
(2015) 07 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5142 of 2011

Yogendra Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Citation : (2015) 07 JH CK 0004

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : D.K. Dubey, Sr. S.C.I., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.

1. In this writ petition, the petitioner has prayed for quashing the memo No. 770 Ranchi dated 6.3.2010, issued by the respondent No. 2, whereby and whereunder, the claim of the petitioner for grant of selection scale has been refused.

2. The petitioner was appointed as an assistant teacher in science group by the Managing Committee, Barjoreji Badshah Memorial High School Barma Mines, East Singhbhum and the petitioner joined on the said post on 1.8.1965. The school was granted recognition w.e.f. 1.1.1965 vide letter as contained in memo No. 518 Pat dated 2.2.1966 by the Secondary Education Parishad, Bihar, Patna. Initially the petitioner was untrained, but subsequently the petitioner had obtained Diploma in Education on 17.2.1972. All the recognised secondary schools have been taken over by the State Govt. w.e.f. 2.10.1980 in terms of the Bihar Non-Govt. Secondary School (Taking Over Management and Control) Act, 1981. The Bihar Nationalized High School (Service Condition) Rules, 1983 had been framed on 9.6.1983 which came into force from 26.9.1983. The petitioner in terms of the provisions as contained in resolution No. 10770 dated 30.12.1981 was granted time bound promotion to junior selection grade w.e.f. 1.4.1981. The

Finance Department vide letter No. 92 dated 7.9.1992 issued direction to the Department of Human Resources Development to give benefits to the teachers cadre under resolution No. 6022 dated 18.11.1989 and subsequently the State Govt. had come up with letter No. 1100 dated 19.12.1992 by creating 20% posts in the senior pay scale. It was enumerated therein that the selection grade will be counted from the date of completion of 12 years in junior selection grade. The petitioner had represented the authorities for grant of selection scale but subsequently vide memo No. 770 dated 6.3.2010 the claim of selection scale of various persons including the petitioner was rejected and which is under challenge in the present writ petition.

3. Heard Mr. B.K. Pandey, learned counsel for the petitioner and Mr. D.K. Dubey, learned Sr. S.C. I, appearing for the respondent State of Jharkhand and Mr. Sudarshan Srivastava, learned counsel appearing for the Accountant General.

4. It has been submitted by learned counsel for the petitioner that the petitioner was given junior selection grade scale w.e.f. 1.4.1981 and in terms of memo No. 1100 dated 19.12.1992 Clause 6, the petitioner on completion of 12 years of service from the date he was granted selection grade shall be entitled to senior scale. It has further been submitted that subsequently under letter as contained in memo No. 267 dated 25.4.1994, the aforesaid criteria was reiterated but a clause was inserted to the effect that all the teachers are required to be eligible with a Post Graduate degree which was relaxed, if any teacher has completed 18 years of service on the date of implementation of the selection scale. Learned counsel for the petitioner, therefore, submits that in either of the conditions the petitioner is an eligible candidate to be considered for selection scale and although in the impugned order, the circulars and memos which the petitioner relied upon have been mentioned but the same has not been considered in its proper perspective while rejecting the claim of the petitioner for selection scale.

5. Mr. D.K. Dubey, Learned Sr. S.C. I, on the other hand, referring to the counter affidavit, has submitted that a promotion committee was formed to consider the matter of promotion admissible to eligible teachers pursuant to coming into force of the Jharkhand Nationalized Secondary School (Service Condition) Rules, 2004 as amended in 2008. It has further been submitted that the circulars which have been referred to by the petitioner have been considered by the promotion committee which finds due place in the impugned order dated 6.3.2010 and therefore it cannot be said that the case of the petitioner and other persons claiming the same benefits has not been considered. He therefore submits that the order dated 6.3.2010 contained in memo No. 770 is in accordance with law and therefore the writ petition should be dismissed.

6. Mr. Sudarshan Srivastava, learned counsel for the Accountant General has pointed out that in terms of memo No. 1100 dated 19.12.1992, the number of posts in selection scale has been restricted to 20 per cent of the number of post in senior scale. It has therefore been submitted that if the case is remitted back, due regard should also be had with the said contention.

7. The impugned order as contained in memo No. 770 dated 6.3.2010 categorically mentions about resolution as contained in memo No. 6022 dated 18.12.1989 and departmental letter No. 267 dated 25.4.2004, but the impugned order does not disclose as to why the said resolution/circular/letter has not been considered. Perusal of the memo No. 1100 dated 19.12.1992 clearly reveals at clause 6 that for selection scale 12 years of service has to be calculated from the date on which the junior selection scale was granted. In memo No. 267 dated 25.4.2004, the same condition has been reiterated in clause 3. However clause 5 of the circular dated 25.4.1994 depicts that all the teachers have to obtain Post Graduate degree but the same shall not be required if prior to implementation of the selection scale assistant teacher has completed 18 years of service. In either of the circumstance, the petitioner comes within the zone of consideration. Therefore the petitioner cannot be debarred or his claim for selection scale cannot be rejected merely on the basis of a subsequent enactment. The impugned order dated 6.3.2010 although have made passing reference to the circulars/memos relied upon by the petitioner but the same have not been taken into consideration in their proper perspective. The order dated 6.3.2010 is also devoid of any reasons to arrive at such conclusion as no distinguishable feature has been pointed out to reject the claim of the petitioner.

8. In such circumstances, the impugned as contained in memo No. 770 dated 6.3.2010 is quashed and set aside so far as the petitioner is concerned. The matter is remitted back to the respondent No. 2 to take a fresh decision on the claim of the petitioner for selection scale in accordance with law after giving an opportunity of hearing to the petitioner by passing a reasoned order within a period of six weeks from the date of receipt/production of a copy of this order.

9. It goes without saying that the respondent No. 2 while considering the case of the petitioner shall also take note of the restriction to 20% of the number of posts in the selection scale as contained in memo No. 1100 dated 19.12.1992.

10. This writ petition stands disposed of with the above observations and directions.