

Omkar Ram and Anr Vs. Education

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Court : Jharkhand

Decided On : Sep-05-2017

Appellant : Omkar Ram and Anr

Respondent : Education

Judgement :

1 W.P(S) No. 2615 of 2017 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 2615 of 2017 1. Omkar Ram 2. Smt. Seema Singh Petitioners
VERSUS 1 The State of Jharkhand 2. The Director, Primary Education, School
Education and Literacy Department, Government of Jharkhand 3. The District
Superintendent of Education, Ranchi 4. The Secretary/ Headmaster, Kshitish Deaf
and Dumb Primary School, Niwaranpur, Ranchi ... Respondents CORAM:
HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioners :Mr. M.M. Pan,
Advocate For Respondents: J.C. To GP - I C.A.V. On 16/08/2017 Pronounced on
05/09/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. In the instant writ application, petitioners have prayed for quashing of the Order dated 20.09.2016, as contained in Memo No. 669, issued under the signature of respondent no. 2 and for a direction upon the respondents to pay salary including arrears thereof.

3. The facts in short is that the School in question i.e. Kshitish Deaf and Dumb Primary School, Nivaranpur, Ranchi is a Government Recognised Special Minority Aided School and all the expenses towards salary and retiral benefits of the teaching and non-teaching staffs appointed against sanctioned posts are being financed and funded by the State Government from public exchequer. Pursuant to the advertisement dated 25.12.2010, petitioners being B.A. and having special professional qualification of Diploma in Special Education - Hearing Impaired, applied for appointment as Assistant Teachers. After due process of scrutiny and interview, petitioners were selected and they gave their joining on 01.04.2011 and since then they are discharging their duties. Their appointments had also been approved by the District Superintendent of Education after necessary scrutiny and verification of documents, vide memo no. 1499, Dated 09.05.2012 granting them Matric Trained Scale of Rs.9,300 - 34,800 from date of their joining. In spite of their joining and approval by the competent authorities, petitioners were not being paid their salary from the date of their initial joining. When no heed was paid to their representations, petitioners moved before this Court in W.P.(S) No. 3203 of 2013. However, during pendency of the writ petition, vide issuance of letter bearing no. 1905, Dated 21.05.2013, the approval of appointment of petitioners granted by the predecessor-in-office on 09.05.2012, was canceled without providing the opportunity of being heard. The ground of rejection is also frivolous as the condition RC2W.P(S) No. 2615 of 2017 of passing TET Examination was adopted by the State with effect from 05.09.2012 whereas the petitioners have joined their service on 01.04.2011, which was duly approved by the competent authority. Petitioners continued to work but their salary had been withheld. However, in the mean time, the writ petition filed by the petitioners was disposed of vide order dated 16.07.2014 and the matter was remanded back before respondent no. 2 - Director, Primary Education, Government of Jharkhand. However, when the respondents did not act pursuant to order of this Court, the petitioners filed Contempt Case (Civil) No. 824 of 2014. In the mean time, in light of order dated 16.07.2014, passed in W.P.(S) No. 3203 of 2013, the District Superintendent of Education, Ranchi submitted preposition statement in four copies along with necessary documents to the Director, Primary Education, Government of Jharkhand, which was duly replied by him vide letter no. 16 (Vidhi),

Dated 16.01.2015 directing the District Superintendent of Education, Ranchi to act in pursuant to Letter No. 957, Dated 22.06.2014. In the mean time, the respondent no.2 passed order dated 20.09.2016, as contained in memo no. 669, whereby the petitioner's claim for fixation of pay has been rejected on the ground of reservation roster not followed in their appointment despite knowing the fact that roster policy is not applicable to the Minority Institutions in appointment of teachers and admission of students. However, after passing of impugned order dated 20.09.2016, as contained in memo no. 669, the contempt proceeding was dropped and petitioner has preferred the instant writ petition for the prayers mentioned hereinable.

