

Ravi Kumar Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-25-2017

Appellant : Ravi Kumar

Respondent : The State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No.6440 of 2013

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Ravi Kumar, son of late Ramchandra Prasad, resident of near Gujrati School, P.O. & P.S. Jharia, District Dhanbad. Petitioner VERSUS1 The State of Jharkhand.

2. The Principal Secretary, Human Resources Development Department, Govt. of Jharkhand, Ranchi.

3. The Director, Secondary Education-cum-Joint Secretary, Jharkhand, Ranchi.

4. The Deputy Commissioner, Dhanbad.

5. The District Education Officer, Dhanbad.

6. The Secretary, Managing Committee, Sanskriti Vidya Mandir (High School), Digwadih, Dhanbad. ... Respondents.

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For Petitioner : Mr. Bhanu Kumar, Advocate For Respondents : JC to AAG Mr. P.K. Mukhopadhyay, Advocate

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK C.A.V. on 31.07.2017
Pronounced on 25/08/2017 Dr. S.N. Pathak, J.

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has approached this Court with a prayer for quashing the order contained in letter dated 28.01.2013, issued by the Director, Secondary Education-cum-Joint Secretary, Jharkhand (Annexure-7) whereby the approval of services of the petitioner has been rejected. Further prayer has been made to direct the respondents particularly, respondent No. 3 to grant approval of the services of the petitioner and to release the arrears of salary w.e.f. 04.01.2012 till date and also to release current salary, forthwith and other consequential reliefs relating to service condition. FACTUAL MATRIX³ The factual exposition as has been delineated in the writ petition is that the Sanskriti Vidya Mandir (High School) Digwadih, Dhanbad is a recognized Non-government Minority Aided High School within the meaning of Articles 29 and 30 of the Constitution of India. The aforesaid school² published an advertisement and later on, re-advertisement inviting applications for appointment on Trained Post Graduate Headmaster and Trained Graduate/P.G. Economics Teacher, upon advice of the District Education Officer, Dhanbad. In response to the said advertisement, the petitioner submitted his application and after participating in interview, comparative statement of marks of all the candidates was prepared, which goes to show that the petitioner secured the highest marks i.e. $110+54=164$. As there was some confusion over the subject of Economics & Commerce, guidelines was sought from the District Education Officer, Dhanbad, who vide his letter dated 20.12.2011, directed the Managing Committee to take decision in view of the recommendation of the Selection Committee and to strictly follow the prescribed procedure.

4. Thereafter, the petitioner was issued letter of appointment for the post of Assistant Teacher for Economics vide reference No. 2012 dated 03.01.2012 issued by the Honorary Secretary, Sanskriti Vidya Mandir (High School), Digwadih, Dhanbad. In compliance of the aforesaid letter, the petitioner submitted his joining on 04.01.2012 in the said school, which was duly accepted by the

Managing Committee. The petitioner discharged his duties faithfully and to the satisfaction of the respondent-authorities and as such, on the recommendation made by the Secretary of the aforesaid School, the District Education Officer, Dhanbad granted approval to the appointment of the petitioner and forwarded the requisite check slip containing all the vital information relating to the petitioner to the Director, Secondary Education for grant of approval of the services on 29.02.2012. It is the further case of the petitioner that as per the provisions contained in Section 18(3) of the Bihar Non-government Secondary Schools (Taking over of Management & Control) Act, 1981, it was mandatory upon the Director, Secondary Education to grant approval of the services of the petitioner but surprisingly, the same was rejected vide letter dated 28.01.2013, which is under challenge in this writ application.

