

(2006) 04 JH CK 0065
In the Jharkhand High Court
Case No : W.P.S. No. 6275 of 2005

Shiv Charan Hansda

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Citation : (2006) 3 JCR 467

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Indrajeet Sinha and Din Dayal Saha, for the Appellant; H.K. Mehta, G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ petition the petitioner has prayed for quashing the office order dated 20.1.2005 by which petitioner's appointment has been cancelled and his claim for payment of salary has been rejected.

2. Petitioner's case is that pursuant to advertisement issued in 1988 for appointment on the vacant post of matric trained teacher in Kanhaidih Mission Primary School in the district of Dumka, the petitioner applied and he was selected by the Managing Committee. The petitioner joined on 24.10.88 as Headmaster of the said school. Petitioner's further case is that his appointment was provisionally approved and, thereafter, he obtained teachers' training course in Primary Teachers Training College, Ghormara, Deoghar and tried to appear in the training examination for the Session 1998-99. In this regard the petitioner also filed a writ petition being WPS No. 6124/2004 which was disposed of on 23.11.2004 with a direction to the Regional Deputy Director of Education, Dumka to take a decision for appearance of the petitioner in the teachers' training examination. It is contended that instead of taking a decision in the matter, the impugned order removing the petitioner from service has been issued.

3. A counter affidavit has been filed by the respondents wherein it is stated that

in 1988 an advertisement was published for appointment of matric trained teacher in the primary Mission school, Kanhaidih but against this advertisement the petitioner who was simply a matriculate, was appointed by the Managing Committee. It is stated that in 1982 and 1983 specific directions were issued by the Education Department to the effect that recognized Govt. aided minority schools shall appoint matric trained teachers after publication of advertisement but violating the said direction of the Education Department, the petitioner who is untrained matriculate, was appointed on the post of teacher by the Managing Committee. The matter relating to fixation of pay of the petitioner was forwarded to the Director, Primary Education but the same remained pending since the petitioner was matric untrained teacher. Under the aforesaid circumstance, the claim of service and payment of salary of the petitioner has been rejected by the respondents by issuing the impugned order dated 20.1.2005.

4. Mr. Indrajeet Sinha, learned Counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as teacher in 1988 and he continuously worked for about 16-17 years and, therefore, his appointment could not have been cancelled on the ground that his appointment was illegal and against the rules. Learned Counsel submitted that the petitioner could not have been removed from service without initiating a departmental inquiry.

5. It has not been disputed by the petitioner that the advertisement was issued in the year, 1988 for appointment of matric trained teacher in the said school. Although the petitioner was a simple matriculate and was not having teachers training qualification, he was appointed by the Managing Committee on the post of matric trained teacher. It also appears that although the appointment of the petitioner was provisionally approved but his pay fixation matter remained pending with the respondents for the reason that his appointment itself was illegal. When the respondents did not give final approval of his appointment and were not taking decision in the matter of pay fixation of the petitioner, the petitioner tried to appear in the teachers' training examination in the year, 1988 but, for one reason or the other, the petitioner could not obtain teachers training qualification.

6. It is, therefore, clear that the appointment of the petitioner itself was illegal violating the prescribed rules and directions of the Education department, Govt of Jharkhand. It has been categorically stated in the counter affidavit that before passing the impugned order of removal of the petitioner from service, the petitioner was given opportunity of hearing. The petitioner had appeared before the District Superintendent of Education, Dumka and put his grievances. The D.S.E., after hearing him, took final decision which was communicated to the petitioner by the impugned letter dated 20.1.2005.

7. It is well settled that when the initial appointment on the post of teacher itself is illegal, merely because a person continuously worked for some time, it does not give him indefeasible right to claim the said post.

8. Considering the aforesaid facts I do not find any illegality in the impugned order of removal of the petitioner from service. This application is, accordingly, dismissed. However, if admittedly the petitioner worked for some time, he is entitled to get remuneration of the said period which he was getting before his salary was stopped. Hence, the respondents are directed to pay to the petitioner the salary/remuneration for the period he worked or rendered his services in the school.