
(2021) 02 JH CK 0138

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6023 Of 2018

Sushma Kumari @ Sushma Kumari Devi

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-02-2021

Acts Referred:

Bihar Education Code, 1961 — Rule 27, 97(xi)
Constitution of India, 1950 — Article 14, 19

Citation : (2021) 02 JH CK 0138

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Ritesh Gupta, Neha Kumari, Rishu Ranjan

Final Decision : Allowed

Judgement

1. Heard Mr. Sumeet Gadodia, learned counsel for the petitioner and Mr. Rishu Ranjan, learned counsel for the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard on merit.

3. The petitioner has preferred this writ petition for quashing the order dated 01.10.2018, whereby, the petitioner has been terminated after rendering

services for more than 30 years.

4. The petitioner was appointed on a vacant post of Assistant Teacher in Khunti, pursuant to an advertisement notice dated 21.09.1988, issued by the

office of the District School Inspectress, Ranchi under the erstwhile State of Bihar. A three member Committee was even constituted which was

presided over by the then District School Inspectress, Ranchi for appointment of Matric Trained Teacher in Government Girl's Middle School, Khunti.

The petitioner, being desirous to be appointed as an Assistant Teacher, submitted her application before the concerned authority and after following

due selection process, the petitioner was selected as eligible candidate for appointment on the vacant post of Assistant Teacher. The appointment

letter dated 27.12.1988 was issued to the petitioner by the office of the District School Inspectress, Ranchi. The appointment of the petitioner was

shown to have been made for a period of three months, but subsequently extension orders were issued from time to time, extending the appointment of

the petitioner. Finally vide letter dated 18.12.1989, it was declared that the post on which the petitioner has been appointed is permanent in nature. The

petitioner was thereafter discharging her duties to the full satisfaction of her superiors. The service of the petitioner was duly regularized by the

District School Inspectress, Ranchi vide order dated 11.01.1991, contained in Annexure-4 of the writ petition. The petitioner was not complained of

any misconduct, till date. The departmental proceeding was initiated against the petitioner vide letter dated 08.09.2010 and charge-sheet in Form-K

was issued to the petitioner. The petitioner replied to the said charge-sheet. The Enquiry Officer has submitted his report and pursuant thereto the

impugned order has been passed, whereby, the service of the petitioner has been terminated vide order dated 01.10.2018.

Aggrieved with this order, the petitioner has preferred this writ petition.

5. Mr. Sumeet Gadodia, learned counsel for the petitioner assailed the impugned order on the ground that the charge-sheet with regard to four charges

have been issued against the petitioner and the termination order has been passed on the other ground, which is not even the part of the charge-sheet.

He draws attention of the Court to the enquiry proceeding and submits that the Presenting Officer in clear terms has stated before the Enquiry Officer

that the District School Inspectress, Ranchi was having the power to appoint Matric Trained Teachers. He submits that however the Enquiry Officer

has also accepted this aspect of the matter that the records of the petitioner are not available. However, the provision of roster clearance or

reservation has not been made before the Enquiry Officer and pursuant thereto a CBI enquiry, which was directed to be conducted by the direction of

the Hon'ble Patna High Court. The CBI has opined that the records of the petitioner are not available. However, the same has been said to be made available, which is recorded in the proceeding. He further submits that the Enquiry Officer's report is itself contradictory and only on the ground of non-clearance of roster, the service of the petitioner has been terminated. He also submits that at the time of appointment of the petitioner, the District School Inspectress, Ranchi was having the power to appoint Matric Trained Teachers.

To buttress his argument, he draws attention of the Court to the rejoinder to the supplementary counter affidavit, filed by the petitioner and submits that at the time of appointment of the petitioner, the District School Inspectress, Ranchi was having the power to appoint the petitioner.

6. For ready reference, Rule 97(xi) of the Bihar Education Code, wherein the power of District Inspectress of Schools has been mentioned, is quoted herein below:

97(xi) to make appointment of class IV Government servants and of teachers in the scale of Rs.50-90 or below in schools under her control and to sanction pension to all such cases.

