
(2000) 07 PAT CK 0096
In the Patna High Court
Case No : C.W.J.C. No. 9765 of 1999

Sidheshwar Nath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2000) 4 PLJR 49

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Tara Nath Jha, for the Appellant; Jawahar Dhari Singh for State, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition is directed against orders contained in Annexures 4 and 5. By Annexure-4 the appeal preferred by the petitioner against the order of his transfer was rejected by the Secretary, Secondary, Primary and Adult Education Department; by Annexure-5 his claim for recognition as founder Headmaster of the school, namely, Sri Jairam Churaman Adarsh High School, Mohania, district Kaimur, was rejected. The relevant facts are these. The petitioner worked as Assistant teacher in High School, Chhaun, district Rohtas from June 1970 to July 1980. He then joined the school in question i.e. Sri Jairam Churaman Adarsh High School in August 1980. The school was ganted permission to establish in 1981 (date not disclosed). On 19.6.82 it was taken over u/s 3(3) of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. In the notification the petitioner was described as Acting Headmaster and it was mentioned that until appointment of permanent Headmaster, he was authorised to function as Acting Headmaster. He continued to function as such until he was transferred to Gandhi Memorial High School, Chainpur, district Kaimur, as an Assistant teacher on 31.12.98. He preferred appeal as provided in the rules before the Secretary of the Department

In charge Secondary Education, which was rejected on 29.4.99 vide Annexure-4. It appears that before the Secretary the petitioner had raised claim for being recognized as founder Headmaster. The Secretary did not go into that matter observing that that was a separate issue which had no nexus with the transfer. It appears that in the meantime the petitioner had also lodged claim for being recognized as founder Headmaster of the school, before the Director which has been rejected by the other impugned order vide Annexure-5 on 15.9.99.

2. On these facts the petitioner challenged the validity of the said two orders. A supplementary affidavit has been filed stating therein that the Vidyalaya Seva Board had concurred in the proposal to recognize the petitioner as the founder Headmaster on 25.4.98 in terms of circular no. 129 dated 30.11.81. Copy of the said letter has been enclosed as Annexure- 6. This fact apparently was not brought to the notice of the Director. In fact, in the writ petition also no clear averment in this regard was made except that the petitioner had "learnt" that the Board had granted its concurrence in his appointment/promotion as Headmaster. The result is that though the respondents have filed counter affidavit they have not dealt with this aspect of the matter.

3. Though they said letter dated 25.4.98 was apparently not brought to the notice of the Director, the petitioner's claim to founder Head-mastership, was nevertheless canvassed and considered. The Director rejected the claim on the ground that as the school in question was not a recognized school prior to 2.10.80 the petitioner could not be recognized as founder Headmaster as per note to Rule 4(3) (a) of the Bihar Nationalized Secondary Schools (Conditions of Service) Rules, 1983. I do not find any error in the finding.

4. From bare reading of the Note appended to Rule 4(3) (a) of the said Rules it is clear that only such teachers who were appointed in a recognized school prior to 2.10.80 can be recognized as founder Headmaster provided they have been working in the school since the date of establishment continuously without any break and they possessed the necessary academic qualification and eligibility required for the post of In charge Headmaster at the inception. The school in question, as noted above, was granted permission to establish only in 1981. Though, thus, the petitioner claims to have joined the scale in 1980 (date not disclosed), as on 2.10.80 the school was not recognized. It may be mentioned here that u/s 3(3) of the Take Over Act, only such schools which had been granted permission to establish or had applied for such permission up to the date of promulgation of the Takeover Ordinance i.e. Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980 (Ordinance No. 146/80), viz., 11.8.80, could be taken over and that is how apparently the school was eventually taken over. Apart from that, nothing has been stated to the effect that on the date of his initial appointment in August, 1980 he possessed the necessary academic qualification and eligibility as required for the post of in charge Headmaster.

