
(2002) 02 PAT CK 0082
In the Patna High Court
Case No : L.P.A. No. 67 of 2000

Smt. Sushila Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0082

Final Decision : Dismissed

Judgement

1. The facts necessary for disposal of the present appeal in nutshell are that Balika High School, Sabour District Bhagalpur was established on 3.1.1975, the Appellant submits that the erstwhile managing Committee of the School appointed the Appellant-Petitioner as an Assistant Teacher on 3.1.1975 and as Headmistress on 1.9.1975. The formal permission to establish the school was granted by the then Bihar Secondary Education Board on 4.6.1976. It is not in dispute that the school was taken over on 3.2.1982 u/s 3(3) of Bihar Non Government Secondary Schools (Taking over of Management and Control) Act, 1981. In the notification dated 13.2.1982 of taking over of institution, the Appellant-Petitioner was known as Incharge Headmistress. The notification further mentioned that the Petitioner was authorised to function as the Headmistress till the appointment of regular Headmistress. This position continued (sic) long many years and the Petitioner-Appellant did not raise any grievance against (sic) said arrangement till 1995. The Appellant-Petitioner filed C.W.J.C. No. 959 of 1985 (Smt. Sushila Devi v. The State of Bihar). The said petition was disposed of (sic) 2.4.1996 by Hon"ble Single Judge of this (sic) directing the Director, (Secondary education)-cum-Additional Secretary, Education Department, Government of Bihar to order the grievance of the Appellant-Petitioner and if found necessary refer the (sic) to the concerned committee for necessary scrutiny and screening and, for (sic) sing a final order in accordance with (sic).

2. From the records, it appears that number of notices/informations were sent to

the Petitioner Appellant, but the Petitioner Appellant did not appear before the concerned authority, therefore, the authority by its order dated 12.6.1998 rejected the claim of the Petitioner-Appellant. The Director further held that the Petitioner had worked for five years nine months and nine days on the date of take over counted from the date of the permission to establish. It accordingly held that as the Petitioner-Appellant did not possess the requisite qualification and the teaching experience, she was not entitled to be regularised as the founder headmistress.

3. Being aggrieved by the said order passed by the Director, the Petitioner-Appellant has come to this Court in C.W.J.C. No. 5325 of 1998. A learned single Judge of this Court after hearing the parties and taking into consideration the relevant rules, circulars, notifications and earlier judgments of this Court held that the Petitioner's-Appellant's case was rightly rejected by the authority and she was not entitled to any relief. The Petitioner-Appellant being aggrieved by the said order passed by the learned Single Judge has come to this Court under Clause 10 of the Letters Patent appeal.

4. Learned Counsel for the Petitioner-Appellant has submitted before us that the learned single Judge erred in not properly appreciating the ratio of the decided cases so also the impact and effect of circular No. 510 dated 20.11.1981 and yet another circular No. 511 dated 20.11.1981. It was also contended that the learned single judge did not take into consideration the effect of the judgment of the Supreme Court in the matter of A.K. Pradhan v. The State of Bihar and Ors. 1998 (2) P.L.J.R. (SC) 2. It was also submitted before us that if any person acquires the requisite experience during the tenure of service then the Appellant-Petitioner may be regularised. It was not disputed before us that on the date of take over, the Petitioner-Appellant did not possess the requisite teaching experience.

5. Learned Counsel for the Petitioner-Appellant however placing reliance upon a judgment dated 4.7.2001 of this Court in the matter of State of Bihar v. Smt. Susheela Devi (L.P.A. No. 929 of 2000) submitted that the said judgment, placing strong reliance upon the judgment of the Supreme Court in the matter of A.K. Pradhan would cover the field and the Petitioner is entitled to a direction that her case should now be considered.

