

(1999) 09 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. Case No. 493/96 (R)

Sushri Shukla Sen

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Citation : (2000) 1 PLJR 449

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Anwar, R.C. Sincar, Rajesh Kumar, Ruby Parween and S.P. Roy in 493 and Mr. M.M. Tanti in 11 and 183, for the Appellant; M.S. Anwar, S.P. Roy, R.C. Sincar, Rajesh Kumar, A.K. Mehta in 11, M/s M.S. Anwar, S.P. Roy and Rajesh Kumar in 183 and Mrs. Ritu Kumar for the State in 11, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—As in both the cases, parties are common and common point of law is involved, they were heard together and are being disposed of by this common judgment. Petitioner-Shukla Sen (of C.W.J.C. No. 493/96 (R) while challenged the order dated 11.12.1995 in her writ petition, the other petitioner-Shipra Dutta (of C.W.J.C. No. 11/95 (R); challenged the order dated 29.12.1994 in her writ petition.

2. At this stage, it is pertinent to mention that in the case of petitioner-Shukla Sen (C.W.J.C. No. 493/96 (R), the other petitioner-Shipra Dutta is respondent no. 6 whereas in the case of petitioner-Shipra Dutta (C.W.J.C. No. 11/95 (R)), petitioner-Shukla Sen is respondent no. 5.

The admitted fact, as pleaded and not disputed, shows that the petitioner-Shukla Sen passed B.Ed. examination in 1971 whereinafter she was appointed as a teacher on 16.8.1974 in "Bangiya Sanskritik Parishad High School", Ranchi, a linguistic minority school (school for short).

3. The other petitioner-Shipra Dutta was untrained but was appointed in the said school, earlier to petitioner-Shukla Sen on 1.4.1974 whereinafter she passed

B.Ed. examination on 24.2.1975.

The school in question was not recognised at the relevant time when the petitioners were appointed. It was granted permission to establish by the State of Bihar on 10.12.1976 and recognised by Government on 15.1.1980. Subsequently, the school was granted minority status by the State of Bihar on 4.10.1980.

The school having declared minority school, the petitioners and others were allowed scale of pay as allowed by the State and since then the petitioners are continuing in the service of the school.

3A. The school authorities declared Shipra Dutta as senior to Shukla Sen on 22.11.1991 against which petitioner Shukla Sen preferred C.W.J.C. No. 624/92 (R). The aforesaid writ petition was disposed of by this Court on 5.7.1994 wherein this Court directed the D.E.O. to decide the representation of petitioner-Shukla Sen after hearing the parties. Subsequently, the District Education Officer, Ranchi declared Shukla Sen as senior to Shipra Dutta vide order dated 24.12.1994, which is under challenge in C.W.J.C. No. 11/95 (R) preferred by petitioner Shipra Dutta.

During the pendency of C.W.J.C. No. 11/95 (R), Shipra Dutta filed another writ petition C.W.J.C. No. 73/95 (R) for direction on the respondent-District Education Officer, Ranchi to approve selection grade to her. The said writ petition was disposed of by this Court on 3.4.1995 wherein she was asked to prefer a representation before the D.E.O., Ranchi, who in his turn, was directed to pass a speaking order.

4. It appears that in C.W.J.C. No. 11/95 (R) preferred by petitioner-Shipra Dutta, an interim order was passed by this Court on 21.2.1995 against which a petition was filed by respondents of the said case for vacating the interim order. This Court by order dated 7.4.1995 while refused to vacate the stay order, made the same absolute. Subsequently, on hearing the parties, the respondent-D.E.O., Ranchi passed an order on 5.5.1995 in view of order passed in C.W.J.C. No. 73/95(R) and declared Shukla Sen as senior to Shipra Dutta. For the said reason, petitioner-Shipra Dutta preferred contempt petition being M.J.C No. 183/95 (R) alleging wilful disobedience of the Court's interim order in view of order passed on 5.5.1995.

The respondent-D.E.O., Ranchi, however, after giving reference of order dated 3.4.1995 passed in C.W.J.C. No. 73/95 (R) decided the representation of Shipra Dutta vide impugned order dated 11.12.1995 and granted her promotion to senior selection grade scale, subject to final decision of this Court. The aforesaid order dated 11.12.1995, granting promotion to Shipra Dutta to selection grade scale is under challenge in C.W.J.C. No. 493/96 (R) preferred by Shukla Sen.

5. The main question involved in two writ petitions as to who is senior amongst the parties aforesaid.

According to the petitioner-Shukla Sen, she being trained earlier to petitioner-Shipra Dutta and having appointed in fixed pay of Rs. 120/- is senior to petitioner-Shipra Dutta, who was untrained and was appointed in the lower fixed pay of Rs. 100/- per month. Further, according to her, in terms with guideline issued by the State of Bihar vide Circular dated 2.7.1983 (Annexure-7), teachers appointed after 18.9.1972, the seniority is to be fixed on the basis of passing of training. The petitioner-Shukla Sen having passed training earlier to petitioner-Shipra Dutta and both of them having appointed after 18.9.1972, in terms with the aforesaid circular dated 2.7.1983 (Annexure-7), the petitioner-Shukla Sen should rank senior to petitioner-Shipra Dutta.

