
(2015) 10 JH CK 0095
In the Jharkhand High Court
Case No : W.P.(S). No. 5578 of 2009

Saydan Kandulna

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 4 JLJR 402

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : J.J. Sanga, Advocate, for the Appellant; Amit Kumar and Rishikesh Giri, J.C. to G.P. II, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia, prayed for quashing order dated 27.08.2009 issued by respondent No. 4-District Superintendent of Education, Simdega whereby services of the petitioner has been terminated and further for reinstatement of the petitioner with all back wages alongwith statutory interest and consequential benefits.

2. The facts, as emanated from the writ application, in a nutshell, is that pursuant to an advertisement published by the G.E.L Middle School, Baraibera, which is a Minority Government aided school run and managed for welfare of Tribal, in daily Hindi newspaper "Prabhat Khabar" dated 07.07.2005 inviting applications for the post of Trained Teacher, the petitioner applied for the same and after interview of the candidates by the Selection Committee of the said school, the petitioner was appointed as Assistant Teacher and appointment letter was given to the petitioner vide letter dated 27.07.2005 (Annexure 4). After her appointment, the petitioner discharged her duties with utmost satisfaction to the respondents-authorities. It is stated that on 19.01.2006, the Regional Education Officer, Simdega wrote a letter to District Superintendent of Education for approval of services of the petitioner. But despite serving for more than four

years, when the petitioner was not paid a single penny, the petitioner represented before the Secretary, G.E.L. Middle School, Baraibera raising her grievances. But to the utter surprise and consternation, an office order vide Memo No. 1018/Simdega dated 27.08.2009 was issued by the District Superintendent of Education, Simdega whereby services of the petitioner was terminated vide Annexure 6 to the writ application on the ground that the petitioner was overage at the time of appointment.

3. Being aggrieved by the impugned order of termination, the petitioner having no alternative, efficacious and speedy remedy has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of her grievances.

4. Per contra counter affidavit has been filed on behalf of respondent No. 4 repelling the contentions made in the writ application. It has been stated that at the time of appointment the age of the petitioner was 40 years 09 months and 7 days, as per the matriculation certificate produced by the petitioner, whereas, the prescribed maximum age limit was 40 years. It has been stated that so far Annexure 7 is concerned, wherein maximum age limit for Schedule Tribe is mentioned as 45 years, is effective from the date of issuance of notification i.e. from 14.08.2007, whereas the appointment of the petitioner was made on 27.07.2005, which is much prior to the date of issuance of Annexure -7. Hence, the petitioner cannot claim her appointment valid referring to Annexure 7 to the writ application.

5. Heard Mr. J.J. Sanga, learned counsel for the petitioner and Mr. Amit Kumar and Mr. Rishikesh Giri, J.C to G.P II for the respondents and perused the record.

6. Learned counsel for the petitioner has strenuously urged before this Court that District Superintendent of Education, Simdega -respondent No. 4 has no jurisdiction whatsoever to issue the impugned order of termination (Annexure 6). At best the respondent No. 4 can recommend the name of the petitioner for termination. But in the instant case the impugned order of termination has been passed by respondent No. 4, which is wholly illegal, arbitrary and without jurisdiction and is unsustainable in the eye of law. Learned counsel for the petitioner further submitted that before issuance of impugned order of termination the petitioner has neither been served with any show cause notice nor has been afforded any opportunity of hearing, hence, the impugned order is passed in utter violation of principles of natural justice.

7. On the contrary, learned counsel for the State has assiduously submitted that the petitioner was over-age at the time of her appointment and the Managing Committee ignoring the departmental Rules appointed the petitioner on the post of Assistant Teacher and the proposal for approval of the appointment of the petitioner was turned down, which cannot be construed to be an illegal act and hence, the impugned order at Annexure 6 being passed in accordance with departmental Rules, is well within the jurisdiction of respondent No. 4.

8. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the impugned order issued vide Memo No. 1018/Simdega dated 27.08.2009 does not call for any interference by this Court for the following facts and reasons:

"(i). Admittedly, the petitioner in pursuance to the advertisement published has been appointed by the Managing Committee of G.E.L Middle School, Baraibera vide Annexure 4 dated 27.07.2005 and after her appointment, services of the petitioner was sent for approval to District Superintendent of Education, which was denied resulting into termination of services of the petitioner on the ground of over-age. The petitioner relied on a government notification dated 14.08.2007, wherein at paragraphs 4 maximum age limit of the candidates has been dealt with, but, the petitioner was appointed much prior to the said notification i.e. in the year 2005 and in the notification dated 14.08.2007, it is clearly mentioned that the notification will be applicable from the date of issuance of said notification, hence, it will not be applicable in the case of the petitioner.

(ii). So far as claim of the petitioner that she being a disabled lady, as per Annexure 1 of the writ application, ought to have been given relaxation in upper age limit, that cannot be countenanced as neither in the advertisement nor in the appointment letter, the fact of disability has been mentioned, as such she cannot get the benefits of being a disabled lady.

(iii). Since the very appointment of the petitioner is in infraction of Departmental Rule and/or Government Circular/notification, the impugned order of termination at Annexure 6 cannot be dubbed as illegal for violative of Article 14 and 16 of the Constitution of India."

9. On cumulative effect of the aforesaid facts and reasons the impugned order issued vide Annexure 6 dated 27.08.2009 does not warrant any interference by this Court.

10. Accordingly, the writ petition is dismissed being devoid of any merit.