

(2014) 11 JH CK 0103
In the Jharkhand High Court
Case No : W.P. (S) No. 2775 of 2012

Sayeed Khan

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 1 JLJR 519

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : R.K. Sinha, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner, being aggrieved by the order dated 5.1.2012 (Annexure-8), by which his service as Para Teacher has been cancelled, has approached this Court. It has been argued on behalf of the petitioner that the petitioner had been appointed in terms of resolution taken in a general meeting held by Village Level Committee on 30.6.2004 as contained in Annexure-2 and thereafter appointment letter had been issued to him and he had started discharging his duty. But all of a sudden, a show cause notice had been issued to him alleging therein that on the date of selection i.e. on 30.6.2004, the petitioner had no required qualification, as has been prescribed in Annexure-1 to the writ petition and as such the petitioner was directed to immediately reply as to why his service be not cancelled and the honorarium which has been paid to him, be not recovered and an FIR be not instituted against him for commission of forgery. It has submitted that the petitioner was the single candidate before the Village Level Committee and admittedly on due consideration that he was Matriculate and he was not possessing required certificate of Intermediate, as prescribed in Annexure-1, he had been appointed as Para Teacher. Hence, the decision taken by the competent authority to cancel his appointment with a direction to recover the amount of honorarium which has been paid to him with further direction to institute an FIR against him, is arbitrary exercise of power. However, the counsel for the petitioner has submitted

that before the authority concerned by way of reply given in terms of the show cause notice, the petitioner had stated that he had committed no misrepresentation and illegality, rather he at the time of submission of application, had submitted Matriculation certificate along with the admit card of Intermediate and subsequently, he had passed the Intermediate examination.

2. Learned counsel for the respondents has submitted that the petitioner was not possessing required qualification as prescribed under Annexure-1 which prescribes that a candidate, who has to be considered for selection as Para Teacher, must possess minimum qualification of Intermediate trained or Intermediate, but in no case, a candidate possessing less qualification will be selected. It has been submitted on behalf of the respondents that the petitioner had not possessed required educational qualification on due date of consideration for selection and the petitioner had tried to mislead the authority concerned by producing Intermediate admit card of Deoghar Vidyapith. Hence, the forgery has been committed by him. The petitioner was knowing this fact that the certificate of Deoghar Vidyapith has been cancelled, even thereafter he had withdrawn the money of honorarium and as such it has been submitted on behalf of the respondents-State that the authorities have taken a right decision for cancellation of selection of the petitioner as Para Teacher with a direction to recover the amount which had been paid to him by way of honorarium with further direction to institute an F.I.R. against the petitioner. Hence, the impugned order needs no interference.

3. Heard the parties, perused the record.

4. Admittedly, the petitioner was appointed pursuant to a resolution dated 30.6.2004 whereby the minimum qualification prescribed was (i) Intermediate trained, (ii) in case of non-availability of Intermediate training qualification holder, Intermediate qualification holder can be considered/selected, but in no case, the candidate possessing less qualification will be considered/selected.

5. Admittedly, the petitioner on due date of consideration i.e. 30.6.2004 was not holding Intermediate certificate, rather he was a Matriculate, although he had submitted the admit card of Intermediate examination. If it comes in the knowledge of the authority concerned that if any person has been appointed contrary to the conditions mentioned in the advertisement/resolution, the authority concerned may proceed to take steps against such person for the illegality committed by him. It is settled proposition of law that illegality cannot be permitted to be perpetuated.

6. Here the petitioner admittedly was holding Matriculation certificate on 30.6.2004 and as such he had no eligibility to be considered for appointment on 30.6.2004. The Intermediate certificate is of Deoghar Vidyapith, subsequently the same has been cancelled, but the petitioner has not brought this fact to the notice of the competent authority. Hence, the petitioner has suppressed this aspect of the matter from the authority concerned.

7. It is pertinent to mention here the judgment rendered by the Hon"ble Apex Court in Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, wherein it has been held that recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules. Paragraph 21 of the said judgment is quoted hereinbelow:--

"21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date."

8. Further, in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, , the Hon"ble Apex Court has held that if the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment, which is contrary to the" statute/statutory rules, would be void in law. Paragraphs 16, 17 & 18 of the said judgment are quoted hereinbelow:--

"16. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

17. It is a matter of some concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the degree(s) possessed by the candidate(s) are valid or not. It was an ad hoc appointment. Why despite the same, he was allowed to obtain degree from another University is not known.

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be" ratified. An appointment, which is contrary to the statute/statutory rules, would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so."

9. In totality of the entire facts and circumstances, since the petitioner was not possessing required certificate on the date of consideration, finance he has got no right to continue on the post. However, the petitioner has also suppressed the fact from the authority concerned with respect to cancellation of the Intermediate certificate which has been obtained by him from Deoghar Vidyapith and thereafter he had been taking honorarium regularly which shows the intention of the petitioner that by way of suppression of material fact and in absence of the required certificate, he had been taking honorarium from the authorities concerned on the basis of his misrepresentation about the cancellation of his Intermediate certificate.

10. So far as the contention raised by learned counsel for the petitioner that

subsequently the petitioner has obtained Intermediate certificate, this will not help to the petitioner because of the reason that admittedly on the date of consideration i.e. 30.6.2004, the petitioner was not holding the required qualification as prescribed in Annexure-1 dated 5.6.2004. In the facts and circumstances stated herein above, I find no reason to interfere with the impugned order. This writ petition is, accordingly, dismissed. However, since the petitioner had admittedly produced only Matriculation certificate and had not produced the required certificate of Intermediate trained or equivalent to Intermediate training on the date of consideration i.e. 30.6.2004, how the authority had appointed him on the post of Para Teacher. Hence, it needs enquiry by the competent authority with respect to illegality committed by the officer, who had appointed the petitioner and permitted him to discharge the duties and withdraw honorarium.