
(2016) 08 JH CK 0116
In the Jharkhand High Court
Case No : W.P. (S) No. 5453 of 2009

Smt. Shuru Mai Munda

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JCR 290

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. S.P. Roy, Advocate, for the State of Bihar; Mr. Prem Pujari Roy, J.C. to G.A (in W.P. (S) Nos. 7634 of 2011 and W.P.(S) No. 1637 of 2012), J.C. to G.P.-I (in W.P. (S) No. 7660 of 2011), for the State of Jharkhand (J.C. to G.P.-III (in W.P. (S) No. 545

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - As common questions are involved in all these writ applications, they are heard together and disposed of by this common order.

2. Heard learned counsel for the petitioners, learned counsels for the respondent State of Jharkhand as also learned counsel for the State of Bihar.

3. The petitioners were appointed as Assistant Teachers by the Managing Committees of the private high schools, which were subsequently selected and taken over as Project High Schools, by the State Government, for execution of the scheme to provide four high schools in each block of the districts, out of which at least one should be Girls High School. The petitioners were appointed as Assistant Teachers in between the year 1983-85 and the petitioners are claiming recognition / absorption of their services with effect from 1.1.1989 in view of the letter No. 142 dated 4.2.1989, issued by the unified State of Bihar, in the Department of Human Resources and Development, relating to the appointment of the teachers in the Project High Schools.

4. The matter of recognition / absorption of the teachers of such Project High Schools was considered by the Full Bench of Patna High Court in *Project Uchcha Vidyalaya shikshak Sangh v. the State and Others*, and analogous cases, as reported in 2000(1) PLJR 287 and the direction was given to the State Government to examine the claims of the teachers for recognition / absorption of their services in their respective schools. Against the decision of the Full Bench of Patna High Court, the State of Bihar preferred Civil Appeal Nos. 6626 to 6681 of 2001 in the Supreme Court of India, *State of Bihar and Ors. v. Project Uchcha Vidyalay Sikshak Sangh and Ors.*, reported in 2006(2) JLJR (SC) 57 wherein the Hon''ble Apex Court directed the Chief Secretary of the unified State of Bihar to constitute a Three Men Committee comprising of two officers and one educationist of repute and / or a retired judicial officer to examine the individual cases of teaching and non-teaching staff of the selected Project High Schools for their regularisation / absorption in services.

5. Pursuant to the decision of the Hon''ble Apex Court, Three Men Committee was constituted and the said Committee gave its recommendation with respect to the petitioners also. So far as the petitioners are concerned, it is stated in the recommendation of the Three Men Committee that these petitioners, though were appointed by the Managing Committee of their Schools, but they are still untrained, and accordingly, their services are not fit to be recognised. In case of the petitioner Rinu Ganguly (in W.P.(S) No. 7660 of 2011), it was also found that she had crossed the age of 30 years, as prescribed for appointment as Assistant Teacher and on the date of her appointment, her age was about 31 years and on that ground also, the recognition of her service was refused.

6. Learned counsel for the petitioners has drawn the attention of this Court towards the letter No. 142 dated 4.2.1989, issued by the unified State of Bihar, in the Department of Human Resources and Development, relating to the appointment of the teachers in the Project High Schools, which has been brought on record in these writ applications. It is stated in the said letter that the minimum qualification for appointment of the teachers shall be Graduate Trained, but in case of ladies and the candidates belonging to Schedule Castes and Scheduled Tribes categories, if the trained teachers are not available, the services of the untrained teachers may also be recognised in the pay scale of Graduate Untrained teacher, but thereafter, they shall have to complete their training within the period of three years and the State Government shall make necessary arrangements for their training. It is the submission of learned counsel for the petitioners that in view of the express provision of recognising the services even of untrained teachers in case of ladies, Schedule Castes and Scheduled Tribes candidates, the denial of the claim of the petitioners by the Three Men Committee is absolutely illegal and it is a fit case, in which, the services of the petitioners, who are ladies, and one of the petitioner, Bajal Kumar Marandi, belonging to the Scheduled Tribe category, should be regularised / absorbed.

