
(1992) 08 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5847 of 1992

Smt. Sarita Gupta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1993) 1 BLJR 643

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—In this application the petitioner has prayed for quashing of an order contained in Memo No. 2537 dated 29-6-1992 whereby a decision was communicated to the petitioner that the matter relating to grant of promotion by Dr. Prem Shankar Srivastava will remain stayed.

2. The petitioner was appointed as a Science Teacher on 6-4-1977. She was allegedly promoted to the higher grade namely, the grade of B.Sc. trained teacher by an order dated 31-12-1979.

3. However, the said gradation list was changed in the year 1985 in terms whereof the petitioner became Junior. She filed a representation on 19-8-1985 as contained in Annexure-5 to the writ application.

4. According to the petitioner various persons were promoted to the post of Headmasters on the condition that if the case of teachers senior to him had not been considered, the seniority of such teachers would be protected.

5. The petitioner allegedly was promoted to the post of Headmasters by an order dated 24-4-1991 as contained in Annexure-9 to the writ application.

6. However, by reason of the impugned order, in view of the fact that various complaints were received against Dr. Prem Shankar Srivastava relating to grant of irregular appointment/promotion, the State Government notified to review all

the promotions during his tenure i. e., during January, 1991 to September, 1991 which is contained in Aimexure-10 to the writ application.

7. The District Education Establishment Committee in its meeting dated 13-5-1992 cancelled the promotion of the post of Headmasters on the ground that the post of Headmasters of Samastipur District has been stayed by this Court.

8. The petitioner has contended that it is incorrect to state that stay has been granted in the case of grant of promotion by a Headmaster in the district of Samastipur, as the said order of stay has allegedly been vacated in a writ petition bearing No. 5046 of 1982.

9. The petitioner has contended, therefore her case stands absolutely on a different footing and thus the impugned order should not be made applicable in his case.

10. It has been noticed by this Court in many cases that Dr. Prem Shankar Srivastava had passed orders of promotion without placing matter before the District Education Establishment Committee which was a must.

11. This Court in C W. J. C. No. 9207 of 1991 has refused to exercise its discretion on the ground that the matter requires consideration at the hands of the District Education Establishment Committee.

12. In that case and other similar case this Court directed that the case of all eligible candidates should be considered by the District Education Establishment Committee.

13. In this view of the matter, we direct the District Education Establishment Committee to consider the cases of all eligible teachers in accordance with law and in compliance with Articles 16 of the Constitution of India, if there arises any dispute with regard to seniority of the teachers, individual teachers may file their representations before the District Education Establishment Committee, which may be verified by it in presence of any representative of the teachers preferably the President and/or General Secretary of the Teachers' Association, For the purpose of consideration of individual representation of the petitioners, it would not be necessary for the District Education Establishment Committee to hear the teachers individually as their cases can be represented by their authorised representative namely, President and/or General Secretary of the Teachers Association. However, in any case, any particular teacher has any grievance with regard to grant of a particular scale of pay to him from the very beginning, he may file proper representation before the competent authority which may be considered on its own merits.

14. However, in cases where it is found that in absence of proper gradation list it is not possible for the District Education Establishment Committee and/or the representatives of the teachers to come to a just decision in that event a tentative gradation list would be prepared within three months from the date of

receipt of the copy of this order and a final gradation list should be prepared within a period of two months thereafter and in the meanwhile at least one month's time should be given to the affected teachers to their objections to the draft gradation list. Once the final gradation list is published, the District Education Establishment Committee shall pass appropriate orders of promotion in accordance with law keeping in view the sanctioned strength of each cadre, the existing vacancy etc.

15. In the meanwhile, there shall be no recovery from the petitioner pursuant to the impugned order, but it is made clear that in the event, the decision of the District Education Establishment Committee goes against the petitioner, the State would be at liberty to recover the amount from the salary of the petitioner.

16. This application is disposed of with the aforementioned directions but without any order as to costs.