6. Learned Counsel for the State on the other hand submitted that the observations made in the matter of A.K. Pradhan (supra) do not do any favour to the Petitioner-Appellant because the said judgment was on its own facts. Placing reliance upon a judgment of the Supreme Court in the matter of Ram Ballabh Prasad Singh v. The State of Bihar 1988 P.L.J.R. (S.C.) 70 which in its turn had considered the Full Bench judgment, it was submitted that the Petitioner is not entitled to any relief from this Court. Further reliance was placed on the judgment in the matter of Dhrub Lochan Pradhan Vs. The State of Bihar and Others, to contend that the Petitioner has no right in his favour. In relation to the judgment of the Division Bench in the matter of State of Bihar v. Smt. Susheela

Devi it was submitted that the said judgment did not consider the other judgment and has simply placed reliance on the judgment in the matter of A.K. Pradhan (supra), therefore, the said judgment is not binding. We have heard the parties at length and have perused the relevant circulars and the judgment.

7. The Bihar Non-Government Secondary School (Taking over of the Management and Control) Act, 1981 (in short the "Act") was published in Bihar Gazette on 24th January, 1982. Section 15 of the Act confers powers on the State Government to frame rules for the purposes of carrying out the purpose of the Ordinance.

8. The State Government proceeded to frame rules, but as it was to take some time, the State Government issued the above referred two circular Nos. 510 and 511 on 20.11.1981. Circular No. 510 provided for promotion of Assistant Teacher to the post of Headmaster in the National Secondary Schools with regard to the Vacancies occurring prior to 2.10.1980. It provided that the school is to be treated as a unit and the Assistant Teacher having requisite qualifications would be eligible for appointment to the post of Headmaster. The other circular No. 511 provided for recognition of services of a founder Headmaster, inter-alia provided that in case of founder Headmaster, the minimum experience for the said post would be seven years and if the incumbent had completed seven years and had seven years experience to his credit on 2.10.1980 and is also otherwise qualified, then such person shall be recognised as a founder Headmaster. The circular further provided that with regard to the vacancies occurring after 2.10.1980, the appointment to the post of the Headmaster shall be made according to the rules after creating a cadre of teachers on the basis of their seniority.

9. In the matter of Dhruv Lochan Pradhan, a Division Bench of this Court has observed that the rules have been framed subsequently providing for filling up the posts of Headmaster by promotion as well as by direct recruitment and that there would be State Cadre of Headmaster and the school would not be treated as a unit for the purpose of promotion to the post of Headmaster.

10. At this stage it would be necessary to look into the distinction provided by two circulars while circular No. 511 (sic) in clear terms that seven years (sic) will have to be counted up to (sic) 1980 with regard to the recognition of (sic) Headmaster, but the Circular No. which relates to promotion of the Assistant Teacher to the post of Headmaster (sic) vacancies prior to 2.10.1980 did (sic) contain any such provision.

11. In the matter of Phulena Prasad Yadav v. The State of Bihar and Ors. 1991 (2) P.L.J.R. 449, this Court, in relation to circular No. 510 held that the criteria for counting the period of experience for promotion is with reference to the state of affairs as existing on 2.10.1980 the school was taken over and as the teaching experience had to be (sic) up to 2.10.1980. The Division Bench in the matter of Phulena Prasad (sic) observed in relation to Circular No. (sic) that the circular itself provided that the (sic) Headmaster must possess seven (sic) teaching

experience of a recognised (sic), after graduation, as on the date of (sic) of the school. At this stage, it (sic) be apt and apposite to refer to the (sic) Bench judgment of this Court in the (sic) of Ram Ballabh Prasad Singh v. State of Bihar and Ors. reported in 1986 P.L.J.R. 373. A division Bench of (sic) referred the matter to the larger (sic) or its authoritative opinion as the (sic) Bench was of the opinion that (sic) were of frequent occurrence and/(sic) much importance. The Division Bench (sic) the following two questions to the (sic) Bench (sic-Full Bench?) for its (sic):

(1) Whether the Headmaster of a school before it is taken over u/s 3(3) of the Act shall be deemed (sic) a teacher of that school for pur(sic) of examination of his qualification (sic) suitability because there is no specific mention of Headmaster of such school in Section 3(3)?