6. Reliance was also placed by the counsel for the petitioner-Shukla Sen on the circular issued by the State Government dated 21.12.1982 (Annexure-11); Circular dated 27.6.1987 (Annexure-11/1) and Circular dated 15.9.1978 (Annexure-11/2) in support of the claim of petitioner-Shukla Sen.

On the other hand, the other petitioner-Shipra Dutta has taken plea that she having appointed earlier to petitioner-Shukla Sen and having passed B.Ed. examination much prior to the date the school was granted permission by the State to establish, she is senior to petitioner-Shukla Sen.

Counsel for the petitioner-Shipra Dutta also placed reliance on the appointment orders of both the parties and their service books.

7. The formal order of appointment of petitioner-Shukla Sen is dated 24.4.1975, as contained in Annexure-8 to her writ petition. Therein giving reference to her appointment made on 13.8.1974 against leave vacancy, fresh offer given to her by the said letter. Petitioner-Shukla Sen was allowed consolidated honorarium of Rs. 100/- per month plus additional amount of Rs. 20/- per month for successful completion of B.T./B.Ed. course. She was placed on probation w.e.f. 9.11.1974 with stipulation that on completion of such period, she was provided with consolidated honorarium of Rs. 125/- per month.

On the other hand, by the order of appointment of petitioner-Shipra Dutta issued on 2.3.1974 [Vide Annexure-8/1 to C.W.J.C. No. 493/96(R)], she was appointed as teacher with consolidated honorarium of Rs. 100/- per month with stipulation that on completion of one year of service, she will be provided with consolidated honorarium of Rs. 125/- per month.

8. From the aforesaid orders of appointment of both the parties, it will be evident that both of them were appointed and provided with consolidated honorarium of Rs. 100/- per month from their respective date of appointment. Petitioner-Shukla Sen was merely provided with additional amount of Rs. 20/- per month but not as honorarium.

Petitioner-Shukla Sen successfully completed probation period on 9.11.1975 and become entitled for consolidated honorarium of Rs. 125/- per month since then. On the other hand, petitioner-Shipra Dutta completed one year of service on

1.4.1975 and was provided with consolidated honorarium of Rs. 125/- per month. Thereby, petitioner-Shipra Dutta was provided with higher consolidated honorarium of Rs. 125/- per month much prior to petitioner-Shukla Sen.

9. Admittedly, after grant of recognition by the State, they have been provided with same regular scale of pay from their initial date of appointment. In the service book of petitioner-Shukla Sen, while she has been allowed notional pay in the minimum of the scale i.e. Rs. 220/- from her initial date of appointment w.e.f. 16.8.1974, petitioner-Shipra Dutta has been allowed notionally in same scale and pay fixed in the minimum of the scale i.e. Rs. 220/- from her initial date of appointment w.e.f. 1.4.1974.

10. From the aforesaid fact, it will be evident that initially both the petitioners were appointed in same consolidated pay; petitioner-Shipra Dutta provided with her consolidated pay (Rs. 125/-); prior to petitioner-Shukla Sen and after grant of regular scale of pay, both of them were notionally provided with same scale of Rs. 220-315/-.

11. In the aforesaid circumstances, petitioner-Shipra Dutta having appointed earlier than the petitioner-Shukla Sen, I hold petitioner-Shipra Dutta as senior to petitioner-Shukla Sen.

12. So far as the guidelines as referred by counsel for the petitioner-Shukla Sen are concerned, they are not applicable in the present case. The circular dated 2.7.1983 (Annexure-7) relates to seniority of teachers of taken over secondary schools. Other guidelines dated 27.6.1978 (Annexure-11/1) and 15.9.1978 (Annexure-11/2) relate to approval of services of untrained teachers of non-Government High Schools, which are not applicable, the services of both petitioner-Shukla Sen and petitioner-Shipra Dutta having recognised much prior to such circulars, both having passed B.Ed., even prior to grant of establishment, on recognition of grant of minority status of the school. For the reasons aforesaid, while I set aside the orders dated 24.12.1994 and 5.5.1995, allow C.W.J.C. No. 11/95 (R) and dismiss C.W.J.C. No. 493/96 (R).

In view of aforesaid decision, the fact that petitioner-Shipra Dutta has already been promoted to selection grade scale and the apology sought for by the O.Ps. in the M.J.C. application, I do not intend to proceed against them further. The O.Ps. to the contempt application are discharged from contempt and the proceeding against them is dropped.

However, in the facts and circumstances, there shall be no order as to costs.