5. Counsel for the petitioner, however, submitted that recommendation of the

Vidyalaya Seva Board is binding on the Director, and as the Board had recommended the petitioner for being recognized as founder Headmaster in terms of circular no. 129 dated 30.11.81, the Director had no option but to recognize him as the founder Headmaster of the school. In the present case, I do not wish to go into the larger question as to whether the recommendation of the Vidyalaya Seva Board is binding on the Director or not, as I am of the view that the recommendation does not seem to be in accordance with law and the same, therefore, cannot be enforced in writ jurisdiction. The rules as contained in Circular no. 129 dated 30.11.81 relate to establishment of Secondary schools, their recognition and taking over of management and control as a result of the takeover u/s 3(3) of the Act. It consists of 8 paragraphs. The relevant part of the circular, namely, clause (X) on which reliance has been placed, is a part of Rule 3 which deals with the conditions and procedure for recognition of the schools which have been granted permission to establish or such permission has been applied for. Sub-clause (x) lays down the eligibility to the post of Headmaster and provides that the appointment to the post shall be made on the recommendation of the Vidyalaya Seva Board by the officer authorized by the State Government. The circular does not create any vested right in the person to be recognized as founder Headmaster. In fact, there is nothing in the circular which provides for recognition of teachers as the founder Headmaster. It may be mentioned here that the State Government had issued a separate circular with respect to recognition of founder Headmasters, being circular no. 511 dated 20.11.81. No attempt has been made to bring the case of the petitioner within the frame-work of the said circular. In fact, not even reference was made to it during the hearing of the case. The case of the petitioner, therefore has to be considered within the frame-work of the 1983 Rules, and as per the said Rules, as the school in question was not recognized as on 2.10.80, the petitioner cannot be recognized as founder Headmaster, vide Note to Rule 4(3)(a) of the said Rules.

6. Counsel for the petitioner referred to few judgments and, in fairness, I must deal with them. He firstly relied on the case of Ram Ballabh Prasad Singh vs. State of Bihar, 1986 PLJR 373, and the order of the Supreme Court arising there from, reported in 1988 PUR 70 (SC) I have gone through paragraph 20 of the judgment of this Court (1986 PLJR 373) and found nothing therein to suggest that under Circular no. 129 dated 30.11.81 the person concerned acquires any right to being recognized as founder Headmaster. In fact, as pointed out above, the said circular merely lays down the eligibility for the post of Headmaster. As regards founder Headmaster, it is circular no 511 dated 20.11.81 which created such rights subject to the conditions mentioned there in. In this connection reference to the Bench decision in the case of Phulena Prasad Yadav vs. State of Bihar. 1991(2) PLJR 449, would not be out of place, wherein the scope of that circular has been dealt with at length. So far as the order of the Supreme Court [1988 PLJR (SC) 70] is concerned, it said nothing except making few observations regarding scrutiny of the teachers (or being recognized as such after the takeover.

7. Counsel next relied on the case of A.K. Pradhan vs. State of Bihar, 1998(2) PLJR (SC) 2. Therein the Supreme Court by a short order observed that the appellant had no right to be automatically absorbed (sic-absorbed ?) as Government servant on the takeover of unrecognized school but as he had completed more than 7 years of service he had become eligible to be considered for secularization. The said decision came in for consideration by this Court in Ram Balak Prasad Singh Vs. The State of Bihar and Others, , and Dhruv Lochan Pradhan vs. State of Bihar, 2000(1) PLJR 996. It has been held that the order of the Supreme Court in A.K. Pradhan's case does not lay down any principle of law and has to be treated as an order passed under Article 142 of the Constitution of India.

8. Counsel lastly relied on Smt. Susheela Devi Vs. State of Bihar and Others, . I am afraid; this judgment too is of no help to the petitioner. No principle of law has been laid down, as a matter of fact, the claim of the petitioner for secularization, but was rejected on the ground that she was continuing as Headmaster for about 22 years the respondents were directed not to disturb her from the post, and to take steps for regular appointment giving her due weight age. Such type of orders cannot be treated as a binding precedent. The aforesaid direction was issued in view of the order of the Supreme Court in A.K.Pradhan's case (supra). Apparently, attention of the learned Judge was not drawn to the orders passed by this Court in the cases of Ram Balak Prasad Singh (supra) and Dhruv Lochan Pradhan (supra).

9. In the above premises, I do not find any error in the impugned orders nor do I find any merit in the claim of the petitioner for being recognized as founder Headmaster.

10. Before I conclude, I would like to mention that rule 4 of 1983 Rules provides for two modes of appointment on the post of Headmaster-one by direct recruitment and the other by way of promotion. As regards promotion the provisions are contained in Rule 4(3) (b) of the Rules. If the petitioner thinks he is eligible for promotion to the post, it is open to him to represent his case within the frame-work of the said Rules against the vacancies falling in the promoter's quota, in accordance with law. With the observations as mentioned in the preceding paragraph, this writ petition is dismissed.