
(2017) 04 JH CK 0099
In the Jharkhand High Court
Case No : 1052 of 2011

Yoganand Patralekh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 09-04-2017

Acts Referred:

[Bihar NonGovernment Secondary Schools \(Taking Over of Management and Control\) Act, 1981](#), Section 4, Section 3 (3)

Citation : (2017) 04 JH CK 0099

Hon'ble Judges : Shree Chandrashekhar

Bench : SINGLE BENCH

Advocate : Subodh Kr. Pandey, Lalan Kr. Singh

Judgement

1. The petitioner, who was appointed on 31.12.1981 as an Assistant Teacher by the Managing Committee of Rajkiya High School, Mungo, claims that he was made Incharge Headmaster on 01.01.1982 and on that basis he stakes a claim for regularisation of his services as the Headmaster of the school. His representation was declined by the Directorrespondent no.3 by an order dated 13.05.2010. This order has been impugned by the petitioner in the present proceeding.

2. Heard.

3. Mr. Subodh Kr. Pandey, the learned counsel for the petitioner referring to an order passed in "Saryu Prasad Roy Vs. State of Bihar & Others" [C.W.J.C No.11805 of 1993(P)] and "Amin Ansari Vs. State of Jharkhand & Others" [W.P. (S) No.1056 of 2011], contends that the petitioner is similarly situated to the aforesaid appointees and while so, he deserves a similar treatment at the hands of the respondents, however, on the contrary, claim of the petitioner has been erroneously declined by the order dated 13.05.2010.

4. Mr. Lalan Kr. Singh, the learned State counsel referring to letter dated 12.10.1982 contends that the petitioner's appointment to the post of Assistant

Teacher by the Managing Committee of the school was adhoc and, that could have been made permanent only upon the recommendation of the School Service Board. The learned State counsel tenders a copy of order dated 09.07.2014 passed in "The State of Jharkhand & Others Vs. Nirbhay Kumar Jha" (L.P.A. No.114 of 2013) to contend that a teacher, who was made Incharge Headmaster cannot claim automatic regularisation on the post of Headmaster. The learned State counsel has also relied on the decisions in "Ram Ballav Pd. Singh" and "A. K. Pradhan".

5. Admittedly, the petitioner was appointed as Assistant Teacher on 31.12.1981. Such appointments were made pursuant to a policy decision of the Government contained in Circular dated 27.05.1981, whereby it was decided to establish atleast 4 High Schools, out of which one shall be a Girls High School in each Block. Pursuant to the aforesaid decision about 150 Project Schools were established in the year, 1981-1982. Petitioner was appointed in one such school. At the time of his appointment, the petitioner was not a trained teacher. He was appointed as Assistant Teacher for Civics on honorarium of Rs.10/per day. Only on 06.07.1988 the Government recognized his services on adhoc basis. His appointment was in untrained Graduate scale from 01.04.1986 and subsequently, when he obtained the B.Ed. degree he was granted Graduate Trained scale. Evidently, a teacher who was not even qualified for appointment as a teacher cannot claim appointment on the post of Headmaster.

6. The respondent State has taken a plea that a founder Headmaster on taking over of the school does not automatically become Headmaster of the school. Section 4 of Bihar NonGovernment Secondary Schools (Taking Over of Management and Control) Act, 1981 provides that services of every Headmaster, teacher or other employees of the school taken over by the State Government shall be deemed to have been transferred to the State Government, w.e.f. the date of taking over of the school and become employees of the State with such designation as the State Government may determine. However, Section 3 (3) provides that the qualification and suitability of teachers working against sanctioned nine posts in the school shall be examined by committee constituted by the State Government for examining, whether the appointee was suitable for appointment in Government service or not. In "Ram Ballav Pd. Singh Vs. The State of Bihar and Others" reported in AIR 1986 pat 218, a Full Bench of Patna High Court considering the scheme of 1981 Act held as under: "17. Once question no.1 has been answered in the terms above, the same would go to the very root of the succeeding question no.2 as well. Plainly enough, if the Headmaster is within the ambit of the "teachers" in the second paragraph of section 3(3) then both his qualifications and his suitability are to be scrutinised by the committee constituted by the State Government, and it is only if he is found suitable for such appointment that he may be appointed in the Government service. Indeed, the larger question that emerges is that if the Headmaster is also one of the teachers working against nine posts of the school, then are the qualifications and suitability of all these teachers to be meticulously

