
(2016) 01 JH CK 0018
In the Jharkhand High Court
Case No : LPA No. 19 of 2014

The State of Jharkhand

APPELLANT

Vs

Asma Azfar and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Citation : (2016) 2 JCR 163 : (2016) 1 JLJR 594

Hon'ble Judges : Dhirubhai Naranbhai Patel and Amitav Kumar Gupta, JJ.

Bench : Division Bench

Advocate : Dhananjay Kr. Dubey, for the Appellant; Vijay Kr. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.—1. This letters patent appeal has been preferred against the judgment and order delivered by the learned Single Judge in W.P.(S) No. 2567 of 2012* with I.A. Nos. 2132 of 2013, 2356 of 2013 and 3059 of 2013 vide judgment and order dated 17.6.2013, whereby the petition preferred by respondent No. 1 was allowed and the services of respondent No. 1 (original petitioner) was regularized, with a direction to make payment of salary with all consequential benefits. Learned counsel appearing for the appellant (original respondent No. 3 in the writ petition) has submitted that by virtue of Government Letter No. 142 dated 4.2.1989, respondent No. 1 (original petitioner) could not have been appointed as a teacher because she was not graduate at all as on the date of her appointment i.e. on 25.6.1989. It is further submitted that respondent No. 1 (original petitioner) was only Intermediate when she was appointed and later on, she cleared graduation in the year 1992 and post-graduation in the year 1995 and thereafter in the year 2001 she cleared B.Ed. Examination and, therefore, her claim for regularization was rejected by the Three Men Committee and the said order is at Annexure-1 to the memo of the Letters Patent Appeal, which was challenged in the writ petition and the said writ petition was allowed by the learned Single Judge without appreciating the

fact that respondent No. 1 (original petitioner) was not even a graduate when she was appointed. It is further submitted by the learned counsel for the appellant that paragraph No. 33 of the Full Bench's decision, in the case of Project Uchcha Vidyalaya Shikshak Sangh vs. State of Bihar & Ors. reported in [2000 (1) P.L.J.R. 287] is not helpful to respondent No. 1 (original petitioner) because the said paragraph No. 33 is with regard to cut-off date for the candidates, who were possessing the minimum qualification and were appointed prior to 4.2.1989, which is at (Annexure-5) to this Letters Patent Appeal. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge in W.P.(S) No. 2567 of 2012 dated 17.6.2013 deserves to be quashed and set aside.

2. Learned counsel appearing for the respondent has submitted that by virtue of Full Bench's decision, as stated hereinabove, especially paragraph No. 33 thereof, the cut-off date for possessing the minimum qualifications has been shifted and brought up to the date of report, given by the Screening Committee, i.e. 30.9.2007 and admittedly, prior to this cut-off date respondent No. 1 (original petitioner) was already possessing the minimum qualification for appointment to the post of Assistant Teacher. This aspect of the matter has been properly appreciated by the learned Single Judge and hence this Letters Patent Appeal may not be entertained by this Court. It is also submitted by respondent No. 1 (original petitioner) that the post of Assistant Teacher in Urdu language was created for the first time vide Circular No. 142 dated 4.2.1989.

3. Having heard counsels for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the judgment and order passed by the learned Single Judge in W.P.(S) No. 2567 of 2012 along with interlocutory applications therein, vide judgment dated 17.6.2013, mainly for the following facts and reasons:--

(i) Respondent No. 1 (original petitioner) was appointed for the post of Assistant Teacher in Urdu language on 25.6.1989 and at the time of her appointment she was only intermediate.

(ii) As per Circular No. 142 dated 4.2.1989 (Annexure-5) to the memo of Letters Patent Appeal, only the candidates, who are graduate and trained, can be appointed as Assistant Teachers.

(iii) Admittedly, this respondent No. 1 (original petitioner) was not at all a graduate much less trained graduate i.e. B.Ed., when she was appointed on 25.6.1989 as an Assistant Teacher. She was admittedly an inter pass student though she may be very brilliant student and later on she cleared her graduation in the year 1992 and post-graduation in the year 1995 and much later on i.e. in the year 2001 she cleared her B.Ed. Examination. As per Circular No. 142 dated 4.2.1989 only a graduate student can be appointed as a Teacher, but, in no case, a student of Std. V, Std. X or even inter pass can be appointed, because the minimum qualification for appointment to the post of Teacher was graduation.

This aspect of the matter has not been properly appreciated by the learned Single Judge and hence the judgment and order passed by learned Single Judge in W.P.(S) No. 2567 of 2012 dated 17.6.2013 deserves to be quashed and set aside.

(iv) Much has been argued on basis of paragraph No. 33 of the Full Bench's decision, as reported in , 2000 (1) P.L.J.R. 287 (supra). We have also perused the said paragraph No. 33 to be read with paragraph No. 30 thereof and we are of the clear opinion that paragraph No. 33 of the Full Bench decision never dilutes the effect of Circular No. 142 dated 4.2.1989 (Annexure-5) to the memo of Letters Patent Appeal, which requires minimum qualification of graduation and B.Ed. degree for appointment to the post of Assistant Teacher. Thus, the candidates who are appointed after 4.2.1989 must possess this qualification. Paragraph No. 33 of the Full Bench decision talks about those candidates who were appointed prior to 4.2.1989, whereas, respondent No. 1 (original petitioner) was appointed on 25.6.1989 and therefore, the said paragraph No. 33 of the Full Bench decision is not helpful to respondent No. 1 (original petitioner), for change of cut-off date for possessing the minimum qualification. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence the judgment and order passed by the learned Single Judge in W.P.(S) No. 2567 of 2012 dated 17.6.2013 deserves to be quashed and set aside.

4. Learned counsel appearing for respondent No. 1 (original petitioner) has submitted that the post of Urdu Teacher was created for the first time by Circular No. 142 dated 4.2.1989 and hence, even though respondent No. 1 (original petitioner) is intermediate, she could have been appointed as a Teacher on 25.6.1989.

5. We are not in agreement with this contention, canvassed by the learned counsel for respondent No. 1 (original petitioner), mainly for the reasons that by no stretch of imagination, Circular No. 142 dated 4.2.1989 has been diluted by any subsequent circular, much less by the decision of the Full Bench, otherwise a brilliant student of Std. V or Std. X could also have been appointed as Urdu Teacher in the hope that the said student would become graduate and thereafter post graduate and later on B.Ed. Hence, this contention is thoroughly misconceived, at least, for the candidates who were appointed after 4.2.1989.

6. As a cumulative effect of the facts and reasons, we hereby quash the judgment and order dated 17.6.2013 passed in W.P.(S) No. 2567 of 2012 along with I.A. Nos. 2132 of 2013, 2356 of 2013 and 3059 of 2013. This Letters Patent Appeal is, accordingly, allowed and disposed of.

*Ed.--Reported in , 2013 (3) JLJR 293.