5. Thereafter, the petitioner sought information under Right to Information Act from the Directorate of Secondary Education as to whether a candidate having the eligibility of Commerce (Hons.) at Graduate Level and Economics in Pass Course was eligible for appointment against the post of Economics subject or not. In response to the aforesaid query, the Under Secretary (Secondary Education)-cum-Public Information Officer, Jharkhand, Ranchi vide memo No. 360 dated 15.07.2014 replied that such candidate 3 possessed the eligibility for appointment against the Economics subject. It is the further case of the petitioner that one Mamta Pratibha Khalkho, who was also a Commerce Graduate, was appointed in JKR Hindi +2 High School Chirkunda, Dhanbad vide memo No. 3897 dated 27.08.2010, was later on appointed and adjusted against the vacant post of Economics in High School, Putki, Dhanbad by the Director, Secondary Education, Jharkhand, Ranchi vide order contained in memo No. 4166 dated 08.09.2010. The case of petitioner also stands on similar footings. Hence, this writ petition has been filed challenging the order of rejection.

6. Mr. Bhanu Kumar, learned counsel appearing for the petitioner strenuously urges that non-granting of approval of the services of the petitioner as Assistant Teacher of Non-government Minority Aided High School is infringement of the provisions of Articles 29 & 30 of the Constitution of India and also in violation of Section 18(3) of the Bihar Non-government Secondary Schools (Taking over of

Management & Control) Act, 1981. Learned counsel further submits that non-granting of approval of the services of the petitioner as Assistant Teacher of Non-government Minority Aided High School is in the very teeth of the ratio laid down by the Honble Apex Court in the case of All Bihar Christian Schools Association & Anr. Vs. the State of Bihar & Ors., reported in AIR 1988 SC305 and as such, the same cannot be sustained in the eyes of law and fit to be quashed and set aside. To strengthen his argument, learned counsel draws the attention of the Court towards Jharkhand Nationalized Secondary School (Service Condition) Rules, 2004, which provides procedure for appointment of Headmaster and Assistant Teacher of Nationalized Secondary Schools, Rule 4 (iii) (), which clearly stipulates that for appointment of Graduate Trained Teacher, a candidate must possess 50% minimum marks in either Arts, Science or Commerce stream and since the petitioner possess the requisite qualification as stipulated under aforesaid Rules, he deserves to be appointed on the post of Assistant Teacher for Economics subject.

7. Per contra, counter-affidavit has been filed by the respondents. Learned counsel appearing for the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that the instant writ application is not maintainable in the eyes of law and liable to be rejected. He further submits that the petitioners proposal for approval of appointment has been put-up twice before the above-mentioned Committee. On the basis of Jharkhand Nationalized Secondary School (Service Condition) Rules, 2004 4 and amended Rules, 2008, the aforesaid Committee has rejected the petitioners claim i.e. the approval of appointment. The rejection of petitioners claim is the decision of the Committee and not of any particular authority.

8. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. The action of the respondent-authorities rejecting the case of the petitioner for approval of appointment, taking shelter of Jharkhand Nationalized Secondary School (Service Condition) Rules, 2004 and amended Rules, 2008, is not in accordance with law. The issue fell for consideration before the Honble Apex Court in the case of All Bihar Christian Schools Association & Anr. Vs. the State of

Bihar & Ors. (supra) has clearly laid down that Section 18(3) provides that recognized minority secondary schools shall be managed and controlled in accordance with the provisions contained in Clauses (a) to (k). 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. In a civilized 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.

9. As such, non-granting of approval of the services of the petitioner as Assistant Teacher of Non-government Minority Aided High School namely, Sanskriti Vidya Mandir (High School) Digwadih, Dhanbad is in violation of the provisions contained in Section 18(3) of the Bihar Non-government Secondary Schools (Taking over of Management & Control) Act, 1981.

10. As a cumulative effect of the aforesaid rules, guidelines, judicial pronouncements, the order dated 28.01.2013, as contained in Annexure-7, 5 issued by the respondent No. 3, the Director, Secondary Education-cum-Joint Secretary, Jharkhand, Ranchi is hereby quashed and set aside. The respondents are directed to release the arrears of salary of the petitioner w.e.f. from the date of joining i.e. 04.01.2012 and also to release the current salary along with consequential benefits for which the petitioner is found entitled, in view of the quashment of the letter No. 176 dated 28.01.2013, within a period of six weeks from the date of receipt of a copy of this order.

11. Resultantly, the writ petition stands allowed. (Dr. S.N. Pathak, J.) kunal/-

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