

Poonam Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Sep-22-2017

Appellant : Poonam

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Shresth Gautam

Judgement :

1 W.P.(S) No. 1393 of 2007 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 1393 of 2007 .. Poonam, W/o Sri S.D. Tiwari, R/o C/o Biswanath
Narsaria, Narsaria Bhandar, Randhir Prasad Street, Upper Bazar, Ranchi. .
Petitioner Versus 1. The State of Jharkhand.

2. The Director, Primary Education, State of Jharkhand, Ranchi 3. The Deputy
Director, Primary Education, State of Jharkhand, Ranchi 4. The District
Superintendent of Education, Ranchi 5. Sri Sheonarayan Marwari Kanya Madhya
Pathshala Upper Bazar, Ranchi through its Secretary. . Respondents CORAM:
HON'BLE MR. JUSTICE DR. S.N. PATHAK For the Petitioner : Mr. Shresth
Gautam, Advocate : Mr. Abhay Kr. Mishra, Advocate For the Respondents : Mr
Binod Singh, SC (L & C) Mr. Ashok Kr. Singh, JC to SC (L & C) ----- C.A.V. on
22.06.2017 PRONOUNCED ON 22.09.2017 Dr. S.N. Pathak, J.

Heard the parties.

2. The petitioner has approached this Court with a prayer for quashing the letter dated 08.01.2007, issued by the Director, Primary Education, Govt. of Jharkhand, whereby it has been stated that the prepositional statement sent for fixation of pay of the petitioner cannot be approved, because of the fact that the age of the petitioner is above for appointment of all the categories of the teacher and further prayer has been made to fix and approve the salary of the petitioner and pay the same to her as she has been appointed on 16.11.2002. Factual Matrix 3. Sans details, the facts as averred in the writ petition, in a nutshell is that an advertisement was issued for appointment of Matric Trained Teacher in the newspaper on 10.07.2002. The petitioner in pursuance to the said advertisement applied, which was accepted and she was called for a written examination to be held on 21.09.2002. The interview of the petitioner was taken on 22.09.2002. Thereafter, an appointment's Committee was 2 W.P.(S) No. 1393 of 2007 constituted including a Govt. nominee being the District School Inspectress, Ranchi and considering the comparative merits of the participants, the petitioner was selected and appointed vide letter of appointment dated 14.11.2002 as Assistant Teacher in the school of respondent No.

5. Thereafter, the petitioner joined her post and has been sincerely and diligently performing her duties as Assistant Teacher in the said school. It is the case of the petitioner that the respondent No. 5 sent the particulars of the petitioner's appointment to the District Superintendent of Education, Ranchi (hereinafter referred to as DSE, Ranchi in short) for approval on 18.06.2003 and also a copy to the Director, Primary Education, Govt. of Jharkand, Ranchi. In the letter for approval all the details of the advertisement to the post and recommendation of the appointment's committee and the process of selection was sent for necessary approval and sanction. Subsequently, several representations were given by the respondent No. 5 to the DSE, Ranchi for fixation of the salary of the petitioner. The DSE, Ranchi vide letter dated 24.11.2003 sent all the details before the Director, Primary Education for the preparation of the prepositional statement of the salary of the petitioner, but the same was pending and no steps was taken by the respondents. Thereafter, the petitioner vide letter dated 16.05.2005 wrote to the State Govt. including the Departmental Minister for release of her salary but she continued to work. The Director, Primary Education vide his letter dated

03.12.2005 addressed to DSE, Ranchi sought clarification from him that the petitioner's age was approximately 41 years 6 months on the date of her appointment i.e. 16.11.2002, which is more than the maximum age limit prescribed by the Govt. therefore, clarification was sought from DSE, Ranchi in this regard. Pursuant thereto the DSE, Ranchi vide letter dated 27.12.2005 asked for clarification from the respondent No. 5 which was accordingly, replied by the respondent no. 5 to the DSE Ranchi on 10.01.2006 that there is no maximum age limit prescribed for appointment in Minority School, which is aided by Govt. and in this regard letter No. 34 dated 13.01.1986 of the Director, Secondary Education Bihar was also enclosed. Thereafter, the petitioner again vide letter dated 16.02.2006 again represented before Secretary, Human Resources Development Department, Govt. of Jharkhand, Ranchi wherein it was mentioned that there is no maximum age limit prescribed for appointment of teacher in Minority School and only limitation was that salary cannot be paid to the teachers of more than 58 years of age 3 W.P.(S) No. 1393 of 2007 and for the last three years salary of the petitioner has not been paid. It is the case of the petitioner that the DSE Ranchi vide letter dated 04.03.2016 wrote to the Director, Primary Education informing that there was no age limitation prescribed for appointment in the Government aided minority school and in that reference of the letter no.34 dated 13.01.1986 and letter no.4936 dated 24.10.1978 were enclosed and recommendation has been made to release the salary of the petitioner. It has been submitted that the petitioner continued to represent for payment of her salary but to no avail. It has also been submitted that the petitioner has continued to work on the said post and in spite of the recommendation of the DSE Ranchi, the prepositional statement of the petitioner was not released and no steps for the payment of the salary was taken by the respondents. It has been further averred in the writ petition that one Smt. Swarnamayee Dev Burman, who has held to be over age, her age was condoned by the order of the Deputy Director, North Chhotanagpur division, Hazaribagh, as evident from Annexure 14. Left with no other efficacious, alternative and speedy remedy, the petitioner has been constrained to approach this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of her grievances.

