
(2014) 07 PAT CK 0085
In the Patna High Court
Case No : CWJC No. 18825 of 2010

Subhash Chandra Singh and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2015) 2 PLJR 124

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Rajeev Kumar Singh and Arpana Kumari, for the Appellant

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J. This application was filed on 16.11.2010 by the petitioners seeking direction to the Respondents to pay their arrears of salary since January, 2006 i.e. from the date of their initial appointment as Assistant Teacher in Sri Bal Subodhini Pathshala, Shujaganj, Bhagalpur till date. They had the grievance that their appointments as Assistant Teachers were duly approved by the competent authority with effect from the date of their initial appointment by Memo No. 1209 dated 24.4.2006. It is also the plea of the petitioners that they were appointed after following due procedure of selection after inviting applications from eligible candidates through advertisement. By filing an interlocutory application being I.A. No. 3374 of 2014, the petitioners have challenged the orders issued by the District Superintendent of Education, Bhagalpur dated 10.5.2008 as also letter as contained in Memo No. 1270 dated 26.5.2010 whereby the earlier approval granted by the District Superintendent of Education (D.S.E.) vide office order dated 24.4.2006 has been withdrawn. I.A. No. 3374 of 2014 is allowed. The relief sought for by way of amendment and I.A. No. 3374 of 2014 shall form part of the main relief prayed for in the writ application. There are certain facts which are not in dispute. The petitioners were appointed as Assistant Teachers in the School after due advertisement and following a process of selection as asserted in the writ application. There is also

no dispute that the petitioner fulfilled the eligibility criteria for the said post. Appointment letters were accordingly issued by the Secretary of the Governing Body of the concerned School i.e. Sri Bal Subodhini Pathshala, Shujaganj, Bhagalpur. The appointment letters were issued on 10.1.2006. It appears that the guidelines issued by the Department of Human Resource Development, Government of Bihar, as contained in its letter dated 4.3.1993 required, inter alia, that reservation policy shall be followed in the matter of appointment of teachers in Non-Government Aided Elementary Schools. It is also provided that the payment to the teachers shall begin after approval of their service by competent authority (District Superintendent of Education) and further after approval by the Director (Elementary Education). This is also not in dispute that by an office order No. 1209 dated 24.4.2006 (Annexure-4), the appointment of these petitioners were approved by competent authority i.e. the District Superintendent of Education as required under the said letter No. 709 dated 4.3.1993 (Annexure-A) to the counter affidavit filed on behalf of the Respondent No. 3, District Superintendent of Education, Bhagalpur.

2. This is also not in dispute that service books of the petitioners were opened under the signature of Secretary and Headmaster of the School which were duly authenticated by the Area Education Officer and District Superintendent of Education; and District Superintendent of Education fixed the salary of the petitioners in the year 2007 in the scale of Rs. 4500-125-7000.

3. The petitioners are said to have approached the authorities thereafter as they were not being paid their salary and they were told that the matter was under consideration at the directorate level. Nonpayment of salary to the petitioners has made the petitioners approach this Court by way of present writ application. Separate counter affidavits have been filed on behalf of the Respondent No. 3, the District Superintendent of Education, Government of Bihar, and Respondent No. 5, the Managing Committee of the said Sri Bal Subodhini Pathshala, Shujaganj, Bhagalpur.

4. There is no denial of the assertion in the writ petition that the petitioners were appointed after due advertisement and following the process of selection. The only issue which has been raised in the counter affidavit filed on behalf of the District Superintendent of Education is that while making appointments, the Managing Committee did not get approved by competent authority, the roster points for the purpose of reservation. It has accordingly been asserted that the Managing Committee thus appointed the petitioners without following the reservation policy and, therefore, their appointment by the Managing Committee cannot be said to be genuine. As regards, earlier approval granted by the District Superintendent of Education by Annexure-4 dated 24.4.2006, it has been stated that payments were required to be made only after due approval from the Directorate and it was also indicated that if the Managing Committee was taking services of the petitioners, the Managing Committee would be wholly responsible for payments to the petitioners. On this ground, it has been asserted that

Respondents were not liable to pay salary to these petitioners. It has further been stated that since the District Superintendent of Education, Bhagalpur subsequently found that roster points were not approved by the competent authority, he issued letter dated 10.5.2008 holding the earlier approval as ineffective. The District Superintendent of Education is said to have thereafter referred the matter to the Director, Primary Education, Bihar, Patna vide letter No. 288 dated 7.5.2008. Thereafter, the Director, Primary Education, Human Resource Development Department, asked for certain informations from the D.S.E. vide his letter dated 30.3.2009. The Respondent No. 2 (D.S.E.) thereafter, submitted his report vide letter dated 31.8.2009. Subsequently, the Director again directed the D.S.E. vide his letter dated 16.12.2009 to review the appointments of these petitioners in the light of departmental instructions and also to look into the issue by which approval of the appointments of the petitioners was held ineffective.

5. It was further directed by the said letter dated 16.12.2009 that further steps be taken in accordance with Rules after examining whether the roster points were approved by the competent authority or not. The D.S.E. thereafter, demanded papers/report from the concerned Managing Committee to review the entire matter, whereafter the District Superintendent of Education came to a finding that roster points were not approved by the Competent Authority in course of appointment of these petitioners. Accordingly Memo No. 1270 dated 26.5.2010 was issued confirming the earlier order of the D.S.E. dated 10.5.2008. It has been accordingly asserted that as the approval of the appointment of the petitioners was made ineffective vide letter No. 1400 dated 10.5.2008, the State Respondents cannot be held liable for payment of salary to these petitioners appointed without following the procedure of pre-approval of roster points.

