
(1995) 09 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2572 of 1991

Smt. Jaishree Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Citation : (1995) 09 PAT CK 0055

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed for quashing the orders at Annexure 13 and 19 as a result of which the Petitioner has been reverted from the post of Head Mistress in Girls" Middle School, Borio (hereinafter called the said School) and has been asked to function as Assistant Teacher in the said School and Respondent No. 5 Smt. Sarla Saran has been asked to function as the Head Mistress of the said School.

2. Before filing the present writ petition, she had also filed another writ petition bearing C.W.J.C. No. 7339 of 1988 against the reversion order at Annexure-13 dated 1st September, 1988 issued by Respondent No. 4 purporting to revert her from the said post but the said writ petition was permitted to be withdrawn by an order of this Court dated 26th September, 1988. Thereafter again another writ petition was filed being C.W.J.C. No. 8539 of 1988 against the same order dated 1st September, 1988 but by way of inadvertence the fact about the withdrawal of the earlier writ petition being C.W.J.C. No. 7339 of 1988 was not initially mentioned. Thereafter, on detection of the said omission, a supplementary affidavit was filed in the said writ petition (C.W.J.C. No. 8539 of 1988). But when the said writ petition (C.W.J.C. No. 8539 of 1988) was finally taken up for hearing by this Court on 21st February, 1990 the same was dismissed on account of omission on the part of the Petitioner in stating about the earlier filing and withdrawal of C.W.J.C. No. 7339 of 1988. But this Court while dismissing the said writ petition being C.W.J.C. No. 8539 of 1988 by order dated 21st February, 1990 was pleased to observe that the Petitioner may pursue other internal remedies

available to her.

3. Now in this writ petition, the Petitioner's case is that pursuant to the said order dated 21st February, 1990 she made a representation and the said representation was finally disposed of by an order dated 30th March, 1991 as contained in Annexure-19 purporting to revert the Petitioner from the post of the Head Mistress of the said School.

4. The factual aspects of the case may be stated hereunder:

The Petitioner after doing her Sahitya Bhushan from Hindi Vidyapeeth, Deoghar which is equivalent to I.A. and teachers Training Course (two years) in the year 1971, was duly appointed in the year 1973 in the vacant post of Head Mistress in Girls Middle School, Meherma in the district of Santhal Pargana on temporary basis by the District Committee of the Santhal Pargana, Dumka after she was selected for the post and after going through the process of interview. From the appointment letter dated 17th March, 1993 issued in favour of various other teachers including the Petitioner it appears that the District Training Centre after following the proper procedure selected the Petitioner along with other candidates for the post of Head Mistress and the Petitioner's name figured at serial No. 197 in the appointment letter issued from the office of the District Superintendent of Education, Santhal Pargana at Dumka. Thereafter a letter dated 6th April, 1973 was issued from the office of the Deputy Inspector's of Schools, Godda whereby the In charge Head Mistress of the said Girls Middle School, Meherma was directed to hand over the charge of the Head Mistress to the Petitioner and accordingly the charge was handed over and the Petitioner started functioning as the Head Mistress of the said school at Meherma since 6th April, 1973. Thereafter by an order dated 2nd August, 1978 the Petitioner was transferred on the vacant post of Head Mistress in Girls' Middle School, Borio and in the said order of transfer the Petitioner's name finds place against serial No. 58. Pursuant to the said transfer, the Petitioner appeared before the Deputy Inspectors of School, Godda on 19th August, 1978 and requested him to relieve her for joining her new assignment. Then the Deputy Inspector's of Schools, Godda wrote a letter to the Deputy Inspector's of School, Godda on 23rd August, 1978 requesting the later to relieve the Petitioner at an early date. From the said letter dated 23rd August, 1978, as contained in Annexure-5, it appears that the Petitioner was addressed as the Head Mistress of the School in question. (sic) that the Petitioner was relieved by an order dated 28th August, 1978 passed by the District Inspector's of Schools, Dumka for joining the post of Head Mistress of the Girls Middle School, Borio. A copy of the (sic) order dated 28th August, 1978 has been marked as Annexure-6 to the writ petition.

