

(2004) 09 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 8638 of 2003

Shambhu Nath Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Citation : (2004) 3 BLJR 1772 : (2004) 4 PLJR 504

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ram Subhash Singh, Suresh Kumar Ishwar, for the Appellant;
Satyavrat Verma, JC to GP VIII, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 14.12.2001 passed by the Special Director, Secondary Education in appeal No. 19 of 1997, whereby respondent No. 9 has been declared senior to the petitioner.

2. Short facts giving rise to the present application are that the petitioner as also respondent No. 9 were appointed as teachers on 1.4.1981 and 1.1.1979 respectively. At the time of appointment, petitioner possessed degree and Madhyama qualifications whereas respondent No. 9 had degree with Honours. It appears that second post of teacher had fallen vacant some time in the year 1986-87 and step was taken to fill up the said post. The Managing Committee of the School vide its resolution, dated 22nd of June, 1987, decided to appoint the petitioner as second teacher and forwarded the decision to the Bihar Sanskrit Shiksha Board, hereinafter referred to as the Board. The Board approved the appointment of the petitioner by order dated 8th of August, 1988. Respondent No. 9 challenged the aforesaid order in CWJC No. 5830 of 1989 but during the pendency of the said case, the authorities considered the case of respondent No. 9 and by order dated 7th of October, 1991 allowed him to function on the second post in the scale of Rs. 730-1080/- cancelling the earlier order dated 8th of

August, 1988 referred to above. The aforesaid order was challenged before the Special Director by the petitioner who by order dated 7th of October, 1991, reversed the same. Respondent No. 9 challenged the same by filing CWJC No. 553 of 1999, Nagendra Prasad v. Sanskrit Shiksha Board and Ors., before this Court. A learned Single Judge of this Court, by order dated 9.5.2000 (Annexure-9) set aside the order dated 6th of November, 1998 whereby the Special Director had set aside the order in favour of respondent No. 9 dated 7th of October, 1991 and remitted the matter back to the Special Director in the following words :--

"For the reasons aforesaid, I set aside the order dated 7th of November, 1988 passed in appeal No. 19 of 1997 and remit the matter to the Special Director to determine the question as to whether both the petitioner and the 6th respondent were eligible for appointment to the post of 2nd teacher as on 8th August, 1988, when the initial order of approval was issued by the Board. If both are found to be eligible, the senior should be preferred over the junior."

3. In view of aforesaid order, the eligibility of the petitioner and respondent No. 9 was to be decided with reference to the date 8th of August, 1988. In the light of the aforesaid order, the Special Director considered the case of the petitioner and having found that the date of initial appointment of respondent No. 9 is earlier to that of the petitioner and at the time of appointment, he had the qualification of B.A. (Hons.) and had passed the Shastri Examination in the year 1987, held respondent No. 9 to be eligible and senior to the petitioner.

4. Mr. Suresh Kumar Ishwar appearing on behalf of the petitioner submits that the very assumption of the Special Director that the respondent No. 9 is eligible, having passed the Shastri Examination in the year 1987, is erroneous in fact and as such, the impugned order passed on such erroneous assumption, is fit to be set aside by this Court. In this connection, he has drawn my attention to certificate (Annexure-5) showing the date of publication of the result of Shastri Examination. It shows that the result was published on 22.12.1988. He contends that respondent No. 9 having passed the Shastri Examination on 22.12.1988, was not eligible on 8th of August, 1988. I do not find any substance in the submission of the learned counsel.

5. Undisputedly, respondent No. 9 appeared in the Shastri Examination in the 2nd half of the year 1987 but result was published later on. This Court in the earlier writ application between the party has held that "6th respondent (i.e. petitioner herein) passed Shastri Examination in the year 1986, whereas the petitioner (respondent No. 9 herein) passed the Shastri Examination in the 2nd half of the year 1987". Thus, respondent No. 9 was eligible for appointment on the second post on 8.8.1988 and undisputedly senior to the petitioner.

6. In view of aforesaid, the whole assumption of the petitioner that respondent No. 9 was not eligible on 8th of August, 1988, is unfounded on fact.

7. In the result, I do not find any merit in this application and it is dismissed in

limine, without any order as to cost. Application dismissed.