

Rasik Baskey and Ors Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-13-2017

Appellant : Rasik Baskey and Ors

Respondent : State of Jharkhand

Judgement :

1 W.P(S) No. 2947 OF 2008 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 2947 of 2008 1. Rasik Baskey 2. Sitaram Marandi 3. Peon Hembrom
4. Vlison Murmu 5. Dev Hembrom 6. Joel Hansada 7. Nand Kishor Baskey 8.
Lukhi Ram Hansada 9. Sushil Marandi 10.Sushil Murmu 11. Ishak Marandi
12.Dinesh Hembrom Petitioners VERSUS1 The State of Jharkhand through the
Secretary, Human Resources Development Department (Primary Education),
Government of Jharkhand, Ranchi.

2. Director, Human Resources Development Department (Primary Education),
Government of Jharkhand, Ranchi 3. District Superintendent of Education, Dumka
4. Bihar Public Service Commission, Patna through its Chairman/ Secretary, Patna
... Respondents CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For
Petitioner :Mr. Mithilesh Singh, Advocate. For Respondents:Mr. Kaustav Roy, JC
to Sr. SC-III C.A.V. on 20/06/2017 Pronounced on 13/09/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. In the instant writ application, petitioners who are teachers of different Government Primary and Middle Schools, have prayed for a direction upon the respondents to promote them from Grade-I to Grade-IV by fixing their seniority from the date of their appointment inasmuch as they are entitled and eligible thereof in light of different standing orders and circulars of the Government as also order of this Court dated 04.04.2008, passed in W.P.(S) No. 638 of 2006.

3. The facts in short is that in the background of rampant corruption and irregularities prevalent in the Teachers Training Institution of the State, the then State of Bihar vide memo no. 116, dated 05.03.1991, took a policy decision to ban Teachers' Training Institutions and appoint untrained teachers in different Primary and Middle Schools and thereafter provide them training for one year. Thereafter, vide advertisement dated 06.10.1991 (relevant at paragraph-9), it was provided that though trained and untrained both types of candidates were eligible for appointment to the post as teachers, prescribed weightage would be given to the trained teachers. Accordingly, 3% weightage were to be given to the trained candidates at the time of selection and appointment. The petitioners are the teachers of different Government RC2W.P(S) No. 2947 OF2008 Primary and Middle Schools of Santhal Pargana, who were appointed in September and October, 1994 as Assistant Teachers by the State Government on the recommendation of the Bihar Public Service Commission.

4. It is averred that a joint merit list of trained and untrained teachers were prepared by the BPSC. Those untrained candidates having higher qualifications and merit than trained candidates for appointment to the post of teachers, were placed at higher ranks in merit for appointment and this ranking was based on the basis of marks obtained by respective candidates for the post of teachers as per result of the examination held by BPSC. This policy and provision of ranking in the merit list prepared by BPSC on the basis of marks obtained in the main examination was further notified by the State Government as a policy decision vide Memo No. 998, Dated 07.06.1995 where it has been provided that untrained inter and graduate teachers appointed against the post for matric trained teachers would get the scale of Rs.1,200 - 2,040 which is the scale meant for Grade-I sanctioned by notification of the State Government published in the Bihar Gazette

dated 09.07.1993, wherein Rule-3 of the said Notification it has been clearly stated that Grade-I means the scale of Rs.1,200 - 2,040 meant for Matric Trained Teachers. In light of aforementioned Memo No. 998, Dated 07.06.1995, the scale of Rs.1,200 - 2,040 meant for matric trained teachers was given to untrained inter and graduate teachers from the very date of their joining. However, in light of 5th Pay Commission, the State Government implemented a revised pay scale of Rs.4,500 - 7,000 as a replacement scale of Rs.1,200 - 2,040 vide Government Order contained in letter no. 3805, dated 25.06.1999. Proviso 3(Kha) of the said letter dated 25.06.1999 clearly provides that seniority of the untrained teachers would not be affected even if they do not pass training examination or undergo training and their place in the seniority list will remain intact. Even the Hon'ble Supreme Court vide order passed in S.L.P. No. 23187/1996 clearly directed the State Government not to disturb services of untrained teachers and further directed to impart them training by October, 1997.

