

(2019) 05 JH CK 0007

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 151 Of 2018

Usha Kumari And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 JH CK 0007

Hon'ble Judges : Aniruddha Bose, CJ;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, Rahul Gupta, Achinto Sen, Akshay Verma, Krishna Murari, Raj Bardhan

Final Decision : Dismissed

Judgement

1. Heard Mr. Anil Kumar Sinha, counsel appearing on behalf of the appellants.
2. Heard Mr. Rahul Gupta, counsel appearing on behalf of the respondent- State assisted by Mr. Achinto Sen and Mr. Akshay Verma, Advocates.
3. Heard Mr. Krishna Murari, assisted by Mr. Raj Bardhan, Advocates, appearing on behalf of the respondent no. 3-Jharkhand Education Project Council.
4. This appeal has been filed against the judgment dated 18.01.2018 passed by learned single judge in W.P. (S) No. 5527 of 2013, which was dismissed with other analogous cases.
5. Upon perusal of the writ petition filed alongwith this memorandum of appeal, this Court finds that the writ petition was filed for the following reliefs:

"For issuance of an appropriate Writ(s)/order(s)/direction(s) of or a writ in the nature of Mandamus, commanding upon & directing the respondents particularly the respondent no. 5 to make payment of salary/honorarium to them for the period of month April, 2010 to till date, which has not been given for which there is no latches or fault on the part of the petitioner."

6. Counsel for the appellants submits as under:-

A. There were altogether three writ petitioners in the writ petition who are the appellants before this Court.

B. The foundational facts regarding the petitioners in the writ petition are -

i. The petitioner no. 1 was selected as a para teacher on 19.08.2009 by Village Education Committee, Utkramit Primary School, Jorlahi: Lathatand of village Duwari District Chatra. After her selection, she gave her joining on 02.01.2010 in the school and her joining was duly accepted by the headmaster of the said primary school.

ii. The petitioner no. 2 was selected as a para teacher on 18.08.2009 by the Village Education Committee, Utkramit Middle School, Lubdhia of Bariyatu Village, District Chatra and after selection, he gave his joining at the aforesaid school on 03.10.2009, which was duly accepted by the headmaster of the said middle school.

iii. Petitioner no. 3 was selected as para teacher on 18.08.2009 by the Village Education Committee, Utkramit Middle School, Lubdiha and after selection, petitioner no. 3 gave his joining on 01.10.2009, which was duly accepted by the headmaster of the said school.

The joining letters of petitioner nos. 1, 2 and 3 have been annexed as Annexure-1, 2 and 3 respectively to the writ petition.

C. The petitioners continued to work in the school as para teacher and their names were recommended by the Block Education Committee vide Memo No. 72 dated 03.10.2009 issued by the respondent no. 6.

D. The petitioner no. 1, after recommendation of her selection, received her salary/ honorarium for the month of January, 2010 to March, 2010;

Petitioner no. 2 has not been paid even a single penny since the date of joining.

Petitioner no. 3, after recommendation of his selection, has received the salary/ honorarium for the month of January, 2010 to March, 2010.

From the month of April 2010, none of the petitioners were paid the salary/ honorarium in spite of the fact that the letter contained in Memo No. 20 dated 05.05.2011 and letter no. 44 dated 05.07.2013 were issued in this regard by the Block Education Extension Officer , Itkhori-cum-Gidhour to the District Superintendent of Education-cum-District Programme Officer, Sarva Shiksha Abhiyan, Chatra.

E. In spite of best of their efforts, the petitioners did not receive the salary/ honorarium for the period from April, 2010 onwards which was a cause of action for filing the writ petition.

F. The counsel submits that the writ petitioners/ appellants were already

recommended for appointment as para teachers by the Village Education Committee as well as the Block Education Extension Officer before 01.04.2010 and as such, the new Act namely, Right of Children to Free and Compulsory Education Act, 2009 which came into force on 01.04.2010 does not apply to the petitioners. The said Act of 2009 provides National Council of Teachers' education as the prescribed authority and Teachers' Eligibility Test as well as B.Ed. has been made compulsory. The specific case of the petitioners was that the petitioners had joined the school before 01.04.2010 and the joining was already accepted and the petitioners have been working with a legitimate expectation of getting honorarium, but the same has not been paid to them.

G. The counsel for the appellants while assailing the impugned judgment passed by the learned Single Judge has submitted that the aforesaid aspect of the matter has not been properly considered by the learned Single Judge. It is submitted that the judgments which were relied upon by the respondents passed in the case of Prity Kumari Choudhary in W.P. (S) No. 2161 of 2011 and Som Nath Roy in W.P(S) No. 869 of 2014 does not apply to the facts and circumstances of the present appellants in as much as the appellants were already selected who gave their joining as para teacher in the respective schools and were working much prior to the cut-off date i.e. before 01.04.2010 when the aforesaid Act namely Right of Children to Free and Compulsory Education Act, 2009 came into force. He further submits that it is not open for the respondents on one hand to take work from the appellants, and on the other hand , not to pay the honorarium/salary to the appellants.