7. Learned counsel for the petitioner further submits that the impugned order has been passed without considering the Enquiry Officer's report. He also submits that by the impugned order, the liability has been imposed upon the petitioner to the effect that the petitioner has not been able to show whether the roster clearance or reservation is there or not. He further submits that the petitioner was merely a candidate who appeared for her appointment and she cannot be expected to have in possession of relevant documents to demonstrate that the provision of reservation or roster clearance has been followed. Even assuming that if the roster clearance and reservation rules were not followed, the petitioner could not be held responsible for the same that too after rendering 30 years of long service.

He also submits that in the counter affidavit, the respondents have tried to improve the case, which is against the well settled provision of law. He further submits that any new ground cannot be allowed to be supplemented by way of filing the counter affidavit. To buttress his argument, he relied upon the judgment rendered in the case of *United Air Travel Services v. Union of India*, reported in (2018) 8 SCC 141.

8. Paragraph 11 of the said judgment is quoted herein below:

11. The learned counsel for the petitioner has, thus, rightly drawn our attention to the Constitution Bench judgment of this Court in *Mohinder Singh*

Gill v. Chief Election Commr. to submit that such a plea cannot be accepted. We may note that this is a well-settled legal position in many judicial

pronouncements of this Court, but it is not necessary to revert to the same. In para 8 of the aforesaid judgment, V.R. Krishna Iyer, J., in his inimitable

style states as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought

out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

'9. ...public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or of what was in his mind, or what he intended to do.

Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are

addressed and must be construed objectively with reference to the language used in the order itself.' Orders are not like old wine becoming better as

they grow older.

9. So far as the liability imposed upon the petitioner of roster clearance is concerned, learned counsel for the petitioner submits that the petitioner is not

the authority to show roster clearance before the respondent- authority. He further submits that it was the State authority to take into consideration

about the roster clearance. The petitioner was only a candidate and she has applied in terms of the advertisement. To buttress his argument, he relied

upon the judgment rendered in the case of *Indra Mandal Prasad Singh v. State of Bihar*, reported in 2011 SCC Online Pat 1072.

10. Paragraph 8 of the said judgment is quoted herein below:

8. This positive stand of the petitioner, if it was establishment from the records,

was enough to hold that the appointment of the petitioner was not illegal. Since entire procedure, as claimed by the petitioner, was gone through by the respondents themselves in their offices, petitioner was not expected to produce proof of the same in support of his claim that the posts were advertised, names were called for from the Employment Exchange, interview was held and then selection was made. Hence, in absence of any proof being produced by the petitioner in support of his this claim, the Committee was not correct in coming to a finding that the appointment of the petitioner was without any advertisement or without any procedure adopted. In view of the findings of this Court earlier and the claim of the petitioner from before, onus lay on the respondents to establish, on the basis of records of their offices, that either there was no decision of the Divisional Establishment Committee as referred to in the order of appointment of the petitioner issued by the Regional Deputy Director or the Establishment Committee had not taken into consideration any panel of names or had not adopted any procedure before recommending the petitioner for his appointment. Once that presumption, arising from the wordings of the appointment letter, is not rebutted by the respondents, benefit has to go to the petitioner. In the circumstances, if it is presumed that the petitioner was appointed pursuant to an advertisement, after calling names from the Employment Exchange, interview and selection, non- clearance of roster and failure to comply with the reservation rules will only be an irregularity committed by the officers of the State Government in their offices for which, as rightly held by this Court in the earlier writ application of the petitioner, petitioner cannot be penalized. 10. In the circumstances, this Court finds that the petitioner fulfils the tests as laid down by the Constitution Bench of the Apex Court in paragraph 53 of the said judgment as noticed in the impugned order itself. That being the position, this Court holds that the petitioner is fit to be regularized in service. However, it is made clear that though the petitioner may get continuity of service for the purpose of pay fixation etc., he shall not be entitled to monetary benefits of the period during which he has actually not worked and shall not be entitled for seniority over others who are not before this Court.

11. Learned counsel for the petitioner further submits that the Enquiry Officer is quasi-judicial authority and the Enquiry Officer has supplemented his

report by way of another ground, which was not presented before him. To buttress his argument, he relied upon the judgment rendered in the case of Union of India v. Ram Lakhan Sharma , reported in (2018) 7 SCC 670.

