
(1992) 09 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7955 of 1992

Smt. Shashi Bala Verma

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 — Rule 20(2)
Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 PLJR 454

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

Bench : Division Bench

Advocate : Dilip Kumar Tiwari, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha & G.C. Bharuka, JJ.—The present writ application has been filed by the petitioner for issuance of a writ of mandamus directing the respondents to consider the case of the petitioner for her appointment to the post of Headmistress of Gutilal Girls High School, Ram Nagar, in the district of West Champaran and after according her the desired promotion, grant all consequential reliefs. The relevant facts may be stated in brief. According to the petitioner she has been appointed as Assistant Teacher in the aforesaid schools on 1.4.1978. According to her, the post of Headmistress is lying vacant in the said school since 1978, with effect from 2.10.1980 the school has been taken over under the provisions of the Bihar Non-Government Elementary School (Taking Over of Management and Control) Act (hereinafter in short "the Act").

2. It is also the case of the petitioner that in 1978 one Smt. Ram Pyari Devi was working as Acting Headmistress but since she got an appointment in the Project School at Bagaha, therefore, she left the school in question. After her the petitioner being the senior most teacher started working as an Acting Headmistress. It appears that pursuant to an order dated 6.8.1991 passed by the respondent Director one Shri Daroga Choubey was posted as Headmaster in

the school. The petitioner being aggrieved by the said posting filed a writ application in this Court being C.W.J.C. No. 5594 of 1921 seeking two reliefs, namely, (i) quashing of the order of posting of the said Shri Daroga Choubey and (ii) a direction for her promotion to the post of Headmistress. The said writ application was disposed of on 1.10.1991. In the said writ application, it was directed that in view of various Government instructions, male teachers can not be posted in Girl Schools and, as such, the respondent Director was directed to pass appropriate orders regarding posting of said Shri Daroga Choubey. The petitioner was also allowed to file a representation in this regard. Accordingly, the said Shri Daroga Choubey was transferred to another school and the petitioner again started functioning as the Incharge Headmistress.

3. It may be relevant to state here that in the earlier writ application, referred to above, no relief was granted to the petitioner, since as it appears from the order itself (Annexure-2) the petitioner confined her prayer in respect of relief no. 1 and thereby did not press the second relief regarding her promotion.

4. In the present writ application, the petitioner has again sought to seek the same relief which she had abandoned in the earlier writ application. In this view of the matter, we are not inclined to allow the petitioner to raise the same issue once again in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India. But keeping in view the facts and circumstances of this case, we would like to dispose of the writ application on merits as well.

5. The submission made on behalf of the petitioner is that since the post of Headmistress of the school is lying vacant since 1978 i.e. prior to 2.10.1980, therefore, the petitioner, who is working as In-charge Headmistress in the school being the senior most female teacher, is entitled to be promoted on the post of Headmistress by treating the school as a unit in view of the Government order contained in Letter no. 210 dated 20.11.1981 read with Notification No. 538 dated 6th July, 1983 issued under Rule 20 (2) of the Bihar Nationalised Secondary School (Conditions of service) Rules, 1983, which have been framed under the provisions of the Act.

6. We have dealt with in detail with regard to filling up of the post of Headmasters which had fallen vacant prior to 2.10.1980, the date of nationalisation of school, in the case of Jagdish Pandit vs. State of Bihar (C.W.J.C No. 1876 of 1990) and have held that the aforesaid Government orders will govern all such claims. What is relevant for the present case is that even in cases where the post of Headmasters had fallen vacant prior to 2.10.1980 the teacher claiming the right of consideration for promotion to the said post should have the prescribed eligibility on 2.10.1980. One of the eligibility clauses referred to in paragraph 2 of the letter dated 20.11.1981 is that such teacher should have minimum 10 years teaching experience in the school but in case of Tribes, Harijans and Women candidates they should have at least 7 years teaching experience. In the present case as per her own showing the petitioner has been appointed in the school on 1.4.1978 and therefore on 2.10.1980 she was not

eligible for being appointed as Headmistress even in view of the aforesaid Government orders. Therefore, the prayer as made by the petitioner is not tenable. The writ application is accordingly dismissed. There will be no order as to costs.