(2) Whether even the Headmaster of the school taken over u/s 3(3) shall automatically "become Headmaster of the school after its take over in view of Section 4(2) without any scrutiny in respect of his qualification and suitability?"

12. The Full Bench answered the question No. 2 in negative holding that the Headmaster of a school taken over u/s 3(3) does not automatically become the Headmaster of the school after its take over u/s 4(2) of the Act. The question No. 1 was answered in affirmative holding that the Headmaster of an unrecognised school before its take over shall be deemed to be teacher of that school for the purpose of examination of his qualification and suitability (for appointment to government service) u/s 3(3) of the Act. The Full Bench judgment in the matter of Ram Ballabh Prasad Singh was challenged before the Supreme Court, but the correctness of the said judgment was upheld by the Supreme Court in Ram Ballabh Prasad Singh v. The State of Bihar 1988 P.L.J.R. (S.C.) 70 by the following order:

We affirm the view taken by the High Court to the effect that a Headmaster has no right to be automatically absorbed as government servant in case of an unrecognised school being taken over by the Government. The Special Leave petitions are dismissed with these observations.

2. We are told by the learned Counsel that even if the Petitioners are liable to be screened by the appropriate committee there should be no delay in completing the screening in so far as the Petitioners are concerned. We have no doubt that when these observations are pointed out to the appropriate authority, the committee concerned will deal with the matter expeditiously and dispose the same in accordance with law.

From the observations of the Supreme Court, it would clearly appear that a Headmaster has no right to be automatically absorbed as government servant in case of an unrecognised school being taken over by the Government.

13. The judgment of the Supreme Court in the matter of Ram Ballabh Prasad Singh (supra) was again considered by the Supreme Court in the matter of A.K.

Pradhan v. The State of Bihar and Ors. 1998 (1) P.L.J.R. (SC) 2. After quoting the aforesaid observations, the Supreme Court, in the matter of A.K. Pradhan (supra) observed that the services of the employees working in an unrecognised institution are not automatically taken over by the Government, is to be treated as settled by the order passed in the earlier judgment. The Supreme Court however, in the matter of A.K. Pradhan observed that the said Appellant had since completed more than seven years of service and is now eligible and for being considered for regularisation, the said Appellant, if not already regularised as Headmaster, shall be considered for regularisation with effect from the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government. The Petitioner-Appellant heavily relied upon the above quoted observations made by the Supreme Court and further relies upon the judgment of this Court in the matter of State of Bihar v. Smt. Susheela Devi (L.P.A. No. 929 of 2000) to contend that the Petitioner-Appellant since has completed more than seven years of recognisable service, she is entitled to be considered for the post of Headmistress and her claim could not be rejected. In support of this submission reliance was also placed on yet another judgment of the Supreme Court in the matter of Union of India (UOI) Vs. B.S. Agarwal and Others, At this juncture, it was be necessary to refer to the judgment (sic) the matter of State of Bihar v. Susheela Devi, the Division Bench observed that (sic) High Court is bound by the decision of (sic) Supreme Court. In the matter of State of Bihar v. Susheela (supra) the Division Bench further observed that the said Petitioner-Appellant had been functioning as (sic) Headmistress for two decades, the State could not avoid the decision of the Supreme Court. It is necessary to observe this stage that a detailed judgment of the Court in the matter of Dhrub Lochan Pradhan (supra) was not brought to (sic) notice of the Bench which decide L.P.A. 929 of 2000, it would be necessary (sic) mention that in the matter of Dhrub Lochan Pradhan, the judgment was delivered on 20.2.2001 while the judgment in the L.P.A. 929 of 2000 was delivered on 4.7.2001.

14. In the matter of Union of India v. B.S. Agrawal and Anr. (supra) (sic) question before the Supreme Court was (sic) together different. The question before the Supreme Court was in relation to requirement of residual length of service of two years and according to the Supreme Court the same was required to be calculated from the date of approval of vacancies (sic) not from the date of appointment. The fact in the said matter were different.

