

---

**(2007) 08 JH CK 0025**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 225 of 2006**

Shiv Charan Hansda

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

---

**Date of Decision :** 30-08-2007

**Acts Referred:**

**Citation :** (2008) 56 BLJR 699

**Hon'ble Judges :** M. Karpaga Vinayagam, C.J; Narendra Nath Tiwari, J

**Bench :** Division Bench

**Advocate :** J.P. Jha and D.D. Saha, for the Appellant; S. Mitra, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Narendra Nath Tiwari, J.—In this appeal the appellant has challenged the order dated 25.4.06 passed by the learned Single Judge in W.P(S) No. 6275/05.

2. The appellant's case is that he was initially appointed as an Assistant Teacher in Kanhaidih Mission Primary School, a Government aided minority school in the district of Dumka, in 1988. He had been discharging his duties as such regularly since then. The said school had sent proposal to the concerned authorities for approval of his services, but the same was kept pending by the concerned authorities. The appellant-petitioner was not paid his salary on the ground that he was not validly appointed and was not Trained.

3. The appellant had approached this Court in W.P(S) No. 6124/04. The said case was disposed of by order dated 23.11.04 giving liberty to the petitioner to represent before the Regional Deputy Director of Education, Santhal Paargana Division, Dumka for granting fresh permission to appear in the Teachers' Training Examination.

4. The petitioner had then filed his representation. By order dated 20.1.05, the concerned authority rejected the petitioner's representation and cancelled his appointment. His claim for salary, for the period he had worked, was also denied.

5. The petitioner thereafter filed writ petition being W.P(S) No. 6275/05 in which the impugned order has been passed, dismissing the writ petition with certain observation.

6. The respondents, on the other hand, supported the order of the departmental authority as well as the impugned order of the learned Single Judge. According to the respondents, the petitioner did not possess training certificate which is the essential eligibility for the post of teacher. In absence of the requisite qualification, there was no question of approval of his appointment by the concerned authority. There is thus no illegality in the impugned order.

7. After hearing learned Counsel for the parties and perusing the record it is evident that an advertisement was published for appointment of the Matric Trained Teachers in the school in question in the year 1988. Though the petitioner was only Matriculate and not Trained, he applied for the post. The Managing Committee of the school, however, appointed him. His appointment was provisionally approved by the authority subject to future acquisition of training certificate. The petitioner, however, could not acquire the training certificate. In absence of essential qualification, the petitioner's final approval was refused and his appointment was cancelled.

8. The learned Single Judge after considering the said facts and material on record arrived at the conclusion that the petitioner's appointment was illegal and violative of the prescribed rules. The petitioner did not possess essential qualification of training required for the post. The petitioner was given opportunity of hearing before the order of termination was passed. Final decision was taken thereafter and the letter dated 20.1.05 was issued refusing final approval and cancelling the petitioner's appointment as well as denying his salary for the period he had worked. The learned Single Judge in view of the above dismissed the writ petition with a direction to the authorities to pay the petitioner's salary/remuneration for the period he had worked or rendered his services in the said school.

9. The petitioner-appellant has assailed the said order in this appeal, mainly on the ground that the petitioner's service cannot be terminated after lapse of a long period and the said ground has not been properly appreciated by learned Single Judge.

10. Mr. S.P. Jha, learned Sr. counsel appearing on behalf of the appellant, submitted that the impugned order refusing final approval by the authorities and removing the petitioner from service was wholly arbitrary and inequitable. Though the petitioner could not acquire the essential qualification of training required for the post, yet he should not have been deprived of his employment after lapse of a long period of his service. Learned Single Judge should have given equitable consideration and should not have dismissed the writ petition holding the petitioner's appointment illegal. He further submitted that a person, who has rendered a long service, should have been regularized and confirmed for

the sake of equity. He cannot be thrown out in the evening of his life for any defect in his appointment.

11. He referred to and relied on a decision of Patna High Court in Jagdish Prasad Yadav and Ors. v. State of Bihar and Ors. reported in 2001 P.L.J.R (2) 729.

12. In our view, the ground taken by learned Counsel for the appellant is not sustainable. A person who lacks an essential qualification required for the post cannot claim any right for appointment on the post or for continuation of his service. Any appointment of a person made without essential qualification is invalid in law and the same cannot be made valid by applying the principle of equity.

13. Learned Single Judge has thoroughly dealt with, discussed and considered the relevant points and has passed a reasoned order. No valid ground has been made out in this appeal for interference in the impugned order by this Court. The decision referred to above by learned Counsel for the appellant in Jagdish Prasad Yadav and Ors., supra, has got no application to the facts of the instant case. Absence of essential qualification required for the post is an illegality and not an irregularity which can be ignored on the ground of lapse of number of years.

14. In view of the above, discussion, we find no merit in this appeal, and the same is accordingly dismissed.

15. However, the respondents are directed to comply with the order of the learned Single Judge regarding payment of the petitioner's salary/remuneration for the period he had worked, within a period of three months from the date of receipt/production of a copy of this order.