

(2008) 12 JH CK 0026
In the Jharkhand High Court

Umakant Yadav and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 06-12-2008

Acts Referred:

Citation : (2008) 12 JH CK 0026

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Learned Counsel for the petitioners submits at the outset that the petitioners be allowed to delete the name of the petitioner No. 6 Ayodhya Prasad Singh in view of the fact that another writ application vide W.P.(S) No. 2750 of 2008 was filed on his behalf which has since been disposed of by this Court on 10.09.2008 along with other batch cases.

2. Considering the above fact, the name of petitioner No. 6 is deleted from the cause title of this writ application.

3. The petitioners who are teachers in the Government schools have sought for a direction upon the respondents to consider their case for promotion to the post of Headmaster on the ground that they have been working as Acting Headmaster and senior most teachers in their respective schools and are eligible for the promotions in terms of the Bihar Taking Over (Control and Management) Act, 1981.

4. The claim of the petitioners is that on considering the fact that they possess requisite qualification and also possess Teacher's Training Diploma, they were appointed as Trained Graduate Assistant Teachers. Furthermore, the service conditions of the petitioners is governed by the Bihar Taking Over Secondary Schools (Service Condition) Rules, 1983. The petitioners, in course of their tenure of service were given selection grade and some of them were given super selection grade.

It is contended that under Rule 4 of the Non-government Secondary Schools (Taking Over Management and Control) Act, 1981 prescribes the minimum eligibility for appointment/ promotion to the post of Headmaster. The petitioners possess all the requisite qualifications with an additional qualification of 10 years teaching experience. A seniority list was prepared for the purpose of granting promotion to the teachers to the post of Headmasters in accordance with the rules. The petitioners name had appeared in the gradation list as senior teachers.

5. In the earlier part of the year 2000, the petitioners were given promotion as Headmaster in the undivided State of Bihar and it was in pursuance to the directives issued by the respondent Deputy Direction (Education) that the seniority list was prepared and forwarded to the concerned department of the State Government. After receipt of the seniority list from the various schools, the State of Jharkhand had even proceeded to take steps for promotion to the post of Headmasters on the promotional quota in the nationalized high schools. It was during this period when the process was continuing, the State Government came up with a fresh notification with a new provisional gradation list of Assistant Teachers which was prepared on the basis of the rules framed on 05.11.2004 under the Jharkhand Non-Government Secondary School (Service Condition) Rules, 2004. In the new gradation list, the eligibility for promotion on the post of Headmaster was totally changed, prescribing a Post Graduate Degree, a Degree in Bachelor of Education and a minimum of 10 years of teaching experience in a recognized high school as a minimum eligibility criteria. The teachers who possess Diploma in Teaching or Diploma in Physical Education and Basic Training Certificate was, therefore, held to be disqualified.

6. The grievance of the petitioners is that since the process of filling up of the vacant posts of Headmasters in the various schools has commenced in early 2000 and was almost at the stage of completion and since the appointments were to be made against the vacancies which had occurred prior to the promulgation of the rules of 2004, their candidature cannot be denied by imposing a new rule that too, with retrospective effect.

7. Learned Counsel for the petitioners submits that a similar issue came up before this Court for consideration in the earlier writ application in the case of Md. Nazim and Ors. v. State of Jharkhand and Ors. vide W.P.(S) No. 2747 of 2008 and the Batch Cases which was heard and disposed of by order dated 10.09.2008.

Referring to a copy of the judgement delivered in the aforementioned writ applications, learned Counsel submits that the facts of the case of the petitioner in the present writ application are exactly identical to the facts of the cases of the petitioners in the aforementioned writ applications. This Court after considering the issues involved in the writ applications, had observed that the teachers who were found qualified and eligible in accordance with the rules applicable at the time when the process for promotion was initiated, cannot be denied on the ground of coming into force of the new 2004 Rules by applying the

same with retrospective effect. Learned Counsel submits that the decision of this Court in the above mentioned writ applications in the case of Md. Nazim & Others does squarely apply to the facts of the present case also.

A counter affidavit has been filed on behalf of the respondents.

8. Learned Counsel for the State concedes that the facts of the present case are identical to the facts of the case of Md. Nazim and Others referred to by the petitioner and the judgement in that writ application does apply to the facts of the present case also.

9. In the light of the above, the ratio in the case of Md. Nazim and Others as passed in W.P.(S) No. 2747 of 2008 shall apply to the case of the petitioners also and the petitioners are entitled to the reliefs claimed for in terms of the above judgement. This writ application is allowed.