scrutinised before appointment to Government service? Or is it that all these teachers (including the Headmaster) automatically and ipso facto become Government servants and their services stand transferred to the State Government on the same terms and conditions as in the earlier unrecognised school? Second paragraph of section 3(3) meticulously provides for the closest examination of both the qualifications and the suitability of these teachers. This is to be done by a committee constituted by the State Government for this purpose. It is only if these teachers are found suitable that they are to be appointed in the Government service and not otherwise when the management of the school is taken over. Is such scrutiny and detailed procedure to be reduced to a mere farce by the theory of automatic appointment to these posts on the take over? If what the second paragraph of section 3(3) provides is a meaningful and purposeful scrutiny and assessment of first the basic qualifications and then the suitability of teachers in an unrecognised school for appointment to Government service then, obviously enough, there can be no question of the Headmaster of an unrecognised taken over school becoming automatically its Headmaster after it is taken over. To hold so would, in essence, be wiping away the second paragraph of section 3(3) and rendering the whole process of the scrutiny of the qualification and suitability of these incumbents and the creation of a committee by the State Government wholly nugatory. In the context of teachers in general and the Headmaster in particular on the plain language of the second paragraph, therefore, there is not the least semblance of any teacher or Headmaster becoming automatically a Government servant thereunder. In particular, the post of a Headmaster in a school is too crucial to be thrown empirically into a mindless automatic routine that once the take over of the school is ordered, the existing Headmaster must necessarily become the Headmaster of the nationalised school in an integrated education service. 41. To finally conclude, the answer to question No.2 posed at the outset is rendered in the negative. It is held that the Headmaster of a school taken over under section 3(3) does not automatically become the Headmaster of the school after its take over under section 4(2) of the Act.

42. Now it is common ground that at no stage whatsoever the case of the petitioners had been referred to the Education Service Board far from there being any recommendation by such Board in their favour of any appointment as such by the authorised officer of the State Government. To hold otherwise that the petitioners became the Headmasters of the newly nationalised schools would thus be running into the teeth of the categorical statutory instructions and violation of the letter and spirit of the standard methodology of appointing Headmasters to the Government or nationalised schools. It remained undisputed before us that earlier the Headmasters of all Government schools and equally of recognised private schools could only be appointed on a reference to and recommendation by the Service Board. On larger policy that is an eminently meritorious one and the same has now been codified by statutory instructions on the point. Equally reference must also be made to Section 10 of the Act which

provides for the establishment and function of School Service Board. A reading of its 10th subsection leaves no manner of doubt that the larger purpose of this section is that appointments or promotion of Headmasters of nationalised schools are not to be made empirically but after consideration and recommendation of such statutory Board. The relevant part of subsection (9) provides as follows:

"(9) The Board shall make recommendations for appointment of teachers and for appointment of promotion of Headmaster of nationalised secondary schools to the Director in accordance with this Ordinance and the rules framed thereunder:

Provided that for promotion of teachers to selection grade post the recommendation of the Board shall not be necessary:

Provided further that the absence of the recommendation of the Board, and in special circumstances and in anticipation of the recommendation of the Board, the State Government shall be competent to make ad hoc promotion to the post of Headmaster for a period not exceeding six months and to make ad hoc appointment in the prescribed manner to the post of teachers for a period not exceeding six months.

xx xx xx

To my mind, both letter and spirit of this provision indicate that there is no automatic transfer of the existing Headmasters of the private unrecognised schools as the Headmasters of the nationalised schools as well. Such a finding would be the antithesis of the process of selection and recommendation by an expert body like School Service Board.