H. The counsel submits that the learned Single Judge has held in the batch of writ petitions which were disposed of alongwith the writ petition filed by the appellants that mere recommendation for appointment do not create any right for appointment and merely because a candidate is selected, he does not acquire absolute right to be appointed and it is open to the Government not to make appointment even if there is any vacancy. The learned Single Judge has held that the appellants were not appointed following the procedure and in accordance with law and accordingly, the legal right to claim honorarium would flow only if appointments are finally confirmed by district authorities in terms of the guidelines issued by the Jharkhand Education Project Council for appointment of para teachers. The counsel for the appellants submits that the appellants of the instant case were duly appointed in accordance with law and this aspect of the matter has not been properly considered by the learned Single Judge.

7. Counsel for the respondents, on the other hand, submits as follows:-

i. A counter-affidavit was filed by the respondents in the writ petition and they have taken a specific plea that as per the Circular and guidelines issued by the Government, the selection of para teachers is done by the Village Education Committee which is thereafter approved by the Block Education Committee and after its approval, the list of para teachers is sent to the office of the district level. The office of the district level has to organize 15 days "Adhar Training" for

the newly appointed para teachers and after completion of 15 days Adhar training, the para teachers may join in the school which is to be accepted by the Village Education Committee.

ii. The specific case of the respondents in the counter-affidavit is that the petitioners were selected by Village Education Committee and their selection was also approved by the Block Education Committee, but in the meantime, there was a strike for a long period and thereafter, they were engaged in State Assembly Elections, 2009, therefore, the list of para teachers could not be sent to district level office and it was received at the district level office only in the month of February, 2010 and March, 2010 for approval. The fact is that the same was never approved by the district level office and with effect from 01.04.2010 the aforesaid Act of 2009 came into force.

iii. Further case of the respondents is that the basic training of 15 days was to be organized by the district level for the petitioners and others, but before such training could be imparted, Memo No. 849 dated 30.03.2010 was issued by the Secretary, Human Resources Development Department- cum- State Project Director, Jharkhand Education Project Council, Ranchi stating that Right to Education Act was to be implemented in the whole State with effect from 01.04.2010 and in the said memorandum, it was directed that the process of organizing 15 days "Adhar Training" for the petitioners and others be stopped.

iv. The counsel accordingly submits that the condition precedent for joining by the petitioners as para teacher in the school i.e. 15 days "Adhar Training", was never satisfied by the petitioners and accordingly, their joining could not have been accepted by the school. In such circumstances, the petitioners are not entitled for the payment of salary/honorarium as claimed by them.

v. He further submits that a Circular dated 02.01.2007 was issued by the Jharkhand Education Project Council, wherein it was clearly directed that the teachers under 'Sarva Shiksha Abhiyan' could give their joining in the school only after they complete the required training. This Circular was issued as back as on 02.01.2007 and the petitioners in the instant case claim to have been appointed and joined the respective schools as para teacher in the year 2009. He submits that on the face of the said circular dated 02.01.2007, the concerned schools could not have permitted the petitioners to join, and the petitioners could not have approached the schools for joining as para teacher in absence of any training as directed under aforesaid Circular dated 02.01.2007. This circular was annexed as Annexure- D to the counter-affidavit.

vi. So far as the payment of honorarium to two of the petitioners for a short period prior to 01.04.2010 is concerned, the counsel for the respondents submits that the concerned schools have not been made party before this Court and it is not clear as to how, and from which head, the payment of honorarium, if any, has been made to two petitioners of this case and he submits that such payment does not create any right in favour of the petitioners.

vii. The counsel for the respondents further submits that in any view of the matter, there is no question of payment of any honorarium or salary to the petitioners after 01.04.2010. He further submits that no right has been crystalized in favour of the petitioners prior to 01.04.2010 in as much as the condition precedent for being appointed as a teacher in the school i.e. training of 15 days, was admittedly not satisfied by the petitioners.

viii. Counsel for the respondents has further submitted that apart from the aforesaid argument on the merits of the case, the respondents have also made specific statement in the counter-affidavit that the petitioners and 284 number of candidates have filed a writ petition bearing No. W.P.(S) No. 3959 of 2010 (Jai Prakash Singh and Others Vs. State of Jharkhand and Ors.) and the same was disposed of by this Court on 19.04.2011 directing the Deputy Commissioner, Chatra and District Superintendent of Education, Chatra to consider the grievance of the petitioners and others and to pass a reasoned order. Accordingly, the Deputy Commissioner, Chatra and District Superintendent of Education, Chatra have passed a reasoned order contained in Memo No. 568 dated 15.06.2011 rejecting the claim of the petitioners.

