
(2011) 09 JH CK 0139

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6038 of 2010

Umesh Kumar Sharma

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(1), 16

Citation : (2012) 1 JCR 355

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel

1. The present petition has preferred mainly for the reason that the petitioner is appointed as an Assistant Teacher in Project Girls High School, Barkattha, District Hazaribagh. Thereafter in 1984, his services have not been recognized by the respondents-State Authorities only on the ground that Three-Member Committee has not approved the recognition of the appointment given to the petitioner as he has not cleared his teachers training certificate examination from a recognized school/college which is approved by the National Council for Teachers Education.

2. Counsel for the petitioner submitted that report given by Three-Member Committee which is at annexure-B to the counter affidavit, are absolutely dehors to the facts and law. Counsel for the petitioner submitted that the Act, namely National Council for Teachers Education Act, 1993 came into force w.e.f. 01.7.1995, whereas the petitioner has cleared his teachers training certificate examination on 29th September, 1992 as per Annexure-1-A to the memo of petition from Sister Nivedita College at Kolkata. Thus, both clearance of the teachers training certificate examination as also the appointment of the petitioner as an assistant teacher are prior to commencement of the Act of 1993. This aspect of the matter has not been properly appreciated by the Three-

Member Committee. Counsel for the petitioner has also relied upon the decision rendered by this Court in Ravishankar Dubey Vs. The State of Jharkhand and others reported in 2010(3) JLJR 348, as also the decision rendered by this Court reported in the case of Dinesh Prasad Singh Vs. The State of Jharkhand and others reported in 2010 (4) JLJR 440, as also a decision rendered by this Court reported in Kalpana Lodhiya Vs. State of Jharkhand and others reported in 2009 (1) JLJR 348. In all these decisions, it has been held by this Court that once a teacher has cleared his teachers training certificate examination prior to enforcement of the National Council for Teachers Education Act, 1993, the insistence of clearance of teachers training certificate examination from a recognized school/college is uncalled for and unwarranted and in those decided cases, those petitioners were allowed to continue as Assistant Teachers and the case of the present petitioner is like those petitioners and, therefore, petitioner's services are required to be recognized by the respondents-authorities and necessary consequences may be followed upon recognition of the petitioner as a validly appointed Assistant Teacher. Counsel for the petitioner has also narrated in detail the history how these Project Girls Schools, which are 300 approximately in number, were taken over by the State Government and, therefore, some litigations started and went upto the Apex Court in Civil Appeal Nos. 6626-6681 of 2001 and therein a decision was rendered by the Hon"ble Supreme Court and ultimately a committee was constituted, by upholding a Full Bench decision rendered by Hon"ble Patna High Court. Thereafter, Three-Member Committee was constituted vide notification No. 1514 dated 20th July, 2006 and upon the record presented by the Government before the Three-Member Committee, it did not recommend the recognition of services of the petitioner only for the aforesaid reasons. The reason given by the members of the Committee for other similarly situated candidates has been brushed aside, by all the three aforesaid reported decisions of this Court. Petitioner is also sailing in the same boat. Earlier one petitioner has also cleared his teachers training certificate examination from Sister Nivedita College at Kolkata. Specially in the case which is reported in Dinesh Prasad Singh (supra), petitioner has also cleared teachers training certificate examination from the very same college. That Petitioner has also cleared his teachers training certificate examination prior to enforcement of the National Council for Teachers Education Act, 1993, whose petition was allowed by this Court. Likewise, petitioner was also appointed prior to enforcement of the National Council for Teachers Education Act, 1993. This aspect of the matter has not been properly appreciated by the Three-Member Committee while giving their report which is at annexure-B to the counter affidavit filed by the State and hence, the same deserves to be quashed and set aside to the extent it applies to the petitioner and the services of the petitioner may be directed to be recognized by the respondents-State with all consequential effects and benefits including payment of salary and such other allied benefits from the date of appointment of the petitioner i.e. from 21" December, 1984.

3. Counsel for the State vehemently submitted that the State Authorities have acted or reacted as per the Three-Member Committee constituted in pursuance of the direction given by Hon"ble Supreme Court in the aforesaid Civil Appeals and as per the recommendation of the Three-Member Committee, which is at annexure-B to the counter affidavit, the services of the petitioner have not been recognized mainly on the ground that petitioner has not cleared his teachers training certificate examination from a college recognized by the National Council for Teachers Education. Counsel for the respondents vehemently submitted that the petitioner has cleared his teachers training certificate examination from Sister Nivedita College at Kolkata which is not recognized by National Council for Teachers Education in the year in which the petitioner cleared his teachers training certificate examination and therefore, the service of the petitioner cannot be recognized. Hence, the petition deserves to be dismissed.

4. Counsel for the respondents submitted that in case this petition is allowed, the petitioner will be given the benefit of salary which has been extended to the other petitioners in similarly situated cases.

5. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case,, I, hereby, quash and set aside the recommendation made by the Three-Member Committee which is at annexure-B to the counter affidavit filed by respondent No. 2 to the extent to which it affects the present petitioner for the following reasons:

(i) The present petitioner after clearing his graduation examination i.e. B.Sc, he joined Project Girls High School, Barkattha, District Hazaribagh after proper interview. Petitioner was appointed w.e.f. 21st December, 1984 as per annexure-I to the memo of petition. It further appears from the facts of the case that the present petitioner cleared his teachers training certificate examination from Sister Nivedita College at Kolkata on 29th September, 1992 as per Annexure-1(A) to the memo of petition.

(ii) It appears from the facts of the case that the school in which the petitioner was appointed was thereafter taken over by the State Government along with other approximately 300 schools. All the schools were the Girls Schools which are also known as Project Girls High School. Thereafter, a dispute arose about the absorption of services of teachers and ultimately went upto the Highest Court of this country in Civil Appeal Nos. 6626-6681 of 2001 whereby the decision rendered by the Full Bench of Hon"ble Patna High Court was confirmed and a committee was directed to be constituted of Three Members to verify the eligibility of the teachers of the Project Girls High Schools selected in the earlier years. This committee has given a report about several teachers. This report, so far it affects the present petitioner, is at annexure-B to the counter affidavit filed by respondent No. 2 which is dated 10th October, 2010. As per this counter affidavit, the only reason advanced for not recognizing services of the petitioner is the report given by Three-Member Committee and looking to the report, it appears that Sister Nivedita College at Kolkata was not a recognized college by

the National Council for Teachers Education and from this College, petitioner has cleared his teachers training certificate examination in the year 1992 and, therefore, services of the petitioner has not been recognized. This reason is not a valid reason in the eye of law mainly for the reason that the petitioner has cleared teachers training certificate examination from the aforesaid college on 29th September, 1992. Petitioner has also been appointed as an Assistant Teacher w.e.f. 21st December, 1984. The Act, namely the National Council for Teachers Education Act, 1993, was brought into force w.e.f. 1st July, 1995. In view of the aforesaid facts, it appears that the petitioner was appointed prior to enforcement of the Act of 1993 and he has also cleared teachers training certificate examination prior to enforcement of the Act and, therefore, as per the decision rendered by this Court reported in the case of Ravishankar Dubey (supra), it has been held that once a teacher has cleared teachers training certificate examination prior to enforcement of the Act of 1993, it cannot be said that his services were irregular.

(iii) There is no question of any recognition to be given to the Sister Nivedita College at Kolkata by the National Council for Teachers Education Act, 1993 because National Council for Teachers Education Act was not in existence at the relevant time. Paragraph 5(iv) of the aforesaid decision reads as under: -

In view of the aforesaid decision, it has been held by this Court that the N.C.T.E. Act, 1993 came into force with effect from 1st July, 1995 and, therefore, those, who have cleared their Teachers Training Examinations prior thereto, their appointments cannot be terminated, only on the ground that they have not obtained Teachers Training from a recognized institution. In the facts of the present case also, the petitioner has got Teachers Training on 16th August, 1994 from Sister Nivedita College, Kolkata. She was selected as a Teacher also prior to enforcement of the N.C.T.E. Act, 1993, and she was actually appointed as a Teacher prior to enforcement of The N.C.T.E. Act, 1993 and, therefore, the requirement, envisaged in the termination order that the petitioner has not obtained Teachers Training from a recognized institution, is not tenable at law and the reasons given in the termination letter deserved to be quashed and set aside.

iv) It has been held by this Court in the judgment rendered in W.P. (S) No. 5412 of 2005 which has been reported in the case of Sarbani Bose Vs. The State of Jharkhand and others reported in 2006 (3) JLJR 480 as paragraphs 5 to 9 as under:

5. In the case of Dilip Kumar Gupta & analogous cases (supra) the judgment was delivered by a Division Bench of this court on 30th March, 2005. The said case related to appointment of Trained Teachers, pursuant to an advertisement, published by the State of Jharkhand on 28th August, 2002. Many of the candidates applied for appointment; appeared at the competitive test; declared successful but were not granted letters of appointment on the ground that the institutions from which they had obtained Teachers Training Certificate/ B. Ed.

