
(2016) 08 JH CK 0153
In the Jharkhand High Court
Case No : W.P. (S) No. 5637 of 2014

Savitri Devi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JCR 373

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Md. Jalisur Rahman, Advocate, for the Petitioners; JC to SC (L&C), for the Respondents

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The petitioners are working as Assistant Teachers in various Nationalised Primary Schools in the district of Godda, and they have acquired the qualification of Graduate Trained after coming into their services. The petitioners are presently working in Grade-2 pay scale and they are claiming promotion to Grade-3 pay scale in view of the provisions of the Bihar Nationalised Primary School Teacher Promotion Rules, 1993, (herein after referred to as the "Promotion Rules of 1993"), according to which, the teachers having the qualification of Matric Trained and having minimum satisfactory service of 18 years in Grade-2, shall be entitled to be promoted in Grade-3 pay scale and the teachers having qualification of Graduate Trained and having minimum satisfactory service of 12 years in Grade-2 pay scale, shall be entitled to be promoted in Grade-3 pay scale.

3. The gradation list has been prepared for promotion to Grade-3 pay scale on 2.2.2014 by the respondent No. 6, District Superintendent of Education, Godda, but the names of petitioner Nos. 2 to 5 and 10 have not been included in the

gradation list on the ground that they lack the permission for enhancing their educational qualification. Whereas, though the names of petitioner Nos. 1 & 6 to 9 have been included in the gradation list dated 2.2.2014, but their names have been included as Matric Trained teachers, and not as Graduate Trained teachers.

4. All the petitioners are claiming that since they are having the qualification of Graduate Trained, and also having the satisfactory service of more than 12 years, they are entitled to be considered for promotion in Grade-3 pay scale. The petitioners filed their representation before the respondent No. 4, Regional Deputy Director of Education, Santhal Paraganas, Dumka, who, by his letter dated 19.7.2014, as contained in Annexure-2 to the writ application, directed the respondent No. 6, District Superintendent of Education, Godda, to look into the claims of the petitioners if the claims of the petitioners are tenable, their names be included in the gradation list at the appropriate place, or to clarify as to why their names have not been included in the gradation list for promotion. It is the case of the petitioners that no action has been taken by respondent No.6, even on the letter contained in Annexure-2.

5. The respondent No. 6, District Superintendent of Education, Godda, has filed a counter affidavit in the matter, in which, it is stated that the petitioners did not qualify the eligibility criteria for being included in the gradation list. The counter affidavit, however, is silent on the point as to what are the those eligibility criteria, which the petitioners did not qualify. Accordingly, by order dated 29.6.2016, learned counsel for the State was directed to file a fresh supplementary counter affidavit in the matter clarifying as to what are those eligibility criteria, which the petitioners did not fulfil. In spite of giving further opportunity to the learned counsel for the State, by order dated 27.7.2016, no supplementary counter affidavit has been filed by the respondent State bringing on record the eligibility criteria, if any, which according to the respondent No.6, the petitioners did not fulfil.

6. In the counter affidavit, it is stated that the copy of permission granted to the petitioners for enhancement of their educational qualifications, was not available with the respondents. At the same time, it is also stated in the counter affidavit that according to the Promotion Rules of 1993, there is no requirement for granting of any permission for enhancing the educational qualification. As such, there appears to be nothing on record to show as to why, if the petitioners are Graduate Trained teachers, their names have not been included in the gradation list prepared on 2.2.2014 for promotion from Grade-2 pay scale to the Grade 3 pay scale on the basis of their qualification as Graduate Trained teachers.

7. Learned counsel for the petitioners has submitted that even though the case of the petitioners was recommended to the District Superintendent of Education, Godda, by the Regional Deputy Director of Education, Santhal Parganas, Dumka, by his letter dated 19.7.2014 as contained in Annexure-2 to the writ petition, but no action has been taken by the respondent No. 6, either for including of the names of the petitioners in the gradation list as Graduate Trained Teachers, or

communicating any reason for non-inclusion of the same. Learned counsel accordingly, submitted that non-inclusion of the names of the petitioners in the gradation list, is absolutely illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8. Learned counsel for the State, on the other hand, has opposed the prayer, submitting from the counter affidavit, that the copy of permission granted to the petitioners for enhancement of their educational qualifications, was not available with the respondents and reiterating that the petitioners were not entitled for being included in the gradation list. However, at the same time, it is stated in so many words in the counter affidavit that there is no provision, in the Promotion Rules of 1993 framed by the State Government, for granting any permission for enhancing the educational qualification to the Assistant Teachers working in the Nationalised Primary Schools.

9. Having heard learned counsels for both the parties and upon going through the record, I find that no valid reason has been assigned by the learned counsel for the State for non-inclusion of the names of the petitioners in the gradation list for promotion to Grade-3 pay scale on the basis of their educational qualification as Graduate Trained Teachers. I also find that the case of the petitioners was also recommended by the Regional Deputy Director of Education, Santhal Paraganas, Dumka, by his letter dated 19.7.2014, as contained in Annexure-2 to the writ application, but no action has been taken on the said letter. By order dated 29.6.2016, learned counsel for the State was also directed to disclose the eligibility criteria, if any, which the petitioners were not fulfilling, but no supplementary counter affidavit has been filed by the respondent State in spite of giving sufficient opportunity. Even in course of arguments, learned counsel for the State is not in a position to point out any disqualification, for non-consideration of the petitioners' case for being promoted in Grade-3 pay scale.

10. In view of the aforementioned discussions, the action of the respondent State, particularly of the respondent No. 6, District Superintendent of Education, Godda, in sitting tight over the matter and not including the names of the petitioners in the gradation list, cannot be sustained in the eyes of the law. Respondent No. 6, is hereby, directed to include the names of the petitioners in the gradation list for promotion from Grade-2 pay scale to Grade-3 pay scale on the basis of their educational qualifications as Graduated Trained Teachers, as there is no denial to the fact that the petitioners are not having the said educational qualification. It is directed that the names of the petitioner shall be placed in the gradation list dated 2.2.2014 at the appropriate place and they shall be considered for promotion from Grade-2 pay scale to Grade-3 pay scale on the basis of their eligibility and placing in the gradation list. The process of inclusion the names of the petitioners in the gradation list must be completed positively within the period of 8 weeks from the date of production / communication of the copy of this order.

11. This writ application is accordingly, allowed with the directions as above.