12. Paragraphs 27 and 28 of the said judgment are quoted herein below:

27. In State of U.P. v. Saroj Kumar Sinha, this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent

adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held:

28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of

the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the

delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid

procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into

consideration to conclude that the charges have been proved against the respondents.

* * *

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also

cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to

ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is

treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates

the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of

Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the

statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can

be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

13. On these grounds, Mr. Gadodia, learned counsel for the petitioner submits that the petitioner, who has worked in the department for 30 long years and only on the ground of one CBI enquiry and without considering the materials on the record, the impugned order has been passed and the service of the petitioner has been terminated, which is against the law. The termination of service of the petitioner is absolutely arbitrary, illegal and violative of Articles 14 and 19 of the Constitution of India.

14. Per contra, Mr. Rishu Ranjan, learned counsel for the respondent- State submits that pursuant to the order of the Hon'ble Patna High Court in one of the writ petition, the CBI enquiry was directed to be conducted. The CBI enquiry was conducted, wherein, report has been submitted and the records of the petitioner were not found and, thereafter, the departmental proceeding was initiated against the petitioner, in which, the case of the petitioner was considered and, thereafter, the impugned order has been passed. He further submits that the District School Inspectress, Ranchi was not having the jurisdiction to appoint the petitioner. To buttress his argument, he relied upon the judgment rendered in the case of Madhuri Kumari v. The State of Bihar , reported in 2002 SCC Online Jhar 636.

15. Paragraph 7 of the said judgment is quoted herein below:

7. Mr. P.K. Prasad, learned counsel appearing for the petitioners drawn my attention to regulation 868 of Bihar Education Code in support of his submission that District Inspectress of School is the appointing authority. From perusal of the letter of appointment issued to the petitioners it appears that the petitioners were sought to be appointed as Matric Trained Teachers in the pay scale of Rs. 1200-1800. Neither the Education Code nor any of the rules empowers District Inspectress of school to be the appointing authority in respect of appointment to the post of Matric Trained Teachers. The appointment of the petitioners by the District Inspectress of School is illegal and

wholly without jurisdiction. I am, therefore, of the opinion that the Director Secondary Education rightly held that the services of the petitioners are liable to be terminated. I do not find any reason to interfere with the impugned order passed by the Director, Secondary Education. No relief can be granted to the petitioners. These writ petitions are, therefore, dismissed.

16. Learned counsel for the respondent-State further relied upon the judgment rendered in the case of Mewati Rani Singh v. The State of Jharkhand & Ors. in W.P. (S) No. 7476 of 2011, which was delivered on 12.08.2016. He submits that the case of the petitioner is fit to be rejected in view of the judgment delivered by the coordinate Bench of this Court in the said writ petition. He further submits that it is well settled position that public employment must be made under parameters of Articles 14 and 16 of the Constitution of India.

17. Having heard learned counsel for the parties, the Court has gone through the materials on the record. On perusal of the charge-sheet, it transpires that four charges have been levelled against the petitioner, wherein, first charge was that the petitioner got the appointment under special arrangement; second charge was that the petitioner was appointed without following due process of law; third charge was that in the CBI enquiry, the name of the petitioner was found figured and fourth charge was about illegal appointment. However, the impugned order has been passed on the ground of non-clearance of roster with regard to reservation, which is not the part of the charge. It is well settled position that a delinquent is required to serve a particular charge on which the departmental proceeding has been sought to be initiated. On perusal of the Enquiry Report, it transpires that the Presenting Officer has submitted in clear terms before the Enquiry Officer that the District School Inspectress was having the power of employment of Matric Trained Teachers. The Enquiry Officer has not dealt with this aspect of the matter i.e. the power of the District School Inspectress. However, he submitted the Enquiry Report on the ground of non-clearance of roster, which was not the subject matter either of the charge-sheet or the case of the Presenting Officer before the Enquiry Officer. The Enquiry Officer has not accepted the submission of the Presenting Officer with regard to power of the District School Inspectress and held that the