5. Learned Counsel for the Petitioner relying on these documents and various other documents submitted that the Petitioner's status as Head Mistress of the said School was never disputed at any point of time. The Petitioner never was shown as acting or Incharge Head Mistress. Thereafter the Petitioner appeared and passed Hindi Noting and Drafting examination conducted by the Rajya

Bhasha department, Government of Bihar. The result of the said examination was circulated by an order dated 12th August, 1978 within the district of Dumka vide memo No. 5542 dated 23rd October, 1978 and in the said result, the Petitioner was placed at serial No. 19 and the designation has been shown as the Head Mistress of Girls' Middle School, Meherma.

6. Learned Counsel for the Petitioner has laid emphasis on the said fact of the Petitioner's passing the said Hindi Noting and Drafting examination and contended that unless that examination is cleared by the regular Head Mistress of the School, her increment is normally withheld and in the case of the Petitioner also it was stated that the increment would be released only after passing of the said examination. Thereafter by an order dated 27-3-1980 the Education Department, Government of Bihar declared that the Head Mistress/Head Masters of 89 nationalised Middle Schools detailed in Annexure-A were to be declared as drawing and disbursing authorities of the respective Schools. Accordingly the authority letter was issued to the Treasury Officer, Sahibganj by the office of the Accountant General in the month of July, 1987 to honour the bills presented by the Head Master/Head Mistress of the nationalised Middle Schools and a copy thereof was also sent to the Head Mistress, Girls' Middle School, Borio, District Sahibganj and at that point of time the Petitioner was Head Mistress of that School and because of that the Petitioner became the drawing and disbursing authority of the said School. The specimen signature of the Petitioner was attested by the District Superintendent of Education, Sahibganj on 24th August, 1987. Thereafter the Petitioner passed Sahitya Alankar from Hindi Vidyapeeth, Deoghar in the year 1984 which is equivalent to B.A. degree and as such the qualification of the Petitioner is now that of a B.A. trained teacher. It is further stated that after the Petitioner became B.A. trained, she gave several representations to the concerned authorities for B.A. trained pay scale. Pursuant to the said representation, the Petitioner was asked to appear for the interview on 25th January, 1988 and the Petitioner did appear in the said interview.

7. Suddenly on 1st September, 1988 Respondent No. 15 was appointed as the Head Mistress of the Girls' Middle School, Borio where the Petitioner was holding the said post of Head Mistress and she was asked to work as an Assistant Teacher of the said School. In the said impugned order dated 1st September, 1988, the Petitioner has been wrongly shown as the temporary Head Mistress. The said order at Annexure-13 has been impugned in this writ petition.

8. As has been stated earlier, the said order was challenged by the Petitioner firstly in C.W.J.C. No. 7339 of 1988 which was later on withdrawn and therefore another writ petition was filed being C.W.J.C. No. 8539 of 1988 challenging the self same order. The said writ petition, for the reasons stated hereinabove was withdrawn with liberty to the writ Petitioner to pursue internal remedies.

9. Pursuant to the said liberty, she made a representation to the Deputy Commissioner-cum-Chairman, District Education Establishment Committee,

Sahebganj (Respondent No. 3). A copy of the said representation was also forwarded to the District Education Officer and the District Superintendent of Education, Sahibganj and the Regional Deputy Director of Education, Dumka and the Director Primary Education, Patna under registered cover by the Petitioner. Thereafter by an order dated 19th April, 1990 issued by the District Superintendent of Education, Sahibganj (Respondent No. 4), Respondent No. 5 was allowed to function as temporary Head Mistress of the said School and the Petitioner was directed to hand over the charge of the said school to Respondent No. 5. As the Petitioner's representation dated 23rd April, 1990 was not being disposed of and the aforesaid order was passed for handing over the charge to Respondent No. 5, the Petitioner gave a reminder in respect of her representation on 4th May, 1990 to the Deputy Commissioner-cum-Chairman, District Education Establishment Committee, Sahibganj with a prayer that the Petitioner may be allowed to function as the Headmistress of the said School. Thereafter by an order dated 7th May, 1990 issued by the District Superintendent of Education, Sahibganj the operation of the order dated 19th April, 1990 asking Respondent No. 5 to function as the Head Mistress of the said School was stayed. Then by an order dated 2nd June, 1990 the District Education Officer, Sahibganj disposed of the Petitioner's representation and in the said order dated 2nd June, 1990 it was stated that the Petitioner worked as the Head Mistress of the said School for about 15 years and her services were throughout satisfactory. It is further stated that Respondent No. 5 was appointed in the year 1978 and had given B.A. trained pay scale in the year 1987 with retrospective effect from the year 1981 and has been made Head Mistress. It was further stated that the removal of the Petitioner from the post of Head Mistress of the said School after 15 long years of satisfactory service without any decision of the District Establishment Committee was against the requirement of law and as such the District Superintendent of Education cancelled the order dated 1st September, 1988 and also the order dated 19th April, 1990 and directed the Petitioner to continue as the Head Mistress of the said School and it was further directed that the proposal be placed before the District Establishment Committee for giving B.A. trained pay scale to the Petitioner with effect from 1984 and it was further stated that Respondent No. 5 may be posted in any other School. Thereafter suddenly an office order was issued by the District Superintendent of Education, Sahibganj as contained in memo No. 2181-86 dated 30th March, 1991 wherein it has been stated that as per the decision of the Director, Primary Education, Patna in letter No. 142 dated 16th January, 1991 the Petitioner was not entitled to function as Head Mistress of the School as the Petitioner's appointment on the post of Head Mistress cannot be deemed to be regular in view of the fact that at the time of appointment the Petitioner was not graduate trained teacher. As such by the said order Respondent No. 5 was directed to officiate as the Head Mistress of the said School until further order and the Petitioner was asked to hand over the charge of the said School Respondent No. 5. A copy of the said impugned order dated 30th March, 1991 is Annexure-19 to the writ petition.

