
(2015) 05 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4124 of 2008

Shobha Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Citation : (2016) 1 AJR 64 : (2015) 3 JLJR 262

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Rajiv Sinha, for the Appellant

Final Decision : Allowed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for issuance of writ in the nature of certiorari for quashing the order dated 10.06.2008 (Annexure 13) passed by respondent No. 6 whereby the services of the petitioner has been terminated and for quashing letter No. 404 dated 24.05.2008 (Annexure 11) issued by respondent No. 4 by which the grant of approval of the petitioner's appointment has been denied and further prayer has been made not to give effect to the impugned order dated 10.06.2008 and also for reinstatement of the petitioner on the post of Assistant Teacher in the said school with effect from 01.06.2008 i.e. date of termination with all consequential benefits.

2. The factual exposition, as delineated in the writ application, in a nutshell is that in pursuance to an advertisement published in daily newspaper "Hindustan", the petitioner was appointed as Matric trained Assistant Teacher in the vacant sanctioned post in Marwari Girl's School, Dumka by the Managing Committee on 22.01.2000 having possessed the required qualification i.e. "Shikshalankar" from Rastriya Patrachar Sansthan, Geeta Bhawan, Kanpur (U.P.). The said qualification, which is equivalent to B.Ed, was duly recognized by the then State of Bihar. In pursuance to the said appointment letter, the petitioner joined in the

said school as Assistant Teacher on 28.01.2000. The Secretary of the said school, respondent No. 6, wrote a letter dated 28.1.2000 to the respondent No. 5-the Superintendent of Education for approval/sanction of the appointment of the petitioner as Assistant Teacher. In this regard, a doubt was entertained as to whether the said Rastriya Patrachar Sansthan, Geeta Bhawan, Kanpur (U.P.), from where the petitioner has got the Shikshalankar"/B.Ed degree, is recognized by the State Government or not; and whether the degree should be treated equivalent to that of the degree granted by the recognized institution. After protracted correspondence, the Director, Rastriya Patrachar Sansthan, Kanpur vide letter dated 16.01.2003 (Annexure 6) replied confirming the fact that the petitioner, who has passed the Shikshalankar held in year 1993 from the said institution and that the said degree is equivalent to B.Ed degree. But, unfortunately no decision was taken for approval of the appointment of the petitioner, which resulted in great hardship on account of non-payment of salary despite continuous works put in by the petitioner on the said post. On the contrary, the petitioner was advised to procure a fresh B.Ed degree from a recognized institute of Government of Jharkhand and accordingly with due permission of the said school, the petitioner appeared in B.Ed examination held in 2006 from Sidhu Kanhoo Murmu University, Dumka and passed with 1st Class. It has further been stated that vide departmental letter No. 746 dated 27.03.2004 the Rastriya Patrachar Sansthan, Kanpur has been declared as a fake institution without any reason or basis, for which, the petitioner cannot be found at fault. Vide letter dated 24.05.2008 (Annexure 11), the grant of approval of petitioner's appointment has been denied and the Secretary of the school was directed to act as per letter dated 24.05.2008. Shortly thereafter, to the utter misfortune and surprise, the respondent No. 6 without any rhyme and reason has terminated the services of the petitioner in the light of letter No. 404 dated 24.05.2008 issued by respondent No. 4 with effect from 1.6.2008 vide letter dated 10.6.2008 Annexure 13 to the writ application.

3. So far as question relating to legal status of Rastriya Patrachar Sansthan, Kanpur is concerned, the same has been examined at length and on proper examination, the Assistant Director General (I and R) vide its report dated 09.10.1992 (Annexure 14) has categorically gave a finding that Rastriya Patrachar Sansthan, Kanpur is a legal autonomous body, which is legally authorized to conduct the different educational course to conduct examination and to issue certificate to successful candidates. Therefore, the certificate issued by the said institute is legal and valid.

4. In the backdrop of aforesaid factual scenario, learned counsel for the petitioner has contended that Rastriya Patrachar Sansthan, Kanpur is not a forged institution. It has been submitted that even assuming that it is a forged one, as stated in letter No. 746 dated 27.03.2004 of Human Resources Department, Govt. of Jharkhand that the said Rastriya Patrachar Sansthan Kanpur is fake institution and on the basis of degree obtained from the said institution i.e. degree of Shikshalankar, no appointment could be done, but that

cannot be given retrospective effect. Further ground which has been taken by the petitioner is that vide judgment dated 18.11.2009 passed by this Court in W.P. (S) No. 5959 of 2005, wherein the appointment has been made on the basis of certificate obtained from the same institution and the said certificate has been held to be valid. Since issue has already been decided, therefore, in the fitness of things on the ground of equity and justice, the petitioner is also entitled to be given same benefit.