District School Inspectress was not the competent authority to appoint the petitioner. On perusal of Rule 97(xi) of the Bihar Education Code, which has been brought on record by way of filing rejoinder to the supplementary counter affidavit by the petitioner, it transpires that the power of District Inspectress of School is there for appointment of Class-IV Government servants and of Teachers in the scale of Rs.50-90 or below in schools under her control and to sanction pension to all such cases. The Code might have been amended later on, which has not been disclosed by the learned counsel for the respondent-State, whereby, such power of the District Inspectress of School may not be there, but it transpires from Rule 97(xi) that that power was there. The impugned order has not been passed on the ground that the District Inspectress of School was having no jurisdiction to appoint the petitioner. However, the impugned order has been passed on the ground that the petitioner has not been able to demonstrate as to whether roster clearance was there or not. Thus, the impugned order has been passed without considering entire aspects of the matter. The case of roster clearance has been considered in the case of Madhuri Kumari (supra). The impugned order cannot be allowed to be supplemented by way of filing counter affidavit and it has been considered in the case of United Air Travel Services (supra).

18. The judgment relied by the learned counsel for the petitioner in the case of Madhuri Kumari (supra), in paragraph 6 of the said judgment it has been recorded that the District Inspectress of School was directed to make appointment for the period of three months and this paragraph of the judgment is fortified in view of the appointment letter of the petitioner, which is contained in Annexure-1 Series of the writ petition. Initially, the petitioner was appointed for three months and subsequently it was extended from time to time in light of paragraph 6 of the said judgment in the case of Madhuri Kumari v. The State of Bihar, reported in 2002 SCC Online Jhar 636. Paragraph 6 of the said judgment is quoted herein below:

6. From perusal of the order passed by the Director, Secondary Education it appears that although the Inspectress of School was directed to make appointment for a limited period of three months but ignoring the said direction steps were taken for making regular appointment. Even for making regular appointment advertisement either in the Newspaper or by publication for

inviting suitable candidates was not made nor the roaster clearance

with regard to the reservation was followed. It appears that the Deputy Commissioner after making necessary inspection and inquiry found that these appointments were not made in accordance with the rules.

19. Thus, the judgment relied by the learned counsel for the petitioner in the case of Madhuri Kumari (supra) is on the other hand helping the petitioner and this aspect of the matter has not been examined by the learned counsel for the respondent-State.

20. The judgment relied by the learned counsel for the respondent-State in the case of Mewati Rani Singh (supra) is also distinguishable in the facts and circumstances of the present case. In that case, the District Inspectress of School has denied the appointment to the petitioner, which was later on considered by the authority concerned. That aspect of the matter has been dealt with by the coordinate Bench of this Court in paragraph 4 of that judgment and in that case, the Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi has also made enquiry into the matter and found the appointment of that petitioner was illegal. These are the facts, which are not present in the case in hand.

21. Thus, the two judgments relied by the learned counsel for the respondent-State are not helping the respondents.

22. The petitioner was appointed after following due process of law. The advertisement was there and thereafter the petitioner has been appointed. In light of these discussions, a reference may be made to the judgment rendered in the case of Buddhi Nath Chaudhary v. Abahi Kumar , reported in (2001) 3 SCC 328, whereby, the Hon'ble Supreme Court has held that the appointment made long back pursuant to a selection need not be disturbed.

Paragraph 6 of the said judgment is quoted herein below:

6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be

considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected

candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical

reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting

respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed.

Such a view can be derived from several decisions of this Court including the decisions in *Ram Sarup v. State of Haryana*; *District Collector &*

Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi and *H.C. Puttaswamy v. Hon'ble Chief Justice of*

Karnataka High Court, Bangalore. Therefore, we must let the matters lie where they are.

23. As a cumulative effect of the above discussions, the impugned order dated 01.10.2018 cannot sustain in the eyes of law. Accordingly, the

impugned order dated 01.10.2018, contained in Annexure-11 of the writ petition is quashed. In the peculiar facts and circumstances of the present

case, the petitioner shall be entitled for consequential benefits.

24. Accordingly, the writ petition stands allowed and disposed of.