5. Even after direction of the Hon'ble Supreme Court, the respondents did not provide training to the petitioners and others. However, later on the petitioners were sent for training but the respondents did not hold examination after imparting training and publishing result thereof. Being aggrieved, some teachers moved before Hon'ble Patna High Court in W.P.(S) No. 2625 of 2001 and 2770 of 2001 which was disposed of on 04.09.2001 directing the respondents to hold examination within four months and publish result of those who have already undergone training. However, the results were published on 03.05.2002 by Jharkhand School Examination Board. Surprisingly, though the respondents revised and implemented new scale of Rs.4,500 - 7,000 as a replacement scale of Rs.1,200 - 2,040 meant for Grade-I, the RC3W.P(S) No. 2947 OF2008 petitioners and others were not given benefits of said revised scale. Being aggrieved, similarly situated persons again moved the High Court vide CWJC No. 495/2000 with a prayer for granting and implementing the revised scale of Rs.4,500 - 7,000 as a replacement scale of Rs.1,200 - 2,040 meant for Grade-I. The said writ petition was disposed of vide order dated 29.05.2001 with a direction to the respondents to consider case of the petitioners and give prescribed revised scale to those persons within six months, but the same was not given to them. When the order was not complied by the respondents, the said similarly situated persons filed

Contempt Case (C) No. 164/2002 which was disposed of on 05.07.2002 after which they along with these petitioners were given revised pay scale of Rs.4,500 - 7,000 by the State Government.

6. Learned counsel for the petitioners submitted that the State Government, vide its supplementary notification of the month of March, 1979 issued regarding the Acts and Statutes of Bihar Primary Education, September, 1977, vide proviso 2 under Heading Promotion of the said statute provided that 2(e) The basis of seniority shall be the date of first appointment made as per law. The date of appointment being the same, the basis of inter-se seniority of teachers will be their respective higher qualification. In the case of higher qualification of the teachers being the same, date of birth of respective teachers will be the determining factor of their inter-se seniority. Learned counsel further submitted that it is standing policy decision of the State Government that lawful appointment, higher education and merit will be the only basis for determination of inter-se seniority. Learned counsel further submitted that similarly situated persons had moved this Court in W.P.(S) No. 638 of 2006 [Arun Sinha and others Vs. State of Jharkhand and others], and this Court, vide order dated 04.04.2008, directed the petitioners therein to file individual representations before the respondent no. 2 holding that petitioners were not at fault in not getting the training but it was the fault of the State Government. Learned counsel further submitted that being aggrieved by said order, the State moved before the Division Bench by filing L.P.A. No. 214 of 2008 and other analogous cases, which were rejected by holding that petitioners are not at fault in obtaining training. Division Bench further held that once seniority is required to be determined in view of the Circular dated 25.06.1999 and that stands determined because of that Circular and the same could not be made ineffective by the subsequent withdrawal of the said Circular by the State Cabinet with retrospective effect. Learned counsel further submitted that said Judgment has been upheld up to the Hon'ble Supreme Court in S.L.P.(C) Nos. 5520-5522/2013. Learned counsel submitted that in the aforementioned circumstances, petitioners are entitled for RC4W.P(S) No. 2947 OF2008 promotion from Grade-I to Grade-IV by virtue of different government circulars, as has been annexed with the writ petition and therefore, withholding of promotion of the petitioners from Grade-I to Grade-IV is violative of government's standing orders and circulars as also order

of this Court.

7. On the other hand counter affidavit has been filed by the respondents. Mr. Kaustav Roy, JC to learned Sr. SC-III submitted that the the petitioners have passed training on 03.05.2002 and as such they are not entitled for any promotion before the year 2010 as they complete eight years of service by the year 2010 only. Learned counsel further submitted that the rule is clear and as such, petitioners have not been deprived from their legal rights.

8. I have heard counsel for the parties and considered facts and circumstances of the case. The case has already been dealt with by the coordinate Bench of this Court and has been upheld by Division Bench as also by the Hon'ble Apex Court. The decision of the State cannot be made effective from a retrospective date and as such, the action of the respondents is illegal and arbitrary.

9. As a cumulative effect of the aforesaid rules, guidelines and judicial pronouncements, this writ petition is allowed. The respondents are directed to give benefits to the petitioners by promoting them from Grade-I to Grade-IV by fixing their seniority from the date of their initial appointment inasmuch as they are entitled and eligible thereof in light of different standing orders and circulars of the Government as also order of this Court . (Dr. S.N. Pathak, J.) High Court of Jharkhand at Ranchi Dated: September 13, 2017 RC RC

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