
(2002) 09 PAT CK 0099
In the Patna High Court
Case No : C.W.J.C. No. 12756 of 2000

Veena Kumari Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Citation : (2002) 09 PAT CK 0099

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Counsel for the parties.

2. Initially this application was filed for a direction to the respondents to make payment of arrears of salary to the petitioner since February 1998 and also the current salary. However, during the pendency of this writ application, the petitioner was terminated vide order, as contained in Memo No. 3173 dated 1.12.2000, which was made available to the petitioner in January 2001, and, therefore, by amendment application the order of termination, as contained in Annexure-18 has been challenged.

3. Short facts giving rise to this application are as follows:

The petitioner after passing Matriculation examination joined the Primary Teachers Training College, Madhepura for two years" training in 1975 and pursuant to the advertisement dated 21.10.1976, issued in Aaryavarta, inviting applications for preparation of panel for appointment as Assistant Teachers in Primary/Middle Schools in the District of Purnea the petitioner applied. The petitioner thereafter, appeared before the interview board on 17.11.1976 and she was finally selected and a panel was prepared for appointment as an assistant teacher in the District of Purnea in accordance with the guidelines issued by the Directorate of Primary Education. The petitioner thereafter, pursuant to Memo No. 1253-56 dated 31.1.1979, issued by the District Superintendent of Education, Purnea, as contained in Annexure-3, was appointed against the vacant post as stop gap arrangement on the post of assistant teacher

and she joined the post on 12.7.1979. Her services thereafter, were regularized vide order dated 20.2.1980, as contained in Annexure-5 with effect from the date of her joining. Thereafter, she continued on the post without any hindrance. In the month of February 1998 an inquiry was directed by the District Superintendent of Education as to the legality of initial appointment of the petitioner and she was intimated on 25.9.1998 by the headmaster of the school that till inquiry is completed for her appointment, her salary shall not be submitted to the office of the District Superintendent of Education, Purnea and at the same time, the petitioner was asked to submit her original Matriculation certificate and to explain as to under what circumstances appointment letter was issued to her and, ultimately, she produced the certificate etc. which was sent for verification to the Bihar School Examination Board, which was found genuine. Now some how or the other vide order, as contained in Annexure-18, she has been terminated from services giving rise to this writ application.

4. The question of legality or otherwise of the appointment of the petitioner is the issue for consideration.

5. Dr. Sada Nand Jha, learned Counsel appearing on behalf of the petitioner submitted, inter alia, that the petitioner applied for the post of assistant teacher pursuant to the advertisement and she having the requisite qualification for appointment as an assistant teacher and vide order, as contained in Annexure-3 she was appointed as stop gap arrangement as an assistant teacher and her services were regularized by the authority concerned vide Annexure-5 dated 20.2.1980 and she continued as an assistant teacher till passing of the order impugned dated 1.12.2002. It is, therefore, submitted that after continuation of the petitioner for than 20 years in service, how she has been terminated, therefore, the order impugned must be held to be arbitrary/unreasonable and opposed to the principles of equity.

6. A counter-affidavit and a supplementary counter-affidavits have been filed on behalf of the State stating therein that the petitioner was not appointed by the establishment committee nor her name appeared in the panel and the authorities, concerned after due inquiry found that the petitioner got her self appointed on the basis of forged and fabricated appointment letter, and, accordingly, the committee decided to terminate her services.

7. Learned Counsel appearing on behalf of the State submitted that all relevant records were examined in course of inquiry and the authorities ultimately doubted the appointment letter of the petitioner as her name was not included in the panel.

8. The fact that the petitioner continued in service for more than 21 years is not in dispute. It is also not in dispute that at the relevant time when the petitioner was alleged to have been appointed as an assistant teacher, certain procedures were followed by the authorities as per the prescribed Rules and the posts of assistant teachers in Primary/Middle School were advertised in local newspaper, "Aaryavarata". According to the case of the petitioner, she applied for the same

pursuant to the advertisement and she was selected and appointed as an assistant teacher and she continued on the post as such till issuance of the letter, as contained in Annexure-18 for about more than 21 years.

9. From the materials on record, it appears that the petitioner continued in service for more than 21 years and even her certificates and educational qualification were found commensurate with the post. Now the question as to whether the petitioner was legally appointed, in my opinion, should not arise at this stage after lapse of more than 21 years, as it would be opposed to the principles of equity.

10. Even assuming that the petitioner was not appointed strictly in accordance with the law and her appointment may be termed as illegal, the authorities admittedly acquiesced in the infirmities committed by them by allowing the petitioner to continue as an assistant teacher for more than 21 years. The principle as formulated above, is no more *res intergra* and has been set at rest by various decisions of the Supreme Court and this Court.

11. In *Roshan Lal and Others Vs. International Airport Authority of India and Others*, the Apex Courts while dealing with almost similar question held as follows:

One of the principal submissions made by Smt. Shyamla Pappu, learned Counsel for the petitioners was that the appointment of the respondents as Airport Officers (Ops.) was made at a time when there was no sanction for such posts and therefore, their appointment was illegal. Other reasons were also advanced in support of the claim that the respondents were irregularly appointed as Airport Officers. We are afraid that it is rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Ops.). The respondents were appointed as Airport Officers in 1975 and the present Writ Petitioners were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers several years after their appointment. We also notice that the prayer in the writ petitioners also is confined primarily to the seniority list and the consequences flowing from the seniority list.

12. Similarly, in the case of *Roshni Devi and Others Vs. State of Haryana and Others*, , it was observed by the Apex Court that the persons, who may not have been appointed strictly accordance with law, have been appointed and continued in service for more than nine years, should not be disturbed.

13. Besides this legal question, it appears that the petitioner has spent prime of her age under the respondents while working as an assistant teacher and now she has become overage and it would be very difficult for her to get employment for her livelihood.

14. From the materials on record and pleadings of the parties, it does not appear to be a case, where the petitioner can be said to have played fraud upon the

authorities and merely because her name does not find place in the panel prepared in the year 1979, in my opinion, it would not be justified to reopen the question of legality of the appointment of the petitioner after a lapse of more than 20 years of her appointment.

15. For the reasons aforementioned, the action of the authorities in stopping the salary of the petitioner in course of inquiry and the subsequent order of termination of her services must be held to be illegal, arbitrary, unreasonable and without jurisdiction.

In the result, this application is allowed and the order of termination, as contained in Annexure-18, is set aside and the petitioner is reinstated on her post with all consequential benefits.