
(2019) 07 JH CK 0175

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 221 Of 2017

State Of Jharkhand And Ors

APPELLANT

Vs

Mithilesh Kumar Pandey And Ors

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over Of Management and Control) Ordinance, 1980 — Rule 18, 18(3)(f)

Citation : (2019) 07 JH CK 0175

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Atanu Banerjee, Moushmi Chatterjee, Rajiv Ranjan, Rajiv Ranjan Tiwari, Sreenu Garapati

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant State and learned counsel for the respondent writ petitioner.
2. The appellant State is aggrieved by the impugned Judgment dated 28.10.2016, passed by the Hon'ble Single Judge in W.P.(S) No. 7741 of 2006, whereby, the writ application filed by the respondent writ petitioner, challenging his termination from the post of Teacher in Yogoda Satsanga Middle School, Ranchi, has been allowed, and the Hon'ble Single Judge quashed the letter dated 12.6.2006, issued by the Director, Primary Education, Govt. of Jharkhand, Ranchi, denying approval of the appointment of the writ petitioner, and also the consequential letter dated 12.1.2007, issued by the Secretary, Yogoda Satsang, pertaining to discontinuance of service of the writ petitioner, and directed the reinstatement of the writ petitioner on his post, but without any back wages.
3. The facts of the case lie in a short compass. The writ petitioner was earlier appointed as a Teacher in the year 1999 by the Managing Committee of Yogoda Satsanga School, purely on temporary basis, but the said appointment was later on discontinued, in view of the fact that the Management decided to fill up the

post on regular basis. An advertisement was published inviting applications for appointment on the post of Teacher on 27.6.2003, as contained in Annexure-4 to the memo of appeal. In the said advertisement, it was clearly stated that the age of candidate should be preferably under 35 years. The date of birth of the writ petitioner admittedly being 1.2.1960, he was more than 43 years of age on the date of advertisement itself. The writ petitioner, however, underwent the selection process and he was appointed vide appointment letter dated 12.09.2003, as contained in Annexure-8, to the memo of appeal, against the sanctioned post of Teacher in Yogoda Satsanga Middle School in the prescribed pay scale of Rs.1200-2040. It may be pointed out that in the said appointment letter issued under the signature of Secretary, Yogoda Satsanga Middle School, nothing is stated about the age relaxation of the writ petitioner. Thereafter, a letter was issued by the District Superintendent of Education, Ranchi, on 10.3.2004 approving the appointment of the writ petitioner. However, the Deputy Director of Education, vide letter dated 29.4.2004, made a quarry with regard to the age of the petitioner from the District Superintendent of Education, Ranchi, and in reply to the said letter, the District Superintendent of Education, Ranchi, wrote a letter on 11.9.2004, as contained in Annexure-12 to the memo of appeal, stating therein that in clause 5 of letter dated 10.1.1986 issued by the Government of Bihar, Education Department, it has been stated that there is no minimum age fixed for appointment of teacher in a minority secondary school, and for the purpose of payment of salary, there is only a bar that a person should not be above the age of 58 years. However, in this letter, the District Superintendent of Education, Ranchi, also stated that it was not clear as to whether the said letter was applicable to the primary school teachers or not. In reply thereto, vide letter dated 12.6.2006, issued by the Director, Primary Education, Government of Jharkhand, as contained in Annexure-13 to the memo of appeal, the proposal for approval of appointment of the writ petitioner was turned down by the Director, stating that on the date of appointment, the writ petitioner was aged 43 years 7 months and 14 days, which was the above the prescribed age for appointment of a teachers in any category, and as such, the approval for pay fixation of the writ petitioner could not be granted. Pursuant to the aforesaid letter, the Secretary, Yogoda Satsanga Middle School, vide his letter dated 12.1.2007, discontinued the writ petitioner from service.

4. The writ petitioner thereafter approached this Court in W.P.(S) No. 7741 of 2006, which was adjudicated upon by the Hon'ble Single Judge, and by the impugned Judgment dated 28.10.2016, the letter dated 12.6.2006 issued by the Director, Primary Education, Government of Jharkhand, as also the letter dated 12.1.2007 issued by the Secretary, Yogoda Satsanga Middle School, were quashed by the Hon'ble Single Judge, giving direction for reinstatement of the writ petitioner in service. It may be stated at this place, that while allowing the writ petition, the Hon'ble Single Judge has placed reliance upon Rule 18(3)(f) of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980, which reads as follows:-

"No grant shall be admissible for payment of salary of a teacher or a non-teaching staff if appointed or retained beyond 58 years of age."

The Hon'ble Single Judge held that the aforesaid Rule would be squarely applicable in the case of the writ petitioner.

