
(2013) 10 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3274 of 2006

Yagyanand Pathak

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2014) 1 AJR 231 : (2014) 1 JLJR 3

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Kanti Kumar Ojha and Rakesh Kumar, for the Appellant; Abhijeet Kumar Singh, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this court seeking the following reliefs. (i) For commanding upon the respondents concern specially respondent No. 4 for the payment of arrear of salary due since January, 1996 immediately and forthwith and

(ii) For further direction to the respondents to approve the appointment of the petitioner who has been appointed by the Managing Committee of G.E.L. High School, Kochedega against sanctioned post on 06.01.1996.

(iii) To quash the letter No. 2610 dated 10.05.2010 issued under the signature of the Director (Secondary Education) Jharkhand, Ranchi as well as letter No. 370 dated 02.02.2011, issued under the signature of the Director, Secondary Education, Jharkhand and to grant approval of his appointment from the date of passing of his teachers training from recognised university and date of his appointment.

The brief facts of the case as disclosed in the writ petition are that, the petitioner was appointed as Assistant Teacher on 10.01.1996 pursuant to decision taken by the governing body of G.E.L. High School, Kochedega, Simdega dated 05.01.1996. It has been stated that the said school was recognised in the year, 1979 itself and there were 09 approved posts. An advertisement was issued on

15.12.1995 and the petitioner had appeared and pursuant to the said selection process, the petitioner was appointed as Assistant Teacher in the said school. 2. Since the matter of approval of appointment of the petitioner remained pending with the State Authorities and the petitioner was not paid salary, the petitioner approached this court by filing the present writ petition on 21.06.2006 with the aforesaid prayers.

3. In the meantime, the service of the petitioner was not approved pursuant to a decision taken on 28.09.2007. The said " decision has been impugned by the petitioner by filing an interlocutory application which was allowed by order dated 16.01.2012. A counter-affidavit, rejoinder affidavit and supplementary affidavit have been filed on behalf of the parties.

4. A counter-affidavit has been filed by the respondent-State of Jharkhand taking a specific plea that the school in which the petitioner was allegedly appointed as Assistant Teacher was not recognised and in fact this was recognised as a minority institution only on 28.09.2007. A further plea has been taken that on 05.11.2004 a notification was issued under which the necessary eligibility criteria for appointment as a secondary school teacher was prescribed and as the petitioner does not possess the qualification, his service was not recognised and thus, the prayer of the petitioner has been resisted by the respondent-State of Jharkhand.

5. Heard learned counsel appearing for the parties and perused the documents on record.

6. Learned counsel for the petitioner has submitted that after appointment of the petitioner on 10.01.1996, the matter remained pending with the State authorities, though necessary steps were taken by the school authority. Letters were written by the District Education Officer however, the matter regarding grant of approval of appointment of the petitioner as Assistant Teacher, could not be concluded and therefore, the petitioner had to approach this court by filing the present writ petition. He has further submitted that in the year, 2004, the Recruitment Rules came into existence after creation of the State of Jharkhand and therefore, the Rules which were applicable at the time of the appointment of the petitioner, would be applicable in the case of the petitioner while adjudging the eligibility for appointment of the petitioner on the post of Assistant Teacher. He has further submitted that the only ground taken in the impugned order dated 02.02.2011 that the petitioner has acquired B.Ed degree in IIIrd division, is not justifiable in view of the fact that at the time when the petitioner was appointed, the minimum educational eligibility criteria was simple graduation.

7. Learned counsel appearing for the petitioner has relied on the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, in which it has been held,

13. Section 18(3) provides that recognised minority secondary schools shall be managed and controlled in accordance with the provisions contained in cls. (a) to

