
(1997) 09 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 1820 of 1984

Smt. Shashi Prabha Varma	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Citation : (1997) 2 PLJR 930

Hon'ble Judges : Radha Mohan Pd., J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Tej Bahadur Singh, for the Appellant;
Ashok Kumar Singh and Pravin Kumar Verma and Ganesh Prasad Singh and B.K.
Dubey, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The prayer in this writ petition is to quash the orders, contained in letter no 676-79 dated 5.10.1982, letter No. 560 dated 14.3.1983, letter No. 4901 dated 19.8.83 and memo No. 563 dated 13th March, 1984 passed by the Respondent authorities and to direct the Respondents to consider the case of the Petitioner for promotion on the post of Headmistress in Girls Middle School, Dalmianagar in the district of Rohtas which is a Non-Government Aided School.

2. On 13.4.1984 after hearing the learned Counsel for the parties, this Court directed for maintaining status quo as obtaining on that date On 10.5.1984, while admitting the writ petition this Court directed for continuance of the said interim order. I am informed that by virtue of the said order though the Petitioner is functioning as Headmistress, but not being paid salary of the said post. This Court in the order dated 7.8.1985, after noticing that the controversy in this writ application is with regard to the interse seniority of the Petitioner and Respondent No. 7 and that the fate of the impugned order will depend on the outcome of the said controversy, felt that the authorities should examine this matter at their level and give this Court the benefit of their considered decision in

the form of a report after hearing both the parties. The Education Commissioner-cum-Secretary was, accordingly, directed to ask the concerned Joint Secretary of his department to look into the matter and send a report to this Court Within four months. The parties were also directed to appear before the Education Commissioner-cum-Secretary for further action.

3. It appears that despite several orders to expedite the hearing of this case, the matter remained pending as no report was submitted by the Education Commissioner-cum-Secretary. However, after this Court took serious exception to the said attitude of the Respondents, the Secretary, Secondary, Primary and Adult Education, Bihar, Patna himself enquired and submitted a report on 14.5.1995 along with the supplementary counter affidavit filed on 20th May, 1996.

4. In the said report it has been noticed that no rules have been framed separately regarding promotion and seniority of the Teachers working in the Non-Government Aided Schools. It has, however, been held by him that in the absence of separate rules for appointment and promotion in such Schools, the approval is given on the basis of the Government rules and instructions relating to Nationalised Schools. According to the Secretary, the Government pay-scale has been extended to the aided schools for the purpose of sanction of grant and as such the same conditions for entitlement for different pay scales have to be enforced, and it is not open for the Managing Committee to have their own yardstick for giving a particular pay-scale to any Teacher. According to him, relevant instructions in this regard are letter No. 4557 dated 15th September, 1976 and letter No. 2060 dated 15th September, 1981. The promotion on the date of vacancy, i.e., on 15.4.82 in the present case has to be made in accordance with the above instructions which envisage that promotion to a particular grade of pay-scale will be made to the Teachers receiving pay-scale of lower grade. Since the post of Headmistress belongs to Grade 3, the Teachers receiving the pay-scale of grade 4 and grade 5 will be entitled for promotion to this grade on the basis of their seniority in grade 4 and grade 5: It has been found that the Petitioner is the senior most teacher receiving I.A. trained scale, therefore, she should be given promotion to the trained graduate scale by virtue of her seniority. Respondent No. 7, Smt. Ramawati Pandey, is the third in the seniority list and, therefore a, it has been held by him that she could not have been given promotion by superseding the Petitioner.

5. The Secretary has also taken notice of the submission made on behalf of Respondent No. 7 that she had a higher qualification as she was B.A., B.Ed. at the time of appointment itself whereas the Petitioner became graduate in 1980. According to him, the main point to be considered is as to whether the Petitioner had the qualification of trained graduate at the retime of vacancy. After noticing the said question and in view of the fact that the Petitioner had the qualification of trained graduate on 15.4.1982 and she was duly qualified to be promoted to the post of Headmistress and to get the salary of trained graduate, the Petitioner

has been held to be senior to Respondent No. 7. He, thus, found that the approval given earlier is not on the basis of various instructions on the subject. A reference in this regard has been made to letter No. 2060 dated 15th September, 1981 wherein it has been laid down that if the date of appointment and qualification of two teachers is the same, the seniority will be decided on the basis of the date, of birth.