5. Per contra, counter affidavit has been filed by the respondents repelling the contentions made in the writ application. It has been contended in the counter affidavit that the Government of Jharkhand , Human Resources Development Department has issued guidelines regarding recognition of the teachers training college/institutions situated in the State of Uttar Pradesh vide letter No. 746 dated 27.03.2004 wherein it has been stipulated that Rastriya Patrachar Sansthan is a fake institution and on the basis of degree of Shikshalankar issued by the said institution, no appointment could be done. Further guidelines has been issued on the basis of report issued from the Director, Higher Education, Allahabad and Director, S.C.E.R.T., U.P. (Lucknow). It has further been submitted in the counter affidavit that the initial appointment of the petitioner is not legal and valid as she had not requisite training, which was essential for applying to the post advertised. In such circumstances, the approval of the appointment of the petitioner cannot be granted. Further, it would not be proper to grant approval on the basis of B.Ed degree which has been obtained after lapse of seven years from the date of appointment. It has further been submitted that since the very appointment of the petitioner was illegal due to furnishing of certificate from the institution, which was not recognized and subsequent passing of B.Ed examination after lapse of seven years would not entitle the petitioner for approval of his appointment on the said post.

6. Having heard Mr. Rajeev Sinha, learned counsel for the petitioner and J.C. to S.C. I for the respondents and after giving my anxious consideration to the documents available on record, I am of the view that the impugned order dated 10.06.2008 (Annexure 13), whereby services of the petitioner has been terminated and letter dated 24.05.2008 (Annexure 11), whereby grant of approval of petitioner's appointment has been denied, are not legally sustainable for the following facts, reasons and judicial pronouncements:

(i). The controversy regarding validity of the petitioner's B.Ed certificate obtained from Rastriya Patrachar Sansthan, Kanpur is misconceived in view of the fact that the provisions of National Council for Teachers Education Act, 1993 (hereinafter to be referred as the "N.C.T.E. Act") came into effect since 1st July, 1995, which cannot be applied with retrospective effect. The Act which came into existence subsequently could not possibly have been applied retrospectively to defeat the benefit of appointment genuinely granted on the basis of valid certificate issued by the institution, which was duly recognized by the State Government of Uttar Pradesh as evident from Annexure 14 to the writ petition.

(ii). In pursuance to the amendment carried out in the year 2006 in the N.C.T.E. Act, it has been declared that certificate obtained by the candidates, prior to coming into force of N.C.T.E. Act, 1993, from any institution, which may not have been recognized, shall continue to be treated as valid, therefore, under such circumstances, the certificate produced by the petitioner in the year 1993 cannot be treated as invalid and his appointment could not have been terminated.

(iii). Assuming that the Rastriya Patrachar Sansthan, Kanpur is a forged institution, as per communication No. 746 dated 27.03.2004 since it has been reported by the Director General (I and R) vide its report dated 09.10.1992 that the Rastriya Patrachar Sansthan, Kanpur is a legal autonomous body and certificates issued by the said institution is recognized and valid, hence, the communication No. 746 dated 27.03.2004 cannot be given retrospective effect. Moreover, the institution from where the petitioner has obtained B.Ed certificate was duly recognized by the Government of Uttar Pradesh at the relevant time and as per the amendment carried out by the N.C.T.E. Act, such certificate shall have to be treated as valid.

(iv). Furthermore, the very issue came up before this Court in W.P. (S) No. 5959 of 2005, which was disposed of vide order dated 18.11.2009 wherein the appointment on the basis of certificate obtained from the same institution has been held to be valid and the petitioner on the ground of equity, parity and justice is also entitled to be extended same benefit.

7. On careful consideration of the aforesaid facts and documents available on record and after hearing the parties at length, I find that the petitioner has been able to make out a case warranting interference by this Court, accordingly, impugned order dated 10.06.2008 (Annexure 13) and letter dated 24.05.2008 (Annexure 11) are hereby quashed and respondents are directed to reinstate the petitioner in his former post with all consequential benefits including continuity in service and the arrears of wages during the period, in which, he has served in the school. So far as back wages for the interregnum period of termination till the date of reinstatement is concerned, since there is no straight jacket formula for grant of back wages, a balance has to be struck for grant of back wages between interregnum period and sufferings undergone by the petitioner for no fault on his part vis-?-vis principle of "no work no pay" and considering the principles laid down by the Hon'ble Apex Court in the case of Principal, Ayurvedic College and Others Vs. Sushil Chandra Misra and Another, (2006) 110 FLR 384 : (2006) 6 SCALE 274 : (2006) 12 SCC 703 : (2007) 2 SCC(L&S) 340 : (2006) 2 SCR 863 Supp and Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, AIR 2002 SC 2676 : (2002) 94 FLR 741 : (2002) 5 JT 143 : (2002) LabIC 2640 : (2002) 2 LLJ 1156 : (2002) 5 SCALE 174 : (2002) 6 SCC 41 : (2002) 1 SCR 127 Supp : (2002) 3 SCT 665 : (2002) AIRSCW 3008 : (2002) 4 Supreme 592 . I am of the considered view that for the ends of justice the petitioner is entitled to get 25 % back wages from the date of termination till the date of reinstatement. Accordingly, the respondents are directed to do the whole

exercise of reinstatement and payment of arrears of salary within a period of eight weeks from the date of receipt/production of copy of this order.

8. With the aforesaid observations and directions, this writ petition is allowed.