
(2013) 04 PAT CK 0035
In the Patna High Court
Case No : CWJC No. 4646 of 2010

Vishal Pratap Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 3 PLJR 209

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : S.B.K. Mangalam, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioners, counsel appearing on behalf of private-respondent and the counsel for the State. Both the Writ Applications arise from a common bundle of facts and transactions relating to appointment on the post of Panchayat Teachers in the district of East Champaran at Motihari.

2. The orders impugned in both the Writ Applications are Annexures-5, 6 and 7 as well as Annexures-3, 4 and 5 respectively, by virtue of which these petitioners were ordered to be removed from the post of Panchayat Teacher and the private-respondent No. 11 as well as No. 10 respectively in the two Writ Applications were ordered to be reinstated on the post of Panchayat Teacher.

3. There is no dispute that both the private-respondents are holders of an Intermediate degree in vocational course, which has become the bone of contention. Whether they were required to be reinstated or they could be appointed on the post of a Panchayat Teacher in the very first place is the main question in this writ.

4. According to the petitioners, an exercise for appointment on the post of Panchayat Teacher in the concerned Gram Panchayat of Kuerpur in Chakiya Block

in the district of East Champaran was initiated sometime in the year 2006. Since there were large scale complaints of irregularities in such selection and appointment, the erstwhile designated authority, i.e., the Block Development Officer interfered with the matter and annulled such appointments and directed a fresh exercise to be carried out. According to the petitioner of C.W.J.C. No. 4646 of 2010, a provisional list was prepared on 25.7.2007*. in which the name of the private-respondent appears at serial No. 49, which is kept at page 39 of the Writ Application. There is clear endorsement that the said private-respondent was ineligible for appointment or consideration due to the fact that he was holding an Intermediate degree in vocational course. Similar reflection is there in the other Writ Application as well. However, despite appointment of the petitioners on the post of Panchayat Teacher, the matter has been set to knot on the basis of certain observation made by the High Court in the case of Santosh Kumar Singh, which is C.W.J.C. No. 10132 of 2007 decided on 25.7.2009.

5. The core issue which is required to be decided now is whether the private-respondents, who claim themselves, to have been validly appointed as a Panchayat Teacher sometime in March 2007, were eligible for appointment on the post of a Panchayat Teacher as such.

6. Repeated questions were put before the counsel representing the private-respondent to demonstrate whether an Intermediate degree in vocational course was a valid degree as per the rule, which would confer eligibility for such selection. The Court did not get a suitable or straight -response, except that their right is available for the post, on a judicial direction, issued in the earlier Writ Application of Santosh Kumar Singh as well as the judgment of the Hon''ble Patna High Court affirmed by the Division Bench.

7. Learned Single Judge in C.W.J.C. No. 10132 of 2007 has clearly and categorically noted that only after the decision dated 21.8.2008, passed in a batch of Writ Applications, led by C.W.J.C. No. 10203 of 2007*, which was the case of Madan Paswan and others, that a vocational degree was declared equivalent to an Intermediate degree. In other words an Intermediate degree holder in vocational course became eligible for consideration by virtue of judicial orders and not on the basis of the rules in existence with regard to such appointments. In fact there were clear circulars of the State Government as well as directives to show that such persons were not eligible for appointment on the post of Panchayat Teacher. However, if the Patna High Court brought them in the ambit or zone of consideration that can only be prospective in nature i.e., after 21.8.2008 and any claim of the private-respondents that they were validly appointed in March, 2007 itself is a misplaced kind of submission, which was per se illegal, if not tainted by extraneous consideration. Persons holding vocational degree could never have been appointed as a Panchayat Teacher prior to 21.8.2008.

8. The observation of the Learned Single Judge in C.W.J.C. No. 10132 of 2007 was only an observation with regard to the history as to how holders of

vocational degree at Intermediate level would come within the zone of consideration, but that did not mean that are (sic) illegal appointment got them an opportunity for regularization or reinstatement on the post, which they were not entitled to hold in the very first place, as they were appointed in the year 2007.

9. Any appointment of any person on the post of a Panchayat Teacher by virtue of holding an Intermediate degree in vocational subjects could never have been made, at least prior to 21.8.2008. If that was done, then there was no necessity to restore them on the post on the basis of judgment dated 21.8.2008. An illegality or ineligibility will remain so.

10. Counsel for the petitioners is correct in taking a stand that there was no occasion to remove them from their service and make way for holders of vocational degree, because the time when these petitioners were appointed, they did not suffer from any ineligibility, whereas ineligibility of the private-respondents are writ large on the face of the record.

11. The Court comes to a considered opinion that any direction issued in Annexures-5, 6 and 7 or Annexures-3, 4 and 5 in the two Writ Applications would confer an illegal benefit upon the private-respondent of continuance on a post as they were ineligible to be appointed in the very first place. So far as future is concerned it can very well beget them appointment on the basis of their degree but it could only be after 21.8.2008. But any appointment to the post made by the Panchayat in the year 2007 is of no avail to them.

12. Both the Writ Applications succeed. The impugned order, contained in Annexures-5, 6 and 7 and Annexures-3, 4 and 5 of the two Writ Applications respectively stand quashed. Petitioners are directed to be put back in the service forthwith. Both the Writ Applications are allowed.

* Ed.-- Reported in Madan Paswan and others Vs. State of Bihar and others .