6. A supplementary counter affidavit has been filed on behalf of the State Respondents bringing on record a letter dated 16.2.2010 written by the District Superintendent of Education, Bhagalpur to the Secretaries of various schools including the school in question i.e. Sri Bal Subodhini Pathshala, Shujaganj, Bhagalpur. By the said letter, the Secretaries of the respective schools were informed that in course of review, no evidence of approval of reservation roster point by competent authority in the matter of appointment of Assistant Teachers in the respective schools could be found. The Secretaries were accordingly directed to produce documents in this regard for further action. It has further been asserted that the secretaries did not submit any evidence on the point which led to the issuance of the impugned letter dated 26.5.2010.

7. It has been submitted by Mr. Rajendra Prasad Singh, learned Senior Counsel appearing on behalf of the petitioners that the decision of the District Superintendent of Education as contained in letter dated 10.5.2008 making earlier approval of appointment of teachers granted vide Memo No. 1209 dated 24.4.2006 ineffective was unilateral and without any notice to these petitioners. He has submitted that by the said letter dated 10.5.2008, withdrawing the earlier

approval, the petitioners were going to be directly and adversely affected and, therefore, they should have been given an opportunity of being heard. He has further submitted that it is not the case of the Respondent-State of Bihar that reservation policy was in fact not followed and appointments were made in breach of reservation policy. The only objection the State is raising against appointment of the petitioners is that roster points were not got approved before appointment of these petitioners. He submits that this can at the maximum be said to be an irregularity committed by the Managing Committee before initiating the process of selection. The District Superintendent of Education after having approved the appointment could not have himself subsequently made the earlier approval ineffective on such ground. He further submits, referring to the impugned letter dated 26.5.2010 passed by the District Superintendent of Education, Bhagalpur that only ground for refusal of approval of the appointment has been given as absence of approval of reservation roster point by the competent authority. It has been mentioned in the said letter that the concerned Secretaries of the school including the present one, could not produce approval of reservation roster points.

8. Learned Senior Counsel for the petitioners has drawn my attention to the report dated 31.8.2009 submitted by the District Superintendent of Education, Bhagalpur addressed to the Director (Primary Education), Human Resource Development Department, Government of Bihar, wherein, while dealing with the school in question, he had mentioned that roster points stood satisfied in case of appointment of these petitioners.

9. In the supplementary counter affidavit filed on behalf of the State of Bihar, however, it has been stated that the Director (Primary Education) was not satisfied with the said report dated 31.8.2009 and directed the then D.S.E. vide letter dated 16.12.2009 to review certain points in the light of certain departmental circulars before taking any action. It was indicated in the said letter dated 16.12.2009 that it was required to be seen as to whether the roster points were approved or not.

10. I find substance in submission made on behalf of the petitioners that absence of approval of reservation roster points can be at the maximum said to be an irregularity and on this ground, the approval earlier granted by the District Superintendent of Education vide letter dated 24.4.2006 (Annexure-4) could not have been undone.

11. The impugned letter No. 1400 dated 10.5.2008 written by the District Superintendent of Education, Bhagalpur as well as Office Order issued vide Memo No. 1270 dated 26.5.2010 passed by the same authority are accordingly quashed.

12. The matter is remanded back to the Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna to reconsider the issue. The Director (Primary Education) will consider whether the

appointments of the petitioners are in consonance with the reservation policy of the State Government and is directed to approve the services of such petitioner/petitioners whose appointments cannot be said to be violative of the reservation policy of the State of Bihar. The Respondents will ensure payment of salary to such petitioner/petitioners through Government fund, as per their entitlement, whose appointments cannot be said to be illegal.

13. In any event, the petitioners cannot be denied their salaries if they worked after their due selection and appointment. If the reservation policy of the State of Bihar has not been breached in the matter of appointments of these petitioners, the Director will, pursuant to the present remand order proceed accordingly as has been indicated above. If with respect to any of the petitioners, it is found that his or her appointment was against reservation policy, he will pass a reasoned and speaking order accordingly. Such decision must be taken within a period of three months from the date of receipt/production of a copy of this order.

14. Respondent No. 5 in his counter affidavit has admitted that the petitioners were duly appointed and have not been paid their salaries. In such circumstance, even such petitioner/petitioners whose appointment is found to have been made contrary to reservation policy, will also be entitled for full salary for the period during which he/they have worked which salary shall be paid by the Managing Committee of the School.

15. This writ application is thus, allowed in terms of the observations above with the following specific directions:-

"I. The Director (Primary Education, Government of Bihar) must take a decision within three months from the date of receipt/production of a copy of this order whether the appointments of these petitioners are in violation of the reservation policy of the State of Bihar in vogue. If the appointments are not in breach of the reservation policy, he will be required to approve the services of these petitioners for the purpose of payment of salary from Government fund. If he is of the opinion that after applying reservation policy, services of any of the petitioner cannot be saved, he will pass order accordingly within the same period and, thereafter, ensure payment of salary to such petitioners whose appointments cannot be said to be in breach of State Reservation Policy.

II. Respondent No. 5, the Managing Committee of the concerned school, shall ensure payment of salary for the period in question during which one or the other petitioner has been found to have worked but his/her/their appointments could not be saved after applying reservation policy of the State of Bihar by the Director (Primary Education) in his order to be passed pursuant to the present order of this Court."

16. The entire exercise of payment of salary in the light of the present order must be completed within a period of three months from the date of passing of the order by Director (Primary Education) in compliance for the present order.

This application is accordingly allowed.