6. Mr. Rajendra Prasad Singh, learned Senior Counsel appearing for the Petitioner submitted that in view of the report of the Secretary, the claim of the Petitioner stands substantiated and she is entitled for the relief prayed for in the writ petition.

7. Mr. Singh, learned Standing Counsel No. III appearing for the State also submitted that the Secretary had fully considered the entire aspect of the matter and has rightly held the Petitioner senior to Respondent No. 7. As such, according to him also, the approval given earlier in favour of Respondent No. 7 is based on wrong interpretation of various instructions on the subject.

8. Mr. Ganesh Prasad Singh, learned Senior Counsel appearing for Respondent No. 7, however, submitted that even assuming that the promotion of Respondent No. 7 is quashed, this Court can only direct to consider the case of all eligible candidates and as none in the School is qualified as per the present rule prescribing M.A. trained as the minimum qualification for promotion as Headmaster/Headmistress, the Petitioner cannot get any relief.

9. I am unable to accept the said submission of Mr. Singh, learned Senior, Counsel appearing for Respondent No. 7. The rule prescribing the aforementioned qualification for promotion to Headmaster/Headmistress, on which he placed reliance is of 31.12.1982 whereas the vacancy for filling up of which the impugned orders have been passed is of 15.4.1982, i.e. much prior to coming of the said rule in force. It is not disputed that the rule is to apply prospectively and not retrospectively. Thus, in my opinion, the case of the Petitioner is to be considered as per the rule prevailing on the date of the vacancy for filling up of which the impugned orders have been passed. Moreover, the said rule is applicable to the Nationalised Schools and not to the Non-Government Aided Schools. Thus, I do not find any substance in the aforementioned submission of the learned Counsel for Respondent No. 7.

10. It is not disputed by the learned Counsel for Respondent No. 7 that the Petitioner is senior to Respondent No. 7. He, however, contended that the seniority alone is not the criteria for promotion. The post of Headmistress is a selection post and service records etc. are also to be considered. He submitted that the Managing Committee on consideration of the service records etc. decided to promote Respondent No. 7. As such, the Petitioner cannot have any legitimate grievance against the same, especially when Respondent No. 7 possesses the higher qualification than her.

11. I fail to appreciate the said submission of the learned Counsel for Respondent

No. 7. Nothing has been brought on the record to show that the post of Headmistress is a selection post. From the report of the Secretary it appears that the relevant instructions in this regard are letter No. 4557 dated 15th September, 1976 and letter No. 2060 dated 15th September, 1981 which envisage that promotion to a particular grade of pay-scale will be made to the teachers receiving pay-scale of lower grade. Since the post of Headmistress belongs to grade 3, the teachers receiving the pay-scale of grade 4 and grade 5 will be entitled for promotion to the said grade on the basis of their seniority in grade 4 and grade 5. Learned Counsel for the Respondents has failed to point out any rule applicable to the School in question under which a person with higher qualification can be held to be senior to the persons though appointed later. From the report of the Secretary, I find that the qualification for promotion to the post of Headmistress/Headmaster is trained graduate at the time of vacancy. Thus, even assuming that Respondent No. 7 had a higher qualification at the time of initial appointment and the Petitioner acquired the said requisite qualification later in 1980 but much before the vacancy of the post of Headmistress in the School occurred, that would not make Respondent No. 7 senior to the Petitioner when, admittedly, she was junior to the Petitioner by virtue of her date of appointment later than the Petitioner. Moreover, the Secretary in his aforementioned report following the criteria laid down in letter No. 2060 dated 15th September, 1981 found the Petitioner senior to Respondent No. 7 also on the ground that she is senior in age about which learned Counsel for Respondent No. 7 has failed to point out any infirmity.

12. In the result, the writ petition is allowed and the impugned orders are, accordingly, quashed. The Respondent State is directed to consider the case of the Petitioner for promotion on the post of Headmistress of the School in the light of the aforementioned report of the Secretary from due date, i.e., the date of vacancy and pass the necessary orders, including the order for payment of arrear salary within two weeks of the receipt/production of a copy of this order, in accordance with law.