(k). Clause (a) requires a minority secondary school to have a Managing committee registered under the Societies Registration Act 1860 and to frame written bye-laws regulating constitution and functions of the managing committee. The bye-laws regarding the constitution of the managing committee are required to be framed by the minority institution itself. The State or any other authority has no power or authority to impose any terms or conditions for the constitution of the managing committee. If a society running a minority institution frames written bye-laws providing for the constitution of managing committee entrusted with the function of running and administering its school it would ensure efficient administration. This clause is in the interest of the minority institution itself, as no outsider is imposed as a member of the Managing Committee, there is no interference with the minority's right to administer its school. Clause (b) provides for two things, firstly it requires the managing committee of a minority school to appoint teachers possessing requisite qualifications as prescribed by the State Government for appointment of teachers of other nationalised schools, secondly, the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board constituted under S. 10 of the Act. Proviso to cl. (b) lays down that the School Service Board while considering the question of granting approval to the appointment of a teacher shall ascertain if the appointment is in accordance with the rules laying down qualifications, and manner of making appointment framed by the State Government. The proviso makes it clear that the Schools Service Board has no further power to interfere with the right of managing committee of a minority school in the appointment of a teacher. Under cl. (b) the managing committee is required to make appointment of a teacher with the concurrence of the school service board. The expression "concurrence" means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying cl. (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointments are made for the sanctioned strength. The selection and appointment of teachers is left to the management of the minority school, there is no interference with the managerial rights of the institution. In granting approval the School Service Board has limited power. The appointment of qualified teachers in a minority school is a sine qua non for achieving educational standard and better administration of the institution. Clause (b) is regulatory in nature to ensure educational excellence in the minority school. Clause (c) requires a minority school to frame rules regulating conditions of service of its teachers, such rules should be consistent with principles of natural justice and the prevailing law. The clause further requires the minority institution to submit a copy of such rules to the State Government. This clause in substance lays down that the management of a recognised minority school shall frame Rules, regulating conditions of service of teachers and such rules shall conform to principles of natural justice and prevailing law. These provisions are directed to avoid uncertainty and arbitrary exercise of power. If Rules are framed by the

management those rules would bring uniformity in administration and there would be security of employment to teachers. In a civilised society the observance of principles of natural justice is an accepted rule, these principles contain basic rules of fair play and justice and it is too late in the day to contend that while administering a minority school the management should have right to act in contravention of the principles of natural justice. Clause (c) is regulatory in nature which requires the managing committee to frame rules of employment consistent with principles of natural justice and the prevailing law. No outside agency is required to frame rules of employment of teachers; instead, the management itself is empowered to frame rules. There is therefore no element of interference with the management's right to administer a minority school.

8. As against the above, the learned counsel appearing for the respondents reiterated the stand taken in the counter-affidavit and submits that since the school was granted minority status only on 28.09.2007, the prayer for payment of salary since 10.01.1996 would not arise as it would not be the liability of the State of Jharkhand. He has further submitted that by notification dated 05.11.2004, the minimum qualification for appointment as secondary school teacher has been prescribed and that would be binding on the petitioner and since the petitioner does not possess such qualification, his appointment was rightly not approved by the authority.

9. I find that though the petitioner has claimed that he was appointed on 10.01.1996, the writ petition was filed only on 21.06.2006 and thus, the petitioner allegedly continued in service for more than 10 years without salary. I am of the considered view that the alleged appointment of the petitioner was illegal. The conduct of the petitioner in approaching the court after a period of one decade, gives a clear indication that he was not legally appointed on the post as he has claimed in the present writ petition. Moreover, in view of the specific stand taken by the State of Jharkhand in the counter-affidavit that, the petitioner does not possess the minimum educational qualification and since the school in question was given minority status on 28.09.2007, I am of the considered view that the prayer of the petitioner cannot be granted.

10. Learned counsel for the petitioner has relied on the case of "All Bihar Christian Schools Association v. State of Bihar" (supra) and an order passed by this court in W.P. (S) No. 5639 of 2004 dated 28.03.2007. I am of the view that the decisions relied on by the counsel for the petitioner are not at all related to the issue in the present case more particularly the effect of Recruitment Rules operating at the time when the appointment was sought to be approved. In "All Bihar Christian Schools Association v. State of Bihar" (supra), the issue before the Hon'ble Supreme Court was the power of the managing committee of a school run by the minorities. In the present case such an issue is not involved. The matter regarding the approval of the appointment of the petitioner agitated by him in the present writ petition, was not an issue before the Hon'ble Supreme Court in the said decision. In W.P. (S) No. 5639 of 2004, the facts pleaded are

entirely different and therefore, it does not lend any help to the case of the petitioner. I find no merit in this writ-petition. Accordingly, the writ petition is dismissed.