
(2009) 07 JH CK 0091
In the Jharkhand High Court

Sanyukta Kumari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 07 JH CK 0091

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Learned Counsel for the petitioner has submitted that petitioner was appointed as a Para Teacher since 4th of January, 2006 and thereafter petitioner has worked for a number of the months, on the said post and abruptly, capriciously, arbitrarily without holding any inquiry and without giving any notice and in utter violations of principles of natural justice and through a non-speaking order, Respondent No. 4 has terminated the services of the present petitioner vide letter dated 14th August, 2007 (Annexure -6 to memo of petition) and, therefore, this order deserves to be quashed and set aside.

2. It is also submitted by the learned Counsel for the petitioner that how the selection of the present petitioner is illegal is not stated in the impugned order. A lump sum and general reason has been given, without supported by any facts. One line written by Respondent No. 4 and rights vested in the petitioner has been taken away. Had an opportunity of being heard would have been given to the petitioner, it would have been pointed out by the petitioner that there is no illegality in the selection process. What was the hurry in the mind of the Respondent No. 4 in passing the impugned order is not known to the petitioner.

3. It is also submitted by the learned Counsel for the petitioner that petitioner was working as a Para Teacher honestly, diligently, sincerely and to the satisfaction of the respondents. Never any notice was given to the petitioner, complaining the work of the present petitioner. What was defect in the selection process or what were the defects in the petitioner have not been stated in the

impugned order. Thus, the impugned order is absolutely a non-speaking order and arbitrary and therefore, it deserves to be quashed and set aside.

4. I have heard learned Counsel appearing for the respondents who has submitted that a detailed affidavit has been filed by the respondents and several reasons have been stated in the counter-affidavit and that the petitioner was never belonging to the very same village, at which she was appointed as a Para Teacher and, therefore, the petition deserves to be dismissed.

5. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) the petitioner was appointed as a Para Teacher from 4th of January, 2006 thereafter she was working on the said post and was paid salary also by the respondents meanwhile she has also undergone Teacher Training Programme. There is no dissatisfaction ever revealed by the respondents for the services rendered by the present petitioner. It is submitted by the learned Counsel for the petitioner that she was working sincerely, honestly, diligently and to the satisfaction of the respondents.

(ii) Respondent No. 4 has issued a letter vide dated 14th of August, 2007 (Annexure-6 to the memo of petition) whereby he has stated approximately one and half years after the appointment stating therein that petitioner was not selected, in accordance with law, and, therefore, her services have been terminated. This impugned order has been passed without issuing any notice to the petitioner. No opportunity of being heard has been given to the petitioner. Thus, there is violation of principles of natural justice. It is submitted by the learned Counsel for the petitioner that had an opportunity would have been given to the petitioner, she had pointed out to the respondents that there is no illegality in the appointment.

(iii) It is also submitted by the learned Counsel for the petitioner in detail that correct selection process has been followed and it has been stated in memo of petition and supported by Annexures, but, the Respondent No. 4 has never given any opportunity and it also appears to this Court that Respondent No. 4 has passed the impugned order ex parte without giving any opportunity of being heard to the petitioner.

(iv) Looking to the impugned order it appears that the said order is thoroughly a non-speaking order. No reasons have been assigned as to what is the illegality in the selection procedure, which rule and which procedure is violated, is not clear from the impugned non-speaking order. It is submitted by the learned Counsel for the respondents, in detail, that the reasons have been given in the counter-affidavit. This contention is not accepted by this Court mainly for the reason that counter-affidavit filed subsequently cannot supply reasons to a thoroughly non-speaking order. No reason can be supplied by counter-affidavit, otherwise, all invalid orders will become valid, by a passage of time. A person who is filing affidavit cannot supply wisdom to a person who has passed a non-speaking

impugned order and when the affidavit is filed by the same person his subsequent wisdom revealed in the affidavit is not helpful to justify his own non-speaking and arbitrary order. This aspect of the matter has not been properly appreciated by the respondents-State and, therefore, a non-speaking order at Annexure-6 remains a non-speaking order. A better course is to withdraw the impugned order and to pass a fresh order, in accordance with law, by the respondents instead of filing affidavit when there is a dire need of supplying reasons to a non-speaking order, this gesture itself (of supply of support to the non-speaking order) deserves an impugned to be quashed.

(v) Whenever the order is a non-speaking order and that too coupled with fact that no notice is given to the concerned parties, it that amounts to an arbitrary order. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is absent and when equality is present, arbitrariness is absent. In view of this, there is a direct violation of Article 14 of the Constitution of India and hence, the impugned order at Annexure-6, which is an ex-parte order, without giving any notice and also a non-speaking order, deserves to be quashed and set aside.

6. As a cumulative effect of the aforesaid facts and reasons, I hereby, quash and set aside the order passed by Respondent No. 4 dated 14th of August, 2007 (Annexure-6 to the memo of petition) so far as it relates to the present petitioner, at the same time, liberty is reserved with the respondents to initiate actions, in accordance with law and at least, after following the principles of natural justice.

7. This writ petition is allowed to the aforesaid extent.