4. Mr. Shresth Gautam, learned counsel for the petitioner has submitted that the order passed by the respondent No. 2 in not approving the propositional statement of the petitioner for payment of salary, is wholly arbitrary and unsustainable in the eyes of law. Learned counsel also submitted that there is no age limit prescribed for appointment of the teacher of the religious minority school in view of letter No. 34 dated 13.01.1986 of the Director, Secondary Education, Bihar. Learned counsel further submitted that for recognizing minority secondary school, aided by the Govt. only restriction which has been imposed is that 'the teaching and non teaching staff appointed beyond the age of 58 years, would not be paid their salary.' There is no orders or circulars issued by the Govt. which restricts the appointment of the teaching and non teaching staff in the minority school prescribing the minimum age as eligibility criteria for appointment. The action of the respondents is violative of Article 14, 29 and 30 of the Constitution of India. Learned counsel for the petitioner further submitted that it is apparent from the advertisement made for the post of teacher by the School, no age limit has been prescribed in the advertisement itself, therefore, it cannot be said that the petitioner was not eligible for appointment. The appointment 4 W.P.(S) No. 1393 of 2007 procedure was conducted as per the rules and regulations and also in presence of official representative of the Govt. Learned counsel for the petitioner further submitted that Jharkhand Prarambik Vidyalaya Niyukti Niyamwali (Jharkhand Primary School Appointment Rule) 2002, which has been formulated by the State of Jharkhand, do not prescribe any maximum or minimum age for appointment of the teachers and the same has been challenged before this Hon'ble Court in W.P.(S) Nos. 5170 & 6135 of 2002 and vide order dated 13.12.2002, the Clause (Gh) has been set aside and after that rule has been modified and the advertisement has been published in the year 2002 itself wherein, the upper age limit for the appointment of female has been prescribed as 43 years.

5. Controverting the statement of the petitioner in the writ application, counter-affidavits have been filed on behalf of the respondent Nos. 4 & 5.

6. Learned counsel for the respondents-State submitted that all rules and regulations of the appointment of teachers in the school run by the Government

are also applicable in the minority school run by the Managing Committee for appointment of teachers. Learned counsel further submits that in view thereof it is wrong to say that there is no minimum age limit or upper age limit for appointment of teachers in the Minority School. It has been submitted that maximum age for appointment of elementary school teachers for female candidates are 38 years and petitioner is 41 years 6 months on the date of appointment and as such she could not have been appointed as a teacher in the school in question. Learned counsel further submitted that letter No. 34 dated 13.01.1986 issued by the Director, Secondary Education, Bihar Patna is not applicable in the elementary schools run by the minority institutions. It has been submitted by the learned counsel that petitioner did not fulfill the criteria for appointment to the post in elementary school, therefore, the respondent No. 2 vide letter No. 63 dated 08.01.2007 did not approve the proposition statement of the petitioner for payment of salary since the petitioner was more than 41 years, 6 months at the time of filing application form for appointment in the elementary minority school. As per Memo No. 2837 dated 24.12.1999 the benefit of age relaxation can be given to the fathers, brother and sisters, working in the elementary minority schools run and managed by the Catholic Community which has been given earlier to the Secondary Minority School Teachers. 5 W.P.(S) No. 1393 of 2007 7. Learned counsel for the respondent No. 5-school, on the other hand supported the case of the petitioner by filing counter-affidavit. Learned counsel draws the attention of Court towards paragraph No. 13 of the counter-affidavit and submitted that objection raised by respondent No. 4 is not tenable in the eyes of law and on facts or on circumstances and the position was clearly explained to the DSE, Ranchi but inspite of above the Director, Primary Education, Jharkhand, Ranchi has not sanctioned the prepositional statement and as such salary has not been paid to the petitioner.

8. Be that as it may, having gone through the rival submissions of the parties and after perusal of the records, this Court is of the considered view that the petitioner has been able to make out a case for interference on the ground that the school in question is a recognized minority Secondary School and the Schools get aid from the Government. The only restriction, which has been put, is that for teaching and non-teaching staffs appointed beyond the age of 58 years, no Government grant

would be payable for payment of their salary and other benefits. In this regard, it would be apposite to refer to Rule 18 of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980. The relevant provisions of Rule 18 (3) (f) is quoted hereinbelow : - (f) No grant shall be admissible for payment of salary of a teacher or a non-teaching staff if appointed or retained beyond 58 years of age. The aforesaid provision makes it abundantly clear that so far as the teachers, appointed in Minority Secondary School is concerned, there is no minimum age prescribed for appointment of teachers in Minority Secondary School. The Notification dated 10.01.1986 of the Director, Secondary Education and Rule 18 of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 and sub- Rule (3) (f) of the said Rule would be squarely applicable to the petitioner. Moreover, the averment of the petitioner, so far as relaxation of age, condoning the upper age limit of one Smt. Swarnamayee Dev Burman by the order of the Deputy Director, North Chhotanagpur Division, Hazaribagh, as evident from Annexure-14, has not been controverted by the respondents, therefore, the averment of the petitioner goes unchallenged on the ground of doctrine of non-traverse. 6 W.P.(S) No. 1393 of 2007 9. In view of the aforesaid position and reasons stated in the foregoing paragraphs and as similar issue has already been reiterated by this Court in W.P.(S) No. 7741 of 2006 the impugned order dated 08.01.2007, issued by the Director, Primary Education, Government of Jharkhand is hereby quashed and set aside. Respondents are directed to approve the prepositional statement of pay and fix the salary of the petitioner in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. After fixing the salary of the petitioner, the entire amount including arrears is directed to be paid to the petitioner in accordance with law, within a period of two weeks thereafter.

10. With the aforesaid direction, the writ petition stands allowed. (Dr. S.N. Pathak, J.) punit

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