10. Thereafter this writ petition was filed on 4th April, 1991 and by an order dated 15th May, 1991 an order for maintenance of status quo was passed. Thereafter the instant writ petition was admitted on 26th August, 1991. The said interim order is continuing till today.

11. The said orders at Annexures 13 and 19 have been challenged by the writ Petitioner on the following grounds:

(i) The Petitioner was duly qualified at the time of her appointment and the appointment was validly and regularly made and it was not on ad hoc basis and as such the said appointment cannot be withdrawn or cancelled after a period of 15 years and that too without hearing the Petitioner.

(ii) Even if the person concerned does not have the required qualification at the time of appointment but if the person acquires the same during the tenure of service, the appointment becomes regular from the date such qualification is acquired.

(iii) There cannot be reversion of the Petitioner after so many years. The impugned order of reversion has been passed in complete violation of the principles of natural justice.

12. Learned Counsel appearing for the State has filed a counter affidavit and has supported the impugned action on the finding that the order contained in Annexure-19 is in accordance with the government circular and as such there is no question of giving any show cause to the Petitioner who was not appointed as the regular Head Mistress but she was only officiating as care-taker, Headmistress of the said School Circular No. 2440 dated 18th December, 1984 has been annexed in the said counter affidavit and reliance has been allegedly placed on the same.

13. On a perusal of Circular No. 2440 dated 18th December, 1984 this Court does not find that the same stands in the way of the Petitioner's continuance as the Head Mistress of the School in question. In any event the same cannot be considered to be a bar to the appointment of the Petitioner which was made in the year 1973. The other allegation made in the counter affidavit to the effect that the Petitioner was appointed as an In charge Head Mistress is not correct as would appear from various documents annexed by the Petitioner with the writ petition. In fact in the Petitioner's reply to the counter affidavit filed on behalf of the State, several documents have been mentioned for which the Petitioner's status as Head Mistress will be apparent. Those documents are at Annexures 5, 6, 7 and 12 of the writ petition and also other documents.

14. Learned Counsel for the Respondents, however, never tried to controvert the other charge made by the Petitioner that she has been allegedly reverted from the post of Head Mistress without being given any opportunity of hearing to her or even without being given any opportunity of showing cause against the proposed reversion. To that charge, the stand of the Respondents is that since

the Petitioner was holding the post of In charge Head Mistress and on a purely temporary basis, she is not entitled to have any notice.

15. As I have already indicated that it is not possible for this Court to hold, having regard to the case made out in the writ petition, that the Petitioner was appointed as an In charge Head Mistress, this Court is of the view that the Petitioner is entitled to get an opportunity of hearing before the impugned order of reversion has been passed. In this connection, learned Counsel for the Respondents has placed reliance on the decision of the Supreme Court in the case of *Management of M/s. M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar* reported in 1990 B.R.L.J. 176 paragraph 25. Though the said judgment was rendered by the apex Court in a factually different context but in the said judgment the evolving mosaic of law relating to principles of natural justice has been traced and in paragraph 25 of the report, the following observations have been made:

The management need not establish particular prejudice for want of such opportunity. In *S.L. Kapoor Vs. Jagmohan and Others*, Chinnappa Reddy, J., after referring to the observation of Donaldson, J., in *Altco Ltd. v. Sutherland* (1971) 2 Lloyd's Rep. 515), said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasised that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observation of natural justice itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.