ix. The counsel submits that the reasoned order as contained in Memo No. 568 dated 15.06.2011 has not been challenged by the writ petitioners in the instant case. However one Jai Prakash Singh, who is the president of Para Teachers Sangh, has filed another writ petition being W.P.(S) No. 4825 of 2011 and the said case was pending before this Court at the time of filing the counter-affidavit before the learned writ court, in which the name of the petitioners in the list of the persons given in the annexure appears at Sl. Nos. 209, 206 and 207 respectively. He further submits that the said writ petition being W.P.(S) No. 4825 of 2011 was ultimately disposed of and tagged with the present writ petition.

x. The counsel further submits that no rejoinder was filed to the counter-affidavit filed by the respondents and in such circumstances, the claim of the petitioners having been rejected by a reasoned order along with others, which is vide Memo No. 568 dated 15.06.2011, no relief can be granted to the writ petitioners in the instant writ petition as the said decision is not under challenge in this writ petition.

8. In response, the counsel for the appellants has submitted that the appellants have no concern with the aforesaid writ petition being W.P.(S) No. 3959 of 2010 which was disposed of vide order dated 19.04.2011 and the petitioners are not party in the said writ petition. Similarly, the petitioners have no concern whatsoever with the writ petition filed by Jai Prakash Singh, who claims to be the president of Para Teacher Sangh and filed W.P.(S) No. 4825 of 2011 and accordingly, the aforesaid writ petitions, which have been mentioned in the counter-affidavit filed by the respondents, have no concern with the claim of the petitioners in this writ petition. He submits that in aforesaid circumstances, the petitioners having completed all the formalities and appointed as Para Teachers

in the respective school much prior to 01.04.2010 are entitled for the salary/honorarium as prayed for in the writ petition.

9. Since the counsel for the appellants has specifically argued that they are not concerned with the aforesaid two writ petitions filed by Jai Prakash Singh, in the capacity of the president of Navchayanit Para Shikshak Sangh, Chatra and they are not party to the said cases, therefore, the case of the appellants is required to be decided on its merits.

10. This Court finds that admittedly the appellants were selected as para teachers as per the details mentioned above in the year 2009 and they gave their joining before the Headmaster of the respective schools much prior to 31.03.2010. It further appears from the counter-affidavit filed by the respondents that the selection of the appellants was done by the Village Education Committee and approved by the Block Education Committee and list was sent to the office of the district level who was to organize 15 days' training to the approved para teachers, but for one reason or the other, the training could not be organized and the appellants could not be trained.

11. In the meantime the appellants gave their joining in the respective schools and the Headmaster of the schools also accepted the joining of the appellants and it appears that two appellants also received some payment from the concerned schools and it is not clear from the records of this case as to from which head, the payment was made to them. The schools through their Headmasters have not been made party before this Court and accordingly, no such explanation is on record.

12. This Court finds that as per the Circular issued by the respondents as back as on 02.01.2007 as contained in Annexure-D to the counter-affidavit filed in the writ petition, it was clearly indicated to all concerned under the Sarva Shiksha Abhiyan that no teacher should be permitted to join as school teacher unless the teacher is trained.

13. In the aforesaid circumstances, this Court is of the considered view that the appellants have joined the respective schools in violation of the Circular dated 02.01.2007 and accordingly it cannot be said that the appellants have duly given their joining in the respective schools and the entire selection process of the appellants was complete prior to 31.03.2010 and accordingly they have any right, much less any accrued right, to continue and receive salary as prayed for in this writ petition.

14. Admittedly, after coming into force of the aforesaid Act of 2009 w.e.f. 01.04.2010 no teacher, who is not trained as per the requirement of the said Act, can be appointed.

15. In such circumstances, even if the petitioners have continued to work after 31.03.2010, they have done so at their own peril and no directions can be issued by this Court under Article 226 of the Constitution of India to make payment of

salary/honorarium to the petitioners as prayed for in the instant writ petition.

16. This Court finds that the learned Single Judge in the impugned judgment has held that in absence of completion of legal requirements for appointment of teachers, no sanctity can be attached to their selection and held that even after selection and recommendation by the Village Level Committee, right did not accrue to the petitioners to get appointment. This Court also finds that the learned single judge rightly considered the ratio of the two judgments passed by this Court in the case of Prity Kumari Choudhary in W.P. (S) No. 2161 of 2011 and Som Nath Roy in W.P(S) No. 869 of 2014. This Court further finds that it is neither the case of the appellants nor any such arguments have been advanced that the appellants have acquired the required qualification even after the cut-off date i.e. after 31.03.2010 through any mode including in service training.

17. This Court does not find any reason to differ with the findings arrived at by the learned Single Judge and accordingly, the instant appeal is hereby dismissed.