appointed to the post of Primary Teacher.

6. Some of the candidates had passed Teachers Training Examination from Dr. B.C. Roy College of Education, Kolkata and other similarly situated institutions. Having noticed that they have passed the examinations after promulgation of N.C.T.E. Act and those institutions were not recognized by the National Council of Teachers Education, the Court held that the persons, obtained Training Certificates from such nine institutions, situated at Calcutta, can not be granted the relief, as sought for by them.

7. In the present case, the respondents have taken similar plea that the petitioner has passed Teachers Training Examination from Dr. B.C. Roy College of

Education, Calcutta and such institution having not been recognized by the National Council for Teachers Education, as held by the Division Bench in the case of Dilip Kumar Gupta and Ors. (supra), the provisional approval, granted in favour of the petitioner, has been cancelled.

8. It is settled law that a judgment cannot be given effect from retrospective date, till the Court so directs. Any action taken prior to the judgment cannot be annulled automatically, giving reference to such judgment, if the Court has not decided such individual case. The petitioner having passed Teachers Training Course in the year, 1992 and having been appointed by the School on 20th December, 1993, the judgment rendered by this Court on 30th March, 2005 in the case of Dilip Kumar Gupta and Ors. (supra) cannot be made applicable in the case of this petitioner.

9. It has been held by the Court that the N.C.T.E. Act, 1993 came into force since 1st July, 1995 and after six months thereafter i.e. after 1st January, 1996 nobody, offering a course of training in teachers education, can run the institute without prior recognition by the National Council for Teachers Education. The petitioner having passed the examination in the year, 1992 itself, the question of recognition of Dr. B.C. Roy College of Education, Calcutta, by the National Council of Teachers Education at that relevant point of time does not arise. The Director, Primary Education, Jharkhand, Ranchi, has failed to appreciate the aforesaid facts and simply giving reference to the High Court's decision, rendered in the case of Dilip Kumar Gupta and Ors. (supra), cancelled the provisional approval, as was given by the District Superintendent of Education, Singhbhum West, Chaibasa.

(Emphasis supplied)

(iv) In view of the aforesaid decision, it has been held by this Court that the N.C.T.E. Act, 1993 came into force with effect from 1st July, 1995 and, therefore, those, who have cleared their Teachers Training Examinations prior thereto, their appointments cannot be terminated, only on the ground that they have not obtained Teachers Training from a recognized institution. In the facts of the present case also, the petitioner has got Teachers Training on 16th August, 1994 from Sister Nivedita College, Kolkata. She was selected as a Teacher also prior to enforcement of the N.C.T.E. Act, 1993, and she was actually appointed as a Teacher prior to enforcement of The N.C.T.E. Act, 1993 and, therefore, the requirement, envisaged in the termination order that the petitioner has not obtained Teachers Training from a recognized institution, is not tenable at law and the reasons given in the termination letter deserved to be quashed and set aside.

(v) In the case of Kalpana Lodhiya V. State of Jharkhand and Ors. as reported in 2009 (1) J.L.J.R. 348, similar type of termination letter dated same i.e. 18th May, 2008 was under challenge. In fact, services of three Teachers were terminated; one of them is Kalpana Lodhiya and the aforesaid decision has been

rendered in favour of the petitioner-Kalpana Lodhiya and the termination letter dated 18th May, 2008 for that petitioner i.e. Kalpana Lodhiya has been quashed and set aside. It has been held by this Court in the aforesaid decision at paragraph Nos. 6, 7, 9 and 10 as under:

6. Assailing the impugned order, Mrs. A.R.Choudhary, learned Counsel for the petitioner, would argue that at the time of obtaining her appointment in the school, the petitioner had disclosed all the particulars in respect of her educational qualification including the teachers training certificate obtained from Sister Nivedita College, Kolkata without any suppression or misrepresentation and after having accepted the certificate, she was given appointment in the school which was later approved by the Establishment Committee of the Government of Bihar with effect from 29.1.1992. It is further submitted that at the time of her appointment, there was no such Rule, which required that the teachers training certificate must be obtained from a Government recognized institution. Learned Counsel argues further that the National Council for Teachers' Education Act, 1993 came into force with effect 1.7.1995 and under the Act, it was made compulsory that the teachers training institute from where the certificate of teachers' training is obtained, should be a recognized institute as per the provisions of the Act. However, the provisions of the Act, according to the learned Counsel, cannot be applied retrospectively. Learned Counsel in this context, refers to and relies upon the judgment of this Court passed in the case of Sarbani Bose v. State of Jharkhand W.P. (S) 5412 of 2005.