4. Mr. M.M. Pan, learned Counsel appearing on behalf of the petitioners submitted that the impugned order passed by the respondents is illegal, improper, arbitrary, malafide, discriminatory as well as has been passed on extraneous circumstances and without application of mind and as such fit to be set aside. Learned Counsel further submitted that petitioners are holding the post of Assistant Teacher in the minority school and are discharging their duties regularly but till date no payment has been made and the respondent no. 2 has passed impugned order which is not at all sustainable in law. Learned Counsel further submitted that even if the reservation policy had not been duly followed, the petitioners cannot be harassed for the wrongs committed by the respondents. Learned Counsel strenuously urges that the impugned order is not sustainable in the eyes of law on the ground that case of the petitioners have been rejected on the ground that reservation policy has not been followed in their appointments. This plea of the respondents is also not tenable in the eyes of law. To buttress his arguments, learned Counsel has relied upon the Judgment passed by the Apex Court in the case of Sindhi Education Society and another Vs. Chief Secretary, Government of NCT of Delhi and others reported in (2010) 8 SCC49 5. On the other hand counter affidavit has been filed. RC3W.P(S) No. 2615 of 2017 J.C. to learned GP-I appeared on behalf of respondents - State. Learned counsel submitted that matter was referred before the Screening Committee and on the recommendation of the said Screening Committee, it was found that petitioner's appointment was made without following reservation policy and in furtherance of such decision, impugned order has been passed by the respondent no. 2 which is fully sustainable in the eyes of law.

Learned counsel further submitted that the writ petition has got no merits and is fit to be rejected.

6. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioners need consideration and the impugned order dated 20.09.2016, as contained in memo no. 669, passed by respondent no. 2 is fit to be quashed and set aside on the following grounds: (i) The earlier order dated 09.05.2012 granting approval of appointment of the petitioners has been reviewed by the same authority and vide order dated 21.05.2013 the earlier approval granted by him, has been canceled, which is not permissible in the eye of law. It has been held in the case of R.T. Rangachari Vs. Secretary of State for India in Council reported in 1937 0 AIR (PC) 27 that in a case in which after government officials, duly competent and duly authorised in that behalf, have arrived honestly at one decision, their successor-in-office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision. The same view has been reiterated in the case of State of M.P. Vs. Mansinghra reported in AIR 1958 MP413 (ii) It is highly improbable for successor-in-office to review order of predecessor-in-office and to pass a totally different order. Under the rules of executive business, there is no such power conferred upon the authority of the same designation to recall/ review the order of his/her predecessor-in- office on the same post. However, remedy lies in challenging the order either before the higher authority or before Court of law. Taking action suo motu which is punitive involving civil consequences without applying principles of natural justice, is violative of Article 14 of the Constitution of India and as such, is fit to be quashed and set aside. (iii) Case of the petitioners have been rejected on the ground that policy of reservation/ roster has not been followed at the time of appointment. The Hon'ble Apex Court, in the case of Sindhi Education Society and another Vs. Chief Secretary, Government of NCT of Delhi and others reported in (2010) 8 SCC49 has held that State imposed reservation for SC/ ST Teachers in Minority School (aided or unaided) is impermissible. Minority schools have right to appoint persons compatible with their institution or RC4W.P(S) No. 2615 of 2017 culture so that right to conserve their socio economic cultural character is not violated. Merely receiving grant-in-aid perse

would not make such school or institution State within the meaning of Article 12. (iv) No appointment can be declared to be irregular or invalid only on the ground that appointing authority did not adhere to the procedure and obtained roster clearance, the petitioner cannot be penalised. (v) The Hon'ble Patna High Court in the case of Sanjit Kumar Vs. State of Bihar reported in Bihar Law Journals 807, para-7 has held in such situation if the appointing authority did not adhere to the procedure and obtain roster clearance, it would not be proper to penalise him. Besides foundational facts have not been stated by the respondents to suggest that the appointment of the petitioner was in excess of quota. In this view of the matter even if it is assumed that the roster clearance was not taken, in my opinion may not be sufficient justification to terminate services of the petitioner. (vi) The condition of service imposed by any Act or Rule, cannot have retrospective effect and as such, condition of passing TET Examination which was adopted by the State and became effective from 05.09.2012 whereas the petitioners joined their service on 01.04.2011, which was duly approved by the competent authority, cannot be applicable in the case of petitioners.

7. As a cumulative effect of the aforesaid rules, guidelines and judicial pronouncements, the impugned order dated 20.09.2016, as contained in Memo No. 669, passed by respondent no. 2 is quashed and set aside and the writ petition is allowed. The respondents are directed to release all consequential benefits to the petitioner within a period of eight weeks from the date of receipt/ production of a copy of this order. Needless to say that the respondents shall release entire benefits in favour of petitioner to which they are entitled i.e. arrears of salary along with current salary and other benefits as a result of quashment of impugned order. (Dr. S.N. Pathak, J.) High Court of Jharkhand at Ranchi Dated September 5, 2017 RC RC

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