16. Here the prejudice of the Petitioner is apparent on the ground of impugned order of reversion. As such in the facts and circumstances of the case, it was incumbent upon the authorities concerned to hear the Petitioner before passing the impugned order.

17. Learned Counsel for the Respondents (sic-Petitioner?) has also relied upon a decision of the Supreme Court in the case of *Ram Sarup Vs. State of Haryana and Others*, The said judgment was cited for the proposition that where a person, initially recruited, did not have the experience of the qualification but the said person while working for a number of years had acquired the qualification during the course of his working in the post, the initial appointment becomes regular. This judgment was cited for the purpose of contending that after the Petitioner qualified herself as graduate trained teacher in the year 1984 then even if it is assumed that her initial appointment was irregular, but as a result of her acquiring the qualification the said appointment has become regularised. This Court is of the view that those principles enunciated in the said case are attracted to the facts of the instant case inasmuch as the Petitioner has subsequently acquired the qualification of a B.A. trained teacher and the Respondents authorities must take into account that fact before passing the

order of reversion.

18. Failure on the part of the Respondents to take that into account before passing the impugned order of reversion show that they have not acted with due application of mind before passing the order of reversion nor the Respondents have taken into consideration the relevant fact which should have been done before reverting the Petitioner.

19. Learned Counsel for the Petitioner has also placed reliance on the decision of the Supreme Court in the case of H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, In that judgment it has been stated that once the incumbents have been appointed to a particular post, even if such appointments are manifestly wrong and made in departure from the normal procedure, the said person cannot be asked at a later stage to appear in viva voce test conducted by the Public Service Commission for fresh selection. Such appointees must be considered to have been correctly appointed on humanitarian ground and incumbents will be entitled to the benefit of past service. Here the case of the Petitioner stands on a much better footing. It cannot be said that the Petitioner was appointed in departure of the normal procedure. Therefore, passing the order of reversion against the Petitioner after (sic) has been allowed to work on the post for 15 years is wholly un-just and unfair in the facts and circumstances of the case.

20. Learned Counsel for the Respondents has, however, placed reliance on (sic) decision of the Supreme Court in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, In the said judgment of the Supreme Court it has been held that when a person is merely asked (sic) officiate on higher position which is not a promotion, the person concerned does not get any right in such an arrangement and he continues to hold the substantive lower post and only discharges the duties of a higher post essentially as a stop gap arrangement. In the instant case the said judgment has no application inasmuch as the initial appointment of the Petitioner had been on the post of Head Mistress and she is continuing on the said post pursuant to her appointment in the year 1973 till she was dislodged under the impugned order. It is no body's case that the Petitioner was promoted to the post of Head Mistress in 1973. It was her initial appointment to that post. Therefore, the ratio of the judgment of the Supreme Court in the case of Rama Kant Shripad (supra) cannot be followed in the facts and circumstances of this case.

21. Learned Counsel for Respondent No. 5 has submitted that he has no objection to the continuance of the Petitioner as Head Mistress if the Respondent No. 5 is accommodated as Head Mistress in any other School. In face Respondent No. 5 is continuing as Head Mistress despite the interim order granted by this Court in favour of the Petitioner for her continuance as the Head Mistress. No other submission has been made by the learned Counsel for Respondent No. 5. In that view of the matter, this Court does not enter into any assessment of the respective claim of seniority between the Petitioner and

Respondent No. 5.

22. For the reasons aforesaid, this writ petition succeeds and the impugned orders at Annexure 13 and 19 of the writ petition are hereby set aside. The Respondents authorities are not to interfere with the Petitioner's functioning as the Head Mistress on the basis of those orders of Annexure 13 and 19. It is further made clear that the Petitioner's claim of any scale of B.A. trained teacher must be released from the date she acquired the qualification of graduate trained teacher. It is fit and proper that such pay of the Petitioner as graduate trained teacher be released within a period of three months from the date of receipt/production of a copy of this order.

23. There will be no order as to costs.