

(2013) 03 JH CK 0123
In the Jharkhand High Court
Case No : WP (S) No. 975 of 2005

Sanjay Kumar Bose and Another	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2013) 2 JLJR 649

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Indrajeet Sinha and Prashant Pallav, for the Appellant; Ajit Kumar and Saket Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order contained in Memo dated 16.7.2004, the petitioners have approached this Court by filing the present writ petition. The brief facts leading to filing of the present writ petition are that, an advertisement was issued on 6.9.1997 in the Daily Newspaper "The Indian Nation". The petitioner No. 1 submitted application on 11.9.1997 and the petitioner No. 2 submitted his application on 15.9.1997 and they were called for interview by letter dated 3.11.1997. The petitioner Nos. 1 & 2 were issued appointment letters dated 28.5.1998 and 19.5.1998 and they joined on 29.5.1998 and 20.5.1998 respectively. Thereafter, the Secretary of the school sent the name of the petitioners to the District Education Officer vide letter dated 14.7.1998. The District Superintendent of Education, Deoghar sent the approval letter to the Director, Primary Education vide Annexure-9 and 9/1 to the writ petition. Service of the petitioners was approved and their teachers training certificates and matriculation certificates were also verified. It appears that Regional Director, Education, Dumka vide letter dated 24.12.1999 directed the Head Master of Dinbandhu Middle School to send the petitioner no. 2 to undergo "Service Training" and accordingly, the petitioner was sent for "Service Training" by the Headmaster of the said school by letter dated 4.1.2000. The petitioner no.

2 under-went training at Primary Teachers Training College, Ghormara, Deoghar and on completion of the training by letter dated 15.1.2001 the petitioner no. 2 was relieved for rejoining in his school where he joined on 16.1.2001. The petitioner no. 2 has been declared successful on 13.5.2002 in the result of Service Training examination however, when the salary of the petitioners was not released, the petitioners moved the High Court in W.P. (S) No. 5036 of 2003 which was disposed of on 13.10.2003 with a direction to the respondent no. 2 for considering the grievance of the petitioners. The respondent no. 2 by order dated 16.7.2004 declared the appointment of the petitioners by Managing Committee of the school as irregular on the ground that procedure as laid down in Memo no. 709 dated 4.3.1993 was not followed at the time when the interview for selection was conducted. Aggrieved by the said order the petitioners have approached this Court again.

2. A counter-affidavit has been filed stating that in view of Memo no. 709 dated 4.3.1993, Range Education Officer or District Superintendent of School is required to be present at the time when interview for selection on the post of teachers is to be conducted and since, when the petitioners appeared for interview the said Government representative was not present in the interview-board therefore, their appointment is illegal.

3. The petitioners have relied upon an earlier Circular dated 21.7.1983 which lays down that the recommendation of the Managing Committee of the School is required to be approved within 30 days by the Superintendent of Education otherwise, the appointment made by the Managing Committee would be deemed to have been approved.

4. Heard learned counsel for the parties and perused the documents on record.

5. On 19.7.2006 when the matter was heard by this Court the following order has been passed.

Status quo with regard to the present position of the petitioners shall be maintained till the disposal of the writ petition. They will also be paid current salary. Question of arrears of salary shall be considered at the time of final disposal.

6. On 12.12.2012, this Court passed an order in I.A. No. 3217 of 2012 which was filed by the petitioners for a direction for payment in revised pay-scale on the recommendation of 6th Pay Commission, directing the respondents especially respondent no. 5 District Superintendent of Education, Deoghar to pay the revised pay-scale to the petitioners from date on which it has been made effective.

7. Mr. Indrajeet Sinha, learned counsel appearing for the petitioners has contended that the respondent no. 2 has issued Memo dated 16.7.2004 ignoring the earlier Circular dated 21.7.1983 which has been held operative in Circular dated 4.3.1993 also. He has further submitted that in view of the subsequent

approval of appointment of the petitioners by respondents, the plea taken in Memo dated 16.7.2004 for holding the appointment of the petitioners as illegal, is untenable and in any event the appointment of the petitioners cannot be said to be illegal or irregular as it has been made after following the prescribed procedure. The plea taken by the respondents that the petitioner no. 2 has no requisite qualification in as much as his Teachers Training Certificate was not approved, is also false and wrong. The petitioner no. 2 was sent for Service Training by the order of Regional Director of Education, Dumka and he has successfully completed the said training.

8. On the other hand, learned counsel appearing for the respondents has submitted that there were only seven sanctioned posts in the school, out of which two posts were vacant, one due to termination of service of one Manju Modak. The Managing Committee of the School has erroneously advertised two posts whereas only one post should have been advertised as the post of said Manju Modak should have been kept vacant. He has further submitted that in view of Circular and letter dated 709 dated 4.3.1993, appointment of the petitioners was found illegal and therefore, this writ petition is liable to be dismissed.

9. Replying to the plea of the respondents, Mr. Indrajeet Sinha, learned counsel appearing for the petitioners has submitted that it is not correct to say that there were only seven sanctioned posts in the school. In fact the official documents would disclose that there were 9 sanctioned posts in the school, out of which three posts were vacant. He has further submitted that in view of Circular dated 21.7.1983 which has been specifically reiterated in letter dated 4.3.1993, the recommendation of the Managing Committee of the school is deemed to have been approved by the respondents. The petitioners are otherwise also eligible for the appointment on the post of Assistant teachers. On perusal of Circular no. 1626 dated 21.7.1983 and letter no. 709 dated 4.3.1993, it is apparent that a Government-representative is required to be present in the interview-board and the earlier procedure described under Circular dated 21.7.1983 has also been reiterated in letter dated 4.3.1993. The petitioners were appointed in the year 1998, they have been paid their salary regularly and the respondents have been directed by this Court to pay the revised pay-scale pursuant to recommendation of 6th Pay Commission. The main plea taken by the respondent no. 2 in the impugned order dated 16.7.2004 for holding their appointment illegal is constitution of the interview Board in which the Government representative was not present, would not vitiate the appointment of the petitioners. There is no allegation of arbitrariness or favoritism in selecting the petitioners. An advertisement was issued and applications were invited and thereafter interview was conducted for selecting the persons for appointment on the post of Assistant teachers. The plea taken against the petitioner no. 2 that his teachers training certificate was not approved, is also no longer tenable in view of the subsequent service training completed by the petitioner no. 2. I further find that the petitioners who were appointed in 1998, have worked for 15 years and have

been paid their salary regularly, and therefore, deserve to continue in service. At this stage their services cannot be terminated merely because the government representative was not present at the time when the interview was conducted for selecting the persons for appointment on the post of Assistant teachers. The appointment of the petitioners cannot be termed as illegal or irregular. The procedural lapses, if any, would be deemed to have been ignored by the respondents themselves by approving service of the petitioners subsequently. In view of the peculiar facts and circumstances of the case, the impugned order dated 16.7.2004 is hereby quashed. The writ petition is allowed in the aforesaid terms.