

Mahabir Singh and Anr Vs. Human Resource Development

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Court : Jharkhand

Decided On : Jan-20-2017

Appellant : Mahabir Singh and Anr

Respondent : Human Resource Development

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2785 of 2013

1. Mahabir Singh, S/o Late Bidya Dhar Singh, Resident of Mahuda, P.O.- Silphore, P.S.-Pindrajora, District:-Bokaro, Jharkhand.

2. Ganga Dhar Mahato, S/o Late Kunj Bihari Mahato, Resident of Village:- Sonabad, P.O.-Ghatiayali, P.S.-Pindrajora, District:-Bokaro, Jharkhand.
Petitioners Versus 1. The State of Jharkhand through the Principal Secretary, Human Resources Development Department, Government of Jharkhand, Project Building, P.O. +P.S.-Dhurwa, Ranchi.

2. The Director, Primary Education, Human Resources Development Department, Government of Jharkhand, Project Building, P.O.+P.S.-Dhurwa, Ranchi.

3. The Deputy Commissioner-cum-Chairman, District Establishment Committee, Bokaro, P.O.+P.S.& District:-Bokaro.

4. The District Superintendent of Education, P.O.+P.S.& District:-Bokaro, Jharkhand. Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioners : Mr. Rupesh Singh, Advocate For the

Respondents : Mr. Anoop Kr. Agarwal, J.C to S.C. IV ----- CAV on 30/06/2016
Pronounced on 20/01/2017 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioners have inter-alia prayed for quashing the Memo dated 22.03.2013 issued by the respondent no.4 pertaining to stoppage the payment of the salary of the petitioners in view of the direction of respondent no.1 vide letter dated 23.02.2013 and for quashing of Letter No.8/MU0201205-91 dated 23.02.2013 of the respondent no.1 whereby the said respondent has directed to the respondent no.4 for termination from services of the petitioners and further prayed for quashing of the Letter No.704 dated 01.04.2013 and Letter No.761 dated 10.04.2013 issued by the respondent no.4 for directing the petitioners to show cause as to why the services shall not be terminated and further the petitioners have prayed for direction upon the respondents-authorities to release the salary from the Month of February, 2013 onwards. 2 2. The facts as disclosed in the writ application, in brief, is that an advertisement was published in the Hindi Daily Newspaper Prabhat Khabar inviting applications for appointment to the post of Primary Teachers and in pursuance to the said advertisement Jharkhand Public Service Commission conducted the Examination on 27.05.2003. Thereafter, on 04.06.2004, appointment letters were issued by the respondent no.4 and the name of the petitioners have appeared at Serial Nos. 37 and 68 of the list of successful candidates. After thorough scrutiny of the testimonials of the petitioners by the Establishment Committee chaired by the respondent no.3, the petitioners joined their services and continued to discharge their duties without any blemish whatsoever. It is pertinent to mention that both the petitioners completed their Nursery Teachers Training and Creche Management Course under the Central Board of Secondary Education. While Continuing as such Letter No.704 dated 01.04.2013 of the respondent no.4, the petitioners were directed to show cause as to why their services be not terminated for the reason that the Teachers Training Certificate of the petitioners does not conform to the Jharkhand Primary School Teacher Appointment Rules, 2002, amended Rules 2002 and 2003. Pursuant to the said show cause notices, the petitioners submitted their replies and requested the respondent no.4 to provide a copy of letter dated 23.02.2013 of respondent no.1 whereby the respondent no.4 was directed to initiate a proceeding for