7. It is also pointed out by the learned counsel for the petitioners that the matter of over age had also been dealt with by the Full Bench of the Patna High Court in its decision in Project Uchcha Vidyalay Sikshak Sangh's case (supra), wherein in paragraph-22 of the Judgement, it has been held as follows:-

"22. That apart, this cannot be denied that at the time of initial appointment of these petitioners, there was no statutory rule or circular to prescribe the upper qualifying age for appointment of a teacher in a privately managed school. It would also appear that the State Government while taking over the management and control of other privately managed schools under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, had granted age relaxation to the teachers and non-teaching staff of these schools up to the age of 35 years. Therefore, although the relevant circular of the State Government, whereby the maximum age was relaxed to 35 years for the teaching and non-teaching staff of the Non-Government Secondary Schools, is not applicable to the teaching and nonteaching employees of the Project Schools as already held above but having regard to the facts that they have continued uninterruptedly for several years, it would be in fact too hard to reject their claim at such a belated stage simply because some of them had crossed the age of 31 years at the time of initial appointment by the Managing Committee before the take over of the schools as Project School. I am, therefore, of the view that in the background of the facts stated above, such petitioners are also entitled for the regularisation / recognition of their services against the post within the aforementioned staffing pattern."

8. It is submitted that in view of the decision of the Full Court, the case of the petitioner Rinu Ganguly could not be rejected on the ground that she had crossed the age of 30 years, as prescribed for appointment as Assistant Teacher and on the date of her appointment, her age was about 31 years.

9. Learned counsel for the petitioners has further brought on record in W.P.(S) No. 5453 of 2009, the order, passed by the Director, Secondary Education (Now the Department of School Education and Literacy), Government of Jharkhand, Ranchi, as contained in Memo No. 3245 dated 1.12.2015, whereby in the matter of a lady candidate, who was also not having the required qualification of training, her service has been approved with effect from 1.1.1989 in Graduate Untrained pay scale, in view of the letter of the State Government bearing No. 142 dated 4.2.1989 discussed above, making provision for recognition / approval of the services of the lady candidates and the candidates belonging to S.C. / S.T. categories, even if they are untrained.

10. Learned counsels for the State on the other hand, have opposed the prayer and submitted that the case of petitioners have been considered by the Three Men Committee, constituted under the direction of the Hon'ble Supreme Court of India, which has found that the services of petitioners are not fit to be recognised / approved in view of the fact that the petitioners are not having the qualification of training and one of the petitioner, was also over age on the date

of her appointment. Learned counsels for the State have, accordingly, submitted that in view of the fact that the petitioners are untrained teachers, their claims have rightly been denied by the Three Men Committee, constituted pursuant to the order of the Hon"ble Apex Court.

11. Having heard counsels for the parties and upon going through the record, I find that the letter bearing No. 142 dated 4.2.1989, issued by the unified State of Bihar clearly provides for approval of services even of untrained teachers in case of ladies, and the candidates belonging to Schedule Castes and Scheduled Tribes categories, in absence of the availability of the trained teachers, but they have to obtain the training within a period of three years. The fact remains that in the similar circumstance, the order has been passed as late as even on 1.12.2015 by the Director, Secondary Education, Government of Jharkhand, giving approval to the service of a lady teacher, as Graduate Untrained teacher.

12. In view of the aforementioned discussions, the respondent State, particularly the Director, Secondary Education, Department of School Education and Literacy, Government of Jharkhand, is hereby, directed to grant recognition / approval to the services of the petitioners also, with effect from 1.1.1989 in Graduate Untrained pay scale, in view of the letter No. 142 dated 4.2.1989 issued by the unified State of Bihar, which has been followed by the Director, Secondary Education, while granting approval to the service of a similarly situated lady teacher vide order contained in memo No.3245 dated 1.12.2015, if the cases of the petitioners are otherwise fit for being recognised / approved. The Director, Secondary Education, Department of School Education and Literacy, Government of Jharkhand, is also directed to consider the case of the petitioner Rinu Ganguly, irrespective of the fact that she had crossed the age of 30 years and was about 31 years of age on the date of her appointment, in view of the decision of the Full Bench of the Patna High Court in Project Uchcha Vidyalay Sikshak Sangh's case (supra). The Director, Secondary Education, Department of School Education and Literacy, Government of Jharkhand, is directed to pass the orders with respect to the petitioners positively within the period of eight weeks from the date of communication / production of the copy of this order. If it is found that the case of any of these petitioners is not fit for being recognised / approved for any reason apart of their being untrained / over age, the same shall be communicated to the respective petitioners within the same period.

13. All these writ applications are accordingly, allowed with the directions as above.