15. The Division Bench in the matter of Dhrub Lochan Pradhan (supra) at (sic) very outset observed that the questions volved in the said matter was not (sic) and subject matter of dispute in the case A.K. Pradhan (supra). The Division Bench observed that the Apex Court taking (sic) consideration the facts of the said (sic) issued a direction for regularisation as (sic) Appellant of that case had completed (sic) years of service, which was to be reck(sic) the date on which the institution was (sic) over. In my considered opinion, when judgment of the Supreme Court has (sic) interpreted by a Division Bench of (sic) Court in a

particular manner then the (sic) interpretation would be binding upon (sic) subsequent Division Bench and unless (sic) shown that the interpretation put by the earlier Division Bench is bad, illegal or (sic)tional or deserves reconsideration by (sic)ger Bench of this Court, the interpretation (sic) cannot be avoided.

16. In the matter of Dhrub Lochan Pradhan (supra) the Division Bench opined at the question as to what should be the relevant cut off date for counting the experience for filling up the vacancies of the Headmaster prior to 2.10.1980 in nationalised school was neither considered nor (sic) judgment was rendered by the Apex Court on the said point and as such the said judgment was of no help to the said Appellant in the matter of Dhrub Lochan Pradhan (supra). The High Court in the matter of Dhrub Lochan Pradhan (supra) (sic)ound that the Appellant had no requisite qualification, either seven years experience (sic) a founder Headmaster or ten years experience for appointment to the post of Headmaster on the date of take over the (sic) i.e. 2.10.1980, accordingly he had (sic)equisite experience on the cut off date, therefore he could not claim promotion to (sic) post of Headmaster with effect from (sic)10.1980.

17. It would be necessary to observe (sic) yet another Division Bench of this Court in the matter of Gauri Shanker Dixit v. The State of Bihar and Anr. L.P.A. 477 of 1999 decided on 12.1.2000 found that the judgment of the Supreme Court in the case of A.K. Pradhan was not applicable similar situation.

18. On the factual matrix, it was not disputed before us that on the date of the take over, the Petitioner did not possess the necessary qualification to meet the requirements as provided in Circular No. 510 or 511. As on the date of the take over, the Petitioner did not possess the requisite qualification, it would not be possible for us to hold that the Petitioner was entitled to be considered and the State authorities were obliged to promote or appoint the Petitioner to the post of Headmistress.

19. Even otherwise any interference by us at this stage would lead to an injustice to all those persons who have already been promoted in accordance with the statutory rules. Grant of any relief in favour of the Petitioners would upset the entire seniority list and the Petitioner will have to be placed above the persons who in accordance with the statutory rules have already been promoted. In view of this legal position we are unable to hold that at this junction of time the Petitioner is entitled to any relief. It is also to be noted that panels for promotion have already been prepared for promotion of eligible persons in accordance with the statutory rules. Any interference by us would disturb the said panel and the empanelled persons. In our considered opinion the panel cannot be disturbed unless all such persons are given an opportunity of hearing because without hearing them an order against their interest cannot be passed. The Petitioner in fact, in view of the discussion aforesaid, is not entitled to any relief much less a relief directing the State to consider her claim for promotion.

20. It is trite law that in absence of the requisite statutory rules, providing for

particular qualification, any Circular or Executive Instructions which do not run contrary to the provisions of law/Statute and are in fact for advancing the purpose of the Statue itself would be binding. In view of the circulars or executive instructions it would not be possible for a Court to interfere in the matter and grant some relief.

21. The learned single judge has given cogent reason for dismissing the writ petition. Having given our anxious consideration to the legal provisions and the judgment of different courts, we are of the opinion that the Petitioner-Appellant is not entitled to any relief. The appeal deserves to and is accordingly dismissed. Parties are directed to bear their own costs, throughout.