termination of the services of the petitioners. Vide letter dated 10.04.2013, the respondent no.4 provided a copy of the aforesaid letter dated 23.02.2013 of the respondent no.1 and the petitioners accordingly filed their supplementary show cause dated 16.04.2013, justifying their appointments. But to the utter surprise and consternation, the respondent no.4 vide memo 3 no.638 dated 22.03.2013 directed the Headmaster of the concerned Schools not to release the salary of the petitioners till further orders as evident from Annexure-9 to the writ application. During the pendency of the writ application, the order of termination was passed on 18.06.2013 and amendment sought for vide I.A No.5604 of 2013 and vide order dated 24.10.2013, the said amendment has been allowed. The petitioner has sought for quashing of memo no.1251 dated 18.06.2013 issued by the District Superintendent of Education-cum-Sub Divisional Education Officer, Bokaro i.e. the respondent no.4 whereby the concerned authority has been pleased to terminate the services of the petitioners and directed recovery of the amount paid to the petitioners towards the salary for the period rendered by them within a period of 3 months, failing which, necessary legal actions will be initiated against the petitioners.

3. Controverting the averments made in the writ application, a counter- affidavit has been filed by respondent nos.3 and 4 wherein it has been submitted that the Director, Primary Education-cum-joint Secretary, Human Resources Development Department, Govt. of Jharkhand vide letter no.83 dated 21.02.2013 informed the District Superintendent of Education, Bokaro that the petitioner of writ application being W.P.(S) No.3794 of 2005, Mokhtar Ansari pleaded in this Court that Mahavir Singh (present petitioner) having qualification of Nursery Teachers Training Creche Management got appointment and accordingly directed the District Superintendent of Education, Bokaro to submit all papers/record relating to the appointment of Mahabir Singh and promptly the District Superintendent of Education, Bokaro vide letter dated 22.02.2013 submitted the educational certificate of Mahabir Singh and vide letter no.320 dated 23.02.2013 and educational 4 certificate of Gangadhar Mahto to the Director, Primary Education, Jharkhand, Ranchi as evident from Annexure-B, B/1 and B/2 to the counter-affidavit. It has further been submitted that the Principal Secretary to the Government, Human Resources Development Department (Primary Education

Directorate) Government of Jharkhand vide letter no.0212/-5-91 dated 23.02.2013 made it crystal clear that Mahabir Singh and Gangadhar Mahto appointed as Assistant Teacher in Primary School Bangariya, Chandankiyari-1 and Primary School, Lachhmanpur, Chandankiyari-1 respectively and Government took cognizance of the matter that both are appointed on the basis of Nursery Teacher Training and creche Management certificate whereby the said qualification is not congruent to the Teachers Training Qualification prescribed under Jharkhand Primary School Teacher Appointment Rule 2002 and Amended Rule 2002 and 2003 and directed to set at naught their services and further directed to identify the other similar situated persons and erring officials as evident from Annexure-C to the counter-affidavit. It has further been stated in the counter-affidavit that to comply the aforesaid direction of the State and notice to show-cause issued to the petitioners who submitted their show cause but did not assign any reason nor submitted any document to substantiate that they had acquired the requisite qualification pursuant to the vacancies basing therefore respondent found show-cause not to be satisfactory since the petitioners did not have requisite qualification on the date of application and further resolved to recover the entire amount received by them on account of salary and to give effect to the said decision, District Superintendent of Education, Bokaro issued office order dated 18.06.2013 and served notice upon the petitioner 5 nos. 1 and 2 dated 12.07.2013 as evident from Annexure-E to the counter- affidavit. Learned counsel for the State has more or less reiterated the submissions made in the counter-affidavit. During course of hearing, learned counsel for the State has drawn the attention of the Court to the supplementary counter-affidavit dated 11.12.2013 the order passed in W.P.(S) No.3794 of 2005 dated 24.06.2013 in the case of Md. Mukhtar Ansari Vrs. The State of Jharkhand & Ors., where the same issue has been decided by this Court. In the said case, this Hon'ble Court was pleased to hold that the Nursery Teachers Training and Creche Management certificate is not equivalent as described in Elementary/Primary Teachers Appointment Rule- 2002 and amended Rule-2002 & 2003 and the said order has been confirmed in L.P.A No.254 of 2013 vide order dated 4th December, 2013. It has further been submitted by the learned counsel for the State that since the case of the petitioners is squarely covered by the aforesaid decision, no relief can be granted to the petitioners. Learned counsel

