
(2005) 02 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 933 of 2000

Sanjeeb Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 152

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Indu Bhushan Prasad, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—An advertisement was published inviting application for appointment to the post of Assistant Teacher in Dayanand Primary Girls School, Mithapur a minority institution. According to the advertisement candidates having two years" experience of teaching in a recognised school were eligible for appointment and it also permitted untrained candidates to offer their candidatures. In pursuance of the aforesaid advertisement petitioner as also other candidates offered their candidature. The candidature of the petitioner was considered by the Selection Committee and the Managing Committee and the petitioner was selected for appointment. Accordingly by order dated 20th of July, 1998 (Annexure 2) petitioner was appointed as Assistant Teacher in matric untrained scale. Petitioner in pursuance of the said order submitted his joining on 21.7.1998. The Secretary of the Managing Committee of the Dayanand Primary Girls School, hereinafter referred to as the School, wrote to the District Superintendent of Education by its letter dated 5.10.1998 (Annexure 4) seeking approval to the appointment of the petitioner in the matric untrained scale. The Sub-Inspector of School by its letter dated 19.11.1998 (Annexure 7) forwarded the papers for necessary action to the District Superintendent of Education. A reminder dated 22.11.1999 (Annexure 8) was also sent by the Secretary of the

Managing Committee of the School to the District Superintendent of Education. When no decision was taken, the petitioner filed the present writ application praying for a writ in the nature of mandamus commanding the respondents to grant approval to his appointment. Counter affidavit has been filed on behalf of respondent No. 5 in which order dated 31.12.1998 (Annexure A) has been placed on record, whereby the District Superintendent of Education had disapproved the appointment of the petitioner. The reasons for refusal to accord approval are that the petitioner is not a trained teacher and further in the Selection Committee no representative of the State Government was present.

2. Petitioner moulds the relief and prays for quashing of the aforesaid order (Annexure-4) whereby respondent No. 5 refused to accord approval to her appointment.

3. A rejoinder to the counter affidavit has been filed in which it has been stated that necessity for training is not must for appointment as Assistant Teacher. It has also been stated that in view of letter of the State Government dated 21.7.1983, if approval is not granted within 30 days, it shall be deemed that approval is already granted.

4. Mr. Indu Bhushan Prasad, appearing on behalf of the petitioner contends that in pursuance of the advertisement the candidates who appeared for selection were untrained persons and hence, petitioner was selected for appointment. He points out that in such circumstance, respondents ought to have granted approval to his appointment.

5. Junior Counsel to Standing Counsel No. 3 contends that in view of the decision of the State Government as communicated by letter dated 4th of March, 1993 (Annexure-B) only trained teachers can be appointed and even if the stand of the petitioner is correct, that will not entitle approval of his appointment.

6. Having considered the rival submission, I do not find any substance in the submission of Mr. Prasad. The decision of the State Government in clear term provides that the Managing Committee of the School shall invite application from trained candidates only. Undisputedly, petitioner was not trained and as such, respondents did not err in declining to approve his appointment.

7. Mr. Prasad then contends that letter dated 21.7.1983 (Annexure-10) of the State Government had clearly provided that the District Superintendent of Education shall pass order in regard to the approval of the appointment within 30 days and in case, it is not done, the sanction shall be deemed to have been accorded. He points out that the Managing Committee forwarded the papers in regard to the appointment of the petitioner by letter dated 2.10.1998 and hence, refusal to grant approval by order dated 3.12.1998, is beyond a period of 30 days and as such, the said decision is fit to be ignored.

8. Junior Counsel to Standing Counsel No. 2, however, contends that the resolution relied on by the petitioner is in relation to the grant of salary and

same shall have no bearing so far as the legality or otherwise of the approval is concerned.

9. I do not find any substance in this submission of Mr. Prasad also. Petitioner has not been found to be eligible for appointment in terms of the decision of the State Government. The District Superintendent of Education had declined to approve his appointment and passed specific order for that purpose. The relief sought for by the petitioner is not for payment of salary. In my opinion, after expiry of the stipulated time the appointment of the petitioner shall not be deemed to have been approved.

10. Besides the aforesaid, according to the respondents, petitioner's selection by the Managing Committee for appointment as teacher was also illegal on account of the fact that the Committee which selected the petitioner did not had any Government representative. Letter of the State Government dated 4th of March, 1993 provides for necessity of a representative of the Controlling Officer of the school. Undisputedly, no such representative participated in the selection. In that view of the matter, the impugned decision not to accord approval to the appointment of the petitioner, cannot be faulted. I do not find any merit in this application and it is dismissed accordingly.