
(2008) 08 JH CK 0084
In the Jharkhand High Court

Suresh Prasad Bhagat

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2008) 4 JCR 648

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been filed for issuance of an appropriate writ, order or direction to quash the order dated 16.09.2002, passed by the Commissioner, Santhai Parganas, Dumka (respondent No. 2) whereby the claim of the petitioner for extending him the Graduate Trained Scale with effect from 01.04.1985 and Post-Graduate Scale of the post of Headmaster with effect from 16.03.1996, was rejected.

2. The brief facts, as submitted by the petitioner, are set out as under:

An advertisement was published to the effect that all eligible persons, who had earlier applied against the post of Teachers Unit for the District of Santhai Parganas and were found suitable after appearing in an interview by the Committee so constituted and had also completed the Training Course but were not able to pass the examination because of non-holding of examination were to be appointed. Accordingly, 21 Assistant Teachers, including the petitioner, who had completed the Training Course but had not passed the examination, were appointed on 16.04.1980. The petitioner joined the post of Assistant Teacher on 24.04.1980. The petitioner passed the Teachers Training Examination, held by the School Examination Board on 25.11.1980 and in terms of appointment letter dated 16.04.1980 was entitled to Intermediate Trained Scale with effect from 01.03.1981 itself. Pursuant to a decision vide letter Nos. 4169 and 4170 dated 05.12.1979, an office order was issued on 07.04.1983 and the petitioner was

given Intermediate Trained Scale with effect on 01.03.1981. The petitioner after obtaining due permission appeared at the B.A. Examination from Bhagalpur University and passed the same in the year, 1983. The petitioner, thereafter, did the Master Degree in Political Science and appeared at the M.A. Examination of 1992, which was held in February, 1995 and was declared pass in M.A. (Political Science) Examination, 1992 in 2nd Class. In the gradation list of the Primary School, so prepared, the petitioner was placed at serial No. 36 as Intermediate Trained Teacher and the names of one Surya Prasad Mandal (respondent No. 4) and Lakshmi Kant Thakur (respondent No. 5) were placed at serial Nos. 41 and 42 respectively and the said gradation list remained intact till 1989. In the year, 1990 the Department of Primary Education, Government of Bihar, prepared another gradation list and the petitioner's name appeared at serial No. 37 whereas the names of respondent Nos. 4 and 5 were placed at serial Nos. 43 and 46 respectively. It is also contended that the said gradation list was never challenged at any point of time. According to the petitioner, since he had achieved Graduation in 1984 and Post-Graduation in 1995 he was entitled to higher scale of B.A. Trained and M.A. Trained as per the decision of the State Government vide Notification No. 2060 dated 15.09.1981. According to the petitioner, a fresh gradation list was to be prepared for such candidates, who had obtained or enhanced their qualification, for the purposes of giving higher pay scale in accordance with the seniority. The petitioner further contends that the District Superintendent of Education erroneously applied the provisions of Take Over Primary Teachers Promotion Rules, 1993 and gave promotion to respondent Nos. 4 to 6 with effect from 20.11.1968 for LA. Trained Teacher. The District Superintendent of Education, Dumka, issued Notification No. 567 dated 16.03.1996 vide which respondent Nos. 4 to 6 were promoted in B.A. Trained Scale. However, the name of the petitioner was not included anywhere in the serial list and by the same order the District Superintendent of Education promoted 23 other Teachers in the B.A. Trained Scale of Headmaster. The petitioner preferred appeal before respondent no.2, challenging the illegal preparation of gradation list and giving M.A. Trained Scale of Headmaster to juniors, ignoring the rightful, claim of the petitioner. The petitioner, thereafter, filed a writ petition being C.W.J.C. No. 3247 of 1998, challenging the order dated 16.03.1998 before the Hon'ble Patna High Court and for extending him the B.A. Trained Scale and P.G. Trained Scale of Headmaster, which was given to junior Teachers i.e. respondent Nos. 4 to 7. The petitioner also gave the detail facts about the contesting respondents with regard to their dates of appointment and the dates on which they achieved B.A. and M.A. Degree. The Hon'ble Patna High Court vide its order dated 13.09.2002 directed to reconsider the claim of the petitioner. It also permitted to file a separate appeal vis-a-vis respondent Nos. 6 and 7. Respondent no.2 vide its impugned order dated 16.09.2002 dismissed the appeal being Misc. Appeal No.5 of 2000-01 and also the Misc. Service Appeal No. 7 of 2000-01, which is sought to be challenged in this writ petition.

3. According to the petitioner, the gradation list prepared by the respondents in

1986 was of Matric Trained Scale and that is why the petitioner's name was not included in the said list as mentioned in the order dated 16.09.2002. The petitioner has also contended that the gradation list prepared in 1994 after Promotion Rules, 1993 was illegal and also on the basis of Matric Trained Scale, which was held by the Hon'ble High Court in C.W.J.C. No. 3247 of 1998 as illegal and, therefore, that cannot be the basis of the decision of seniority between the petitioner and the private respondent Nos. 4 to 7. The petitioner further submits that the entire action was not only discriminatory but amounts to double standard and the seniority cannot be decided under the provisions of Bihar Nationalized Elementary School Teachers Promotion Rules, 1993. It has also been pointed out that even in the approved gradation list of 1986 the name of the petitioner was shown at serial No. 36 whereas the name of the private respondents appeared at serial Nos. 41 and 44 and, thus, the entire action on the part of the respondent authorities was arbitrary, illegal and liable to be set aside. The petitioner has also filed an application for amendment (I.A. No. 965 of 2008) in view of letter dated 14.02.2008, issued vide Memo No. 559 for recovery of excess drawn salary in one lump-sum.