5. The appellants State challenged the said order passed by the Hon'ble Single Judge in the present letters patent appeal, and by order dated 7.11.2017 passed in I.A. No. 3274 of 2017, the operation, implementation and execution of the order passed by the Hon'ble Single was stayed during the pendency of this appeal.

6. Learned counsel for the appellants State has submitted that the impugned Judgment passed by the Hon'ble Single Judge cannot be sustained in the eyes of law, inasmuch as, the Hon'ble Single Judge has wrongly held that Rule 18 of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Ordinance, 1980, was applicable to the case of the writ petitioner, inasmuch as, admittedly the school in question is a minority 'Non-Government Primary School' and not a 'Non-Government Secondary School', and the said Ordinance had been issued only with respect to the 'Non-Government Secondary Schools'. Learned counsel accordingly, submitted that the Hon'ble Single Judge made an error of law by placing reliance upon the Rule, which was not applicable in the case of the writ petitioner, for holding the orders passed against the writ petitioner to be illegal and consequently quashing the same. Learned counsel further submitted that admittedly at the time of the appointment the writ petitioner was more than 43 years of age, and he could not be taken into service as a teacher in any category in any Government aided school with that age, and accordingly, the service of the writ petitioner had not been approved by the Director, Primary Education, following which, the service of the writ petitioner had been terminated by the Secretary, Yogoda Satsanga Middle School, Ranchi. Learned counsel accordingly, submitted that since the school in which the writ petitioner was appointed, is admittedly a Government aided minority school, his appointment was rightly not approved by Director, Primary Education, being overage, as he was admittedly more than 43 years of age at the time of his appointment, and accordingly, the impugned Judgment passed by the Hon'ble Single Judge, cannot be sustained in law.

7. Learned counsel for the respondent writ petitioner, on the other hand, has submitted that in the petitioner's school, being the minority school, the circulars and orders of the Government regarding appointment of an employee in Government service cannot be made applicable in the case of the minority schools. It is submitted by learned counsel for the respondent that in case of minority schools, no minimum age is prescribed for appointment of a teacher and accordingly, the Hon'ble Single Judge has rightly relied upon Rule 18 in the aforesaid Ordinance, wherein, the only embargo for non-approval of the salary was that a teacher or non-teaching staff should not have been appointed beyond the age of 58 years. In support of his contention, learned counsel for the

respondent has placed reliance upon an unreported decision of this Court in W.P. (S) No. 5954 of 2009 in *Swaran Kaur Versus The State of Jharkhand & Ors.*, decided on 31.8.2017, wherein, in similar circumstance, a teacher, who was appointed at the age of more than 46 years in a minority school, and denied the payment of salary and post retirement benefits, her writ petition was allowed by the Hon'ble Single Judge, directing the Director, Primary Education, Govt. of Jharkhand, to pass necessary orders with respect to the payment of salary and post retiral benefits to that teacher, since she had already retired. Placing reliance on this decision, learned counsel for the writ petitioner submitted there is no illegality in the impugned order passed by the Hon'ble Single Judge.

8. Having heard learned counsels for both the sides and upon going through the materials on record, we find that in the advertisement itself, which was published on 27th June, 2003, as contained in Annexure-4 to the memo of appeal, it was clearly mentioned that the candidate should be preferably under 35 years of age. Had any age relaxation been made in favour of the petitioner at the time of his appointment, by the management of the school, it should have been mentioned in the appointment letter itself, that knowingly the age of the writ petitioner was being relaxed for a particular reason. There is nothing in the appointment letter dated 12.9.2003, as contained in Annexure-8 to the memo of appeal, to show that any age relaxation was made in favour of the writ petitioner by the school management. That being the position, the submission of learned counsel for the respondent writ petitioner that the circulars and orders governing the field of appointment of Government employees shall not be applicable to the case of the petitioner, and the only embargo upon the approval of salary was that he should not be appointed beyond the age of 58 years, cannot be taken into consideration. We find that in terms of the advertisement issued by the school, the petitioner was overage on the date of advertisement itself, and naturally, also on the date of appointment, and there was no age relaxation in favour of the petitioner by the school management. This apart, the writ petitioner was appointed in the 'Non-Government Primary School' and not in a 'Non-Government Secondary School', but the Hon'ble Single has committed an error of law while making applicable the Rules with respect to the 'Non-Government Secondary Schools' in case of the writ petitioner. We are of the considered view that solely for this reason, the impugned order passed by the Hon'ble Single cannot be sustained in the eyes of law.

9. Accordingly, the impugned order dated 28.10.2016, passed by the Hon'ble Single Judge, in W.P.(S) No. 7741 of 2006, is hereby, set aside. This letters patent appeal is accordingly, allowed.