7. A counter-affidavit has been filed on behalf of the respondent No. 4.

While admitting the fact that the petitioner was appointed by the Managing Committee of the school and subsequently, her services were approved by the District Education Establishment Committee, East Singhbhum, Jamshedpur in the Matric trained pay scale with effect from 29.1.1992 and since then, she has been rendering her services in the school, the stand taken by the respondent is that the petitioner had submitted her teachers training certificate which was obtained by her from Sister Nivedita College, Kolkata. It was later detected that the aforesaid college was not recognized by the Government of West Bengal Directorate of School Education. An explanation was therefore called for from the petitioner by the office of the District Superintendent of Education. The explanation offered by her being not found satisfactory, a second show-cause notice was served upon her followed by a departmental proceeding and thereafter, her services were terminated by the impugned order. It is further stated that certificate of teachers' training issued by the aforesaid institution being not a valid certificate for her appointment as a teacher on the Government sanctioned post and the petitioner having got herself employed in the Government service by suppressing the fact that the institute was not a Government recognized institute, her services were rightly terminated. Learned Counsel places reliance upon the judgment passed by this Court in the case of Swarn Kaur v. State of Jharkhand W.P.(S) No. 398 of 2003 and submits that the

facts of the petitioner's case is similar to the facts of the Swarn Kaur's case (supra) and also the case of Dilip Kumar Gupta 2005(2) JLR 313.

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9. Such disqualification has been raised on the basis of the provisions of the National Council for Teachers' Education Act, 1993 which came into force with effect from 1.7.1995, by which it has been made compulsory that the institute from where the teachers have obtained certificate of teachers training, should be an institute recognized under the NCTE.

10. It is not disputed that the petitioner's appointment was approved by the District Education Establishment Committee in January 1992. On the date of her appointment in the year 1990 and even on the date when her services were approved by the District Education Establishment Committee, there was Rule which required that the teachers training should be only from the Government recognized institution. After allowing the petitioner to serve for more than 16 years from the date of her appointment, her services cannot now be terminated by applying the provisions of NCTE Act retrospectively. In the case of Sarbani Bose (supra), a similar issue came up before this Court for consideration. This Court had observed that appointment made prior to coming into force of the NCTE Act, cannot be annulled by application of the provisions of NCTE Act retrospectively.

(Emphasis supplied)

(vi) Thus, in view of the aforesaid decision also, the petitioner, who has cleared Teachers Training from the very same college i.e. Sister Nivedita College, Kolkata, prior to enforcement of the Act, 1993 and is appointed also, prior to enforcement of the Act, 1993, his services cannot be terminated on the ground that he has not cleared his Teachers Training from recognized college under the Act, 1993.

(vii) Looking to the facts of the present case, there is no difference at all between the aforesaid decided case and the petitioner's case. Petitioner's clearance of Teachers Training is also prior to enforcement of the N.C.T.E. Act, 1993 and she (petitioner of the earlier decided case) was also selected and appointed as a Teacher prior to enforcement of the N.C.T.E. Act. The only difference is that the services of the petitioner were ratified on 5th April, 1995 and the N.C.T.E. Act, 1993 came into force with effect from 1st July, 1995. "Ratihabitio priori mandato aequiparatur" means a subsequent ratification of an act is equivalent to a prior authority to perform such act. As stated hereinabove, the ratification or Government approval may be subsequent in point of time, but, it always approves or ratifies an action of selection and appointment, which is dated 28th April, 1995 and 2nd May, 1995 respectively. Both these dates are prior to enforcement of the N.C.T.E. Act, 1993 and, therefore, subsequent approval or ratification is of no much help to the respondents.

(viii) Thus, it appears from the facts of the case that the petitioner was working as a Teacher with effect from 2nd May, 1995 and her services have been terminated with effect from 22nd May, 2008, only on the ground that she has not cleared the Teachers Training from a recognized institution, but, it ought to have been kept in mind by the respondents that when the petitioner has cleared her Teachers Training on 16th August, 1994, there was no question of giving any recognition to that institution i.e. Sister Nivedita College, Kolkata, because N.C.T.E. Act, 1993 came into force with effect from 1st July, 1995.

6. In view of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the order of termination of the petitioner dated 22nd May, 2008, which is at Annexure 18 to the memo of petition. Petitioner is permitted to resume his duties, unless has reached an age of superannuation.

7. This writ application is, accordingly, allowed and disposed of.