4. According to the respondents, the petitioner was not liable for promotion and not entitled for grant of Graduate Trained Scale and the name of the petitioner was at the appropriate place in the gradation list.

5. I have perused the statement of facts, pleadings and heard the argument. In the appointment letter dated 16.04.1980 it is clearly mentioned that the petitioner along with others were appointed on the condition that once they obtain the Training, they will be appointed with effect from 01.04.1981 in the Matric Trained Scale. It appears that the recovery was ordered in view of the fact that even the District Superintendent of Education had extended I.A. Trained Scale to the petitioner with effect from 01.03.1981. In the writ petition being C.W.J.C. No. 3247 of 1998, preferred by the petitioner, the Hon'ble High Court vide its order dated 13.09.2000 while remanding the matter for consideration of the appeal, made certain observations, which are reproduced as under:

From the appellate order of the Divisional Commissioner it appears that the cases of only those teachers who were appointed up to 26.11.68 were considered for promotion, and as petitioner was appointed later on 24.4.80 in the order it has been mentioned as 1.4.81, which probably is a mistake, for effective date of grant of I.A. trained scale is 1.3.81), he was not promoted to the headmaster's scale. The ground appears to be specious but there is apparent fallacy therein. If the seniority of the Intermediate trained teacher is not affected by reason of the 1993 Rules then those in that scale are entitled to be treated as senior to the Matric trained scale teachers. It would be anomalous to exclude them from the zone of consideration for promotion to the headmaster's scale on the ground that they were appointed after the cut off date. It is obvious that order has been passed and impugned promotion given to the said respondents treating Matric trained/I.A. trained teachers at par. If that is not possible in view of the Bench

decision of this Court aforesaid, I wonder if it is possible to bypass the claim of the petitioner while granting headmaster's scale to the said respondents. I do not wish to make further observations as I am inclined to direct the Divisional Commissioner, Santhal Parganas Division to reconsider the petitioner's claim.

6. Thus, there is no denial of the fact that the petitioner was throughout placed higher in the gradation list as compared to the private respondents. The law in this regard is well settled that even assuming that there was a default, then the candidate/petitioner herein cannot be made to suffer for the default of the authorities concerned. In any event, the admitted case remains that the petitioner had achieved Graduation in 1984 and Post-Graduation Degree in 1995 and was thus, entitled to higher scale of B.A. Trained and MA Trained as per the decision of the State Government vide Notification No. 2060 dated 15.09.1981. As per the said notification dated 15.09.1981 fresh gradation list of such candidates, who had obtained or enhanced their qualification, was to be prepared every year by the end of 31st December for the purposes of extending them the higher scale in accordance with seniority. In any case, the contention raised that the Primary Teachers Promotion Rules, 1993 will be applicable appears) be prima facie erroneous.

7. Respondent no.2 has committed an error of jurisdiction and could not sit over the judgment of Hon'ble High Court, passed in C.W.J.C. No. 3247 of 1998, wherein, a definite finding was given by the Hon'ble High Court that seniority of LA. Trained Teachers vis-a-vis Matric Trained Teachers cannot be decided under the provisions of Bihar Nationalized Elementary School Teachers Promotion Rules, 1993. The Hon'ble High Court gave a clear cut finding in its order dated 13.9.2000 that it will be anomalous to exclude the petitioners from the zone of consideration for promotion to the Headmaster's scale on the ground that they were appointed after the cut off date. The respondents further have erred in failing to appreciate that the petitioner was given I.A. Trained scale on 01.03.1981 not because of an order of promotion but in view of the fact that the petitioner was appointed against I.A. Trained Teacher Unit and the decision of the District Superintendent of Education was not necessary before issuance of the order dated 07.04.1983. The learned Single Judge in its order dated 13.09.2000 rightly relied upon the judgment as reported in 1998(1) P.L.R. 608 passed by the Division Bench, wherein, it was specifically held that seniority of I.A. Trained Teachers vis-a-vis Matric Trained Teachers cannot be affected retrospectively by virtue of the aforesaid Rules of 1993 and those who are in I.A. Trained Scale have to be reckoned senior to their counter parts in the Matric Trained Scale. Even otherwise the law in this regard is well settled that once a person has been extended the seniority in accordance with the prevalent rules, as then existed, then the same cannot be altered or taken away retrospectively by making subsequent rules. In the aforesaid background, this writ petition is allowed and the order dated 16.09.2002, passed by respondent no.2 is quashed and it is further directed to consider the claim of the petitioner to grant Graduate Trained Scale with effect from 01.04.1985 and Post Graduate Trained scale in the scale of

Headmaster with effect from 16.03.1996.