7. A similar view has been taken in "Deobansh Pandey Vs. The State of Bihar and Others" reported in 1993 (1) PLJR 221, wherein the Court observed as under: "11. Rule 4 of the Rules provides for eligibility for appointment/promotion to the post of headmaster and rule 7 (Ka) provides the procedure for such appointment/ promotion. Rule 4 (Ka) (3) (3A) provides that in the matter of direct appointment to the post of headmaster, the candidates must have 10 years teaching experience in a recognised school after graduation but in the case of scheduled tribe, Harijan and founder headmaster, 7 years minimum teaching experience will be deemed to be sufficient. In the note appended to the said Rule, it has been provided that the founder headmaster will mean a teacher, who has been appointed in the school prior to 2.10.80 and who has been in service of the school since the date of its establishment continuously without any break and who was having the requisite educational qualification and eligibility for the post of incharge headmaster right from the beginning.

13. In my opinion, neither the petitioner nor the Respondent No.4 who lay their claims on the basis of the said Government letter, for seeking promotion on the post of headmaster of the school, are entitled to claim such promotion nor it was competent on the part of the respondent authorities to accord any benefit to the respondent no.4 pursuant to the said Government letters, because of following

reasons;

(i) After coming into force of the Rules, the promotion/appointment could have been made only in accordance with the provisions contained in the Rules,

(ii) The Government letter in question stood repealed in view of Rule 21 of the Rules and

(iii) Under the Rules a teacher could be deemed to be a founder headmaster, who, apart from other requirements is also, possessed with the requisite educational qualifications and eligibilities right from the beginning of his joining the service in the school, which neither the petitioner nor the respondent no.4 had inasmuch as they passed their B.Ed. examination and Diploma in teaching much after their joining the service."

8. The judgment in Ram Ballav Pd. Singh was challenged before the Supreme Court, however, without success. It would be useful to record that in "A. K. Pradhan Vs. State of Bihar" reported in (1998) 2 SCC 411, the Supreme Court noticing that the view taken by the Full Bench in Ram Ballav Pd. Singh case was affirmed by the Court in the previous proceeding holding that the Headmaster has no right to be automatically absorbed as a government servant when an unrecognised school is taken over by the Government, did not accept the plea that on completion of seven years from the date when the school was taken over, if a teacher had continued on the post of Headmaster, he becomes entitled for confirmation on the post of Headmaster, and the Special Leave Petition was disposed of with an observation that if the appointee had completed seven years of service reckoned from the date on which the school was taken over by the Government, his claim for regularisation shall be considered. From the aforesaid judgments, it is, thus, apparent that on completion of seven years as Headmaster/founder Headmaster on the date of taking over of the school or, on completion of seven years working on the post of Headmaster after the school is taken over, a teacher automatically does not become entitled for regularisation/confirmation on the post of Headmaster. This Court in "The State of Jharkhand Vs. Nirbhay Kumar Jha" (L.P.A. No. 114 of 2013) has also taken a similar view. This Court has observed as under: "12. In view of above cited case laws, Headmaster of a School does not automatically become the Headmaster of the School after its take over under Section 4(2) of the Act. Headmaster, being a promotional post, can be made only after consideration of recommendation of such statutory Board and the petitioner, who was absorbed as Government Teacher after getting recognition of the School on 2.10.1980 cannot get automatic status of a Headmaster since he has not completed seven years continuous services in a Government recognized institution and even after completion of seven years in Government School, he cannot be made Headmaster as the post of Headmaster is a promotional post and selection and appointment on promotional post is governed by Rules."

9. The petitioner was appointed on 31.12.1981 and he gave his joining in the

school on 01.01.1982, when he claims that he was made Incharge Headmaster. Incidentally, this is the date on which the school was taken over. On admitted facts, the petitioner became Incharge Headmaster only on the date when the school was taken over. His eligibility and suitability for appointment as Headmaster were never scrutinised. There is no recommendation of School Service Board for his appointment as Headmaster. Previous decisions referred to by the learned counsel for the petitioner are clearly distinguishable on facts. For example, Amin Ansari possessed all requisite qualifications at the time of his appointment whereas, the petitioner was not possessing requisite qualifications even for appointment as a teacher.

10. In the aforesaid facts, I find no infirmity in the order dated 13.05.2010 passed by the respondent no.3. Consequently, the writ petition is dismissed.