for the State further submits that after enactment of Bihar Reorganization Act, 2002 Jharkhand State was carved out and the State of Jharkhand adopted the aforesaid Transfer and Disciplinary Action Rule, 1994 with minor amendment and in the said Rule, it is specifically mentioned that any person aggrieved with the decision of District Education Establishment Committee is at liberty to proceed for an appeal before the Divisional Commissioner and the petitioners by filing the interlocutory application has tried to supersede the Forum of Appeal, which is not permissible under law. Learned counsel for the State by referring to decision in C.W.J.C No.5888/87 decided on 30.10.1991 in the case of Smt. Sumitra Devi and Another Vs. State of Bihar and Ors. submitted that the 6 Hon'ble High Court in exercise of writ jurisdiction would not grant any relief which has the effect of perpetuating an illegality. Learned counsel for the State has further referred to the decision of the Hon'ble Apex Court in Civil Appeal No.1970 of 2007 (arising out of Special Leave Petition (Civil) No.14469 of 2003) decided on 16.04.2007 in the case of Bihar Public Service Commission and Ors. Vs. Kamini and Ors., wherein the Hon'ble Apex Court has been pleased to interalia hold that the illegality cannot be allowed to be perpetuated under the so called 'equality doctrine'. That is not the sweep of Article 14.

4. In order to buttress his submissions, learned counsel for the petitioners have referred to the judgment reported in (2003) 9 SCC592 (2001) 2 SCC41 and (2003) 2 SCC355 on the ground of principles of estoppel. Learned counsel for the petitioners submits that not only the recruiting agency i.e. Jharkhand Public Service Commission, but also the respondents themselves made thorough verifications and scrutiny of the eligibility of the petitioners and it was only upon approval by the District Establishment Committee that the petitioners were issued letters of appointment. It has never been a case of the respondents that the certificates of the petitioners are forged or fabricated. Therefore, the action of the respondents in terminating the services of the petitioners are on the sole ground that the petitioners do not fulfill the requirement of Two Year's Teacher Training as required under the relevant Recruitment Rules, cannot be legally sustainable in view of the aforesaid decisions. Learned counsel for the petitioners further referred to the decision of the Hon'ble Apex Court as reported in (2003) 2 SCC111 the respondents cannot be permitted to uproot the livelihood, on the basis of a letter

issued by the Director, Primary Education on 21.02.2013 or on 29.09.2005 for the 7 reason that the petitioners were appointed on the post of Primary Teacher after due process of selection, verification and authentication. Learned counsel for the petitioners has also referred to the judgments on similar principles as reported in (2001) 2 SCC328 and (2003) 9 SCC129 wherein the Hon'ble Apex Court principles of equity and fair play holding that the interference in appointment made long back (pursuant to selection or on grounds of compassion) would uproot the appointee from livelihood and would not be appropriate. On the point of recovery of salary, learned counsel for the petitioner has referred to the decision reported in (2012) 8 SCC417 in the case of Chandi Prasad Uniyal And Others Vs. State of Uttarakhand And Others.

5. After giving my anxious consideration to the submissions at Bar and on perusal of the records, I am not inclined to interfere with the part of the impugned order dated 18.06.2013 so far as termination of the petitioners is concerned but so far as direction of recovery of the salary of the petitioners vide Annexure-10 dated 18.06.2013 concerned, same warrants interference by this Court in view of decision of Hon'ble Apex Court in the case of State of Punjab and Others Vs. Rafiq Masih (white washer) and Others as reported in 2015 (4) SCC334 and (2012) 8 SCC417 in the case of Chandi Prasad Uniyal And Others Vs. State of Uttarakhand And Others. Accordingly, Annexure-10 dated 18.06.2013 so far as recovery of salary is quashed & set aside and the writ petition stands partly allowed. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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