
(2012) 11 JH CK 0016
In the Jharkhand High Court
Case No : LPA No. 214 of 2008

The State of Jharkhand and Others	Vs	APPELLANT
Arun Sinha and Others		RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : (2013) 1 JLJR 200

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Subir Prasad, for the Appellant; Manoj Tandon, Amit Kumar Tiwari, Shree Krishna Pandey, Ramanuj Pandey in LPA No. 214 of 2008, Mr. M.M. Pan in LPA No. 319 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. These Letters Patent Appeals are decided by this common order since identical question is involved in these appeals.

2. The writ petitioners-respondents are the appointees of the year 1993-94. When they were appointed, they were untrained teachers. The petitioners' contention is that they requested the appellant-State to send them for training so that they may not be put in the category of untrained teachers. However they were sent for training in the year 1998, and that too only in view of the order passed by the Hon'ble Supreme Court on 5.9.1997. The petitioners completed the training in the year 1999 but the result was published in the year 2002 only and that too after intervention of the Court. The petitioners, therefore, claimed that they should be given Grade-IV scale as they have also completed the requisite period i.e., 8/12 years in service from the date of their appointment. The petitioners also submitted that in view of the Circular of the Government dated 25.6.1999 of Finance Department, Government of Bihar, it has been specifically clarified that the seniority of the untrained primary teachers will remain intact, in any case, even if they do not pass the training examination or if

they do not get training.

3. Learned single Judge accepted the contention of the writ petitioners in toto and observed that though they were initially appointed as untrained teachers and they were entitled to training which were provided to them by the Government in the year 1998 and that too in view of the order passed by the Hon"ble Supreme Court. The petitioners took and completed the training in the year 1999 but their result was published in the year 2002 and that too when the Court intervened. In these facts and circumstances of the case, the petitioners were not at fault in not getting the training but it was the fault of the State Government. In view of the above reasons, the writ petition filed by the petitioners was allowed, hence, the present L.P.As. have been preferred by the State.

4. Learned counsel for the petitioners submitted that the Circular dated 25.6.1999 though provided that seniority will not be affected by training or non-training as provided under Clause 3(Kha) of the said Circular, that Circular has been withdrawn retrospectively by the decision of the Cabinet of Government, dated 16.9.2000 and, therefore, petitioners are entitled to any relief of being untrained teachers at the time of appointment.

5. Learned counsel for the appellant-State submitted that so is the position in Bihar Taken Over Elementary School Teachers' Promotion Rules, 1993 and relied upon Rule 13 of the said Rules wherein it has been provided that untrained teachers shall not be eligible for promotion to any of the Grade i.e. 1 to 8 and as per the said sub-rule (3) of Rule 13, an untrained teacher may be given Grade-I from the date on which he becomes trained.

6. We have considered the submission of the learned counsel for the parties and perused the reasons given in the impugned judgment. Learned Single Judge has carefully considered all the issues involved in the petition and found that the petitioners were though appointed in the year 1993-94 but they were not provided training by the fault of the State only and even the training was provided only after passing of the order by Hon"ble Supreme Court on 5.9.1997. Even when the petitioners completed training in the year 1999, their result was not published and after intervention of the Court, that result was published in the year 2002. Therefore, in that fact situation the petitioners are not at fault in obtaining training. Not only this, but in our considered opinion also, once seniority is required to be determined in view of the Circular dated 25.6.1999 and that stands determined because of that Circular and the same could not be made ineffective by the subsequent withdrawal of the said Circular by the State Cabinet with retrospective effect. However, that was not the issue decided by the learned single Judge as it has been raised by the petitioners but effect of that Circular, which has already been given, cannot be taken away and in the facts and circumstances of the case, we are of the considered opinion that there is no merit in these L.P.As. which are, accordingly, dismissed.