Certificates are not approved by the National Council for Teachers Education. Having noticed the rival contentions and gone through the enclosures on record, the Court held as follows:

(a) "Recognized Institute" means an institution recognized or established by State government or Union government or by Statutory Bodies Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting education (training herein);

(b) After 1st July, 1995 or at best for another period of six months i.e. after 1st January, 1996 nobody, offering a course or training in Teachers Education, can run the institute without prior recognition by the N.C.T.E., there being bar to run such institute under Sub-section (1) to Section 14 of the N.C.T.E. Act, 1993;

(c) Even if a Teacher Training Institute is affiliated to a University, recognized by the University Grant Commission, no Teachers Training Examination can be held by the University whether provisional or otherwise for the students of such Teachers Training College after 1st January, 1996, if the Institute is not recognized by the N.C.T.E., in view of Clause (b) to Section 16 of the N.C.T.E. Act, 1993;

(d) A person, who has completed and obtained a Degree /Diploma Certificate in Teachers Training Course prior to 31st January, 1996 i.e. six months after promulgation of the N.C.T.E. Act, 1993 from an institute, recognized or established by the State Government or Union Government or by Statutory bodies Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting Teachers Training Education, is eligible for appointment to the post of Primary Teacher if otherwise found fit and

(e) Since 4th September, 2001 i.e. the date N.C.T.E. (Department of Qualification & Recruitment of Teachers) Regulation, 2001 into force, no untrained person can be appointed to the post of Primary Teacher.

6. Some of the candidates had passed Teachers Training Examination from Dr. B.C. Roy College of Education, Kolkata and other similarly situated institutions, Having noticed that they have passed the examinations after promulgation of N.C.T.E. Act and those institutions were not recognized by the National Council of Teachers Education, the Court held that the persons, obtained Training Certificates from such nine institutions, situated at Calcutta, can not be granted the relief, as sought for by them.

7. In the present case, the respondents have taken similar plea that the petitioner has passed Teachers Training Examination from Dr. B.C. Roy College of Education, Calcutta and such institution having not been recognized by the National Council for Teachers Education, as held by the Division Bench in the case of Dilip Kumar Gupta & ors. (supra), the provisional approval, granted in

favour of the petitioner, has been cancelled.

8. It is settled law that a judgment cannot be given effect from retrospective date, till the Court so directs. Any action taken prior to the judgment cannot be annulled automatically, giving reference to such judgment, if the Court has not decided such individual case. The petitioner having passed Teachers Training Course in the year, 1992 and having been appointed by the School on 20th December, 1993, the judgment rendered by this court on 30th March, 2005 in the case of Dilip Kumar Gupta & ors. (supra) cannot be made applicable in the case of this petitioner.

9. It has been held by the Court that the N.C.T.E. Act, 1993 came into force since 1st July, 1995 and after six months thereafter i.e. after 1st January, 1996 nobody, offering a course of training in teachers education, can run the institute without prior recognition by the National Council for Teachers Education. The petitioner having passed the examination in the year, 1992 itself, the question of recognition of Dr. B.C. Roy College of Education, Calcutta, by the National Council of Teachers Education at that relevant point of time does not arise. The Director, Primary Education, Jharkhand, Ranchi, has failed to appreciate the aforesaid facts and simply giving reference to the High Court's decision, rendered in the case of Dilip Kumar Gupta & ors. (supra), cancelled the provisional approval, as was given by the District Superintendent of Education, Singhbhum West, Chaibasa.

(Emphasis supplied)

v) In view of the aforesaid decisions, once a petitioner has cleared his teachers training certificate examination prior to enforcement of the Act, the respondents cannot insist that as the petitioner has not cleared his teachers training certificate examination from a recognized college, his services cannot be recognized. Appointment of a teacher made prior to enforcement of National Council for Teachers Education Act, 1993 cannot be brought to an end only on the ground that the teacher has not cleared teachers training certificate examination from a recognized college.

vi) In a similarly situated case of Dinesh Prasad Singh (supra), this Court has held that the petitioner of that writ petition who has cleared teachers training certificate examination from Sister Nivedita College at Kolkata in the year 1989 though was not recognized by National Council for Teachers Education Act, 1993 whatsoever arises.

vii) Moreover, in pursuance of the aforesaid decision rendered in the case of Dinesh Prasad Singh (supra), a decision has also been taken by the Secretary of the Government and he has passed an order dated 04.6.2011 which is at annexure-S series of the rejoinder affidavit filed by the petitioner which is dated 6th September, 2011. The petitioner's services in that case, has now been recognized by the respondents-Government who had cleared teachers training certificate examination in the year 1989 from the same college namely Sister

Nivedita College at Kolkata. Thus, order passed by this Court in Dinesh Prasad's case (supra) has also been implemented. Petitioner has also cleared his teachers training certificate examination from the very same college in the year 1992, prior to enforcement of the Act of 1993. Therefore, this petitioner also deserves same treatment.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the report given by the Three-Member Committee which is at annexure-B to the counter affidavit filed by respondent No. 2 on 10.12.2010 to the extent to which it affects the present petitioner and the reasons given in (he said report for the present petitioner is de hors to law for the reasons stated herein above and I, hereby direct the respondents that services of the petitioner may be recognized and necessary order may be passed to that effect and the petitioner will be entitled to all the consequential benefits including salary.

7. Petition is allowed and disposed of.