

Rajive Kumar and Anr Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-13-2017

Appellant : Rajive Kumar and Anr

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 4200 of 2008 1. Rajive Kumar Son of Late Uday Pratap Singh Resident of Dumka + 2 National High School, Dumka P.O. & P.S. & Dist -Dumka.

2. Sabita Patel W/o Dr. Surjeet Singh resident of Lower Kusai, Kumhartoli, Doranda, P.O. and P.S. Doranda, Dist Ranchi at present posted at + 2 S.S. High School, Bundu, P.O. & P.S. Bundu Dist-Ranchi. Petitioners -V e r s u s- 1. The State of Jharkhand through Secretary, Human Resources Development Department, Govt of Jharkhand, Ranchi 2. The Director, Secondary Education Directorate, Human Resources Development Department, Govt of Jharkhand, Ranchi 3. Jharkhand Public Service Commission, Circular Road, Ranchi through its Chairman. Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioners : - Mr. Rajiv Ranjan, Sr. Advocate. For the Respondent-State: - Mr. Jayant Franklin Toppo, S.C. (L&C). For the Respondent No. 3: - M/s. Sanjay Piprawall, Abhay Prakash and Prince Kumar, Advocates. ... C.A.V. On: - 15.06.2017 Delivered On: - 13/11/2017 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioners have inter alia, prayed for issuance of writ of certiorari for quashing the decision dated 20.06.2008 vide Annexure-13 to the writ application, whereby the petitioners being vocational teachers, have been debarred and made ineligible for appointment to the post of the Headmaster. Further prayer has been made to hold and declare that the petitioners were eligible for appointment for the post of the Headmaster in consonance with Rule 4 (i) (ii) (a) and (b) of the Jharkhand Rajkiyakrit Secondary Schools Service Condition Rules, 2004.

2. The factual matrix, as has been averred in the writ application, in a nutshell is that the National Policy of Education, 1986 introduced a systematic, well-planned and vigorously implemented programme of Vocational Education and the said policy was implemented in the erstwhile State of Bihar at + 2 level and 25 Vocational courses in the 6 major areas were introduced throughout the State in 148 Schools as per Annexure-1 and 2. Under the Jharkhand Non-Government Secondary School (Taking Over, Management and Control) Act, 2002 (adopted Bihar, 1981 Act). Jharkhand Rajkiyakrit Madhyamik Vidyalaya (Seva 2 Sart Niymawali), 2004 framed and constituted Vidyalaya Seva Board and empowered it to make appointment to the post of the Teachers and the Headmasters vide Annexure-3 to the writ petition. As per the staffing pattern for the Vocational Education, the Directorate of Education, N.C.E.R.T., made a provision for three full time teachers and three Laboratory Assistants for three vocational courses at class 11 and class 12 apart from other faculty of Staffs, peons, LDC etc. The Qualification of the Teachers was also prescribed in which, it was clearly held that status of vocational teachers would be same as that of academic stream and full time teachers should be appointed by the Govt. on regular basis. The Policy further stated that they are to be designated as full time teacher as evident from Annexure-4 to the writ application. The Vidyalaya Seva Board advertised two units of teaching post as per Annexure-5 and the petitioners participated in the selection process as such, the petitioner no.1 was appointed as Instructor, Mining Geology Vocational Trade and was posted at + 2, National High School, Dumka and working as such from 06th July, 1993, till date. Similarly, the petitioner no. 2 was appointed in the Vocational Trade of Food Preservation and Processing. The Director, Secondary Education issued a letter dated 12.10.1993 vide Annexure-6,

whereby Vocational courses were introduced in 40 + 2 High Schools in the first phase and in the second phase, it was introduced in 108 + 2 High Schools. The Jharkhand Academic Council, Ranchi vide letter dated 05.06.2007 also clarified that the students, who have passed Intermediate Vocational Teaching will be treated at par with I.A. students for the purpose of pursuing their studies at the higher level i.e. B.A. etc., as per Annexure-7 to the writ application. The Report of the Vocational Education prepared by the Jharkhand Academic Council, Ranchi clearly mentions that the vocational streams one full time teacher and one full time Lab Asstt. are appointed on regular basis but they have not been designated as per the Govt of India norms as lecturer and they have been given the nomenclature of Instructor/Lab Asstt., whereas, the teachers working in the General Streams of the school are getting higher pay scale and thus it was recommended that they should also get pay scale at par with the Teachers working in the general streams as per Annexure-8 to the writ application. The Advertisement was issued by the Jharkhand Public Service Commission in short 'JPSC' for 257 posts of Headmaster 3 in accordance with the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004. In pursuance to the said advertisement, the petitioners participated and declared successful. The notice of successful candidates were also published in which the petitioners' name was mentioned. All successful candidates, who were recommended by the Jharkhand Public Service Commission were also to appear before the Secondary Education Directorate for their formal interview for verification of documents and accordingly, notice was issued fixing the date of interview of the petitioners respectively and the petitioners appeared and showed their documents, which were verified and and were awaiting for final letter of appointment. However, the petitioners were surprised to see an item, which was published in the local newspaper, 'Hindustan', in which the petitioners read that the Secondary Education Directorate has sent a file to the JPSC for revising the list, stating therein, that the Vocational Teachers would not be considered for the post of Headmaster as evident from Annexure-11 to the writ application. The petitioners immediately applied under the Right to Information Act, seeking information, as to whether the news item was correct or not, as per Annexure-12 to the writ application. In response to the said application, the petitioner no. 1 has been

informed by the Secondary Education Directorate, Jharkhand, Ranchi that as per the eligibility conditions given in 2004 Rules, which has been amended in the year 2006 in Rule 4 (i) (ii) (a), the petitioners being Vocational Teachers are not being considered as eligible for the post of the Headmaster and the said information dated 20.06.2008 vide Annexure-13 to the writ application has been impugned in the writ application. Being aggrieved and dissatisfied with the impugned Decision dated 20.06.2008, vide Annexure-13, the petitioners left with no other alternative, has knocked the door of this Court under Article 226 of the Constitution of India for redressal of their grievances.

3. Learned senior counsel appearing on behalf of the petitioners in support of the contentions has vehemently submitted that the petitioners have not been engaged as Teachers in the Education Department in various High Schools, having been appointed as Vocational Teachers, though nomenclatured as Instructors etc., have qualified at par with regular teachers engaged in the High Schools at + 2 levels, therefore, the 4 petitioners having the requisite experience are eligible for appointment on the post of the Headmaster as per the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004. Learned senior counsel for the petitioner further submits that the guidelines for vocational education provides for full time Teachers and the petitioners since 2006, have been getting the scale of lecturers since the petitioners having the qualification prescribed under the Advertisement applied and became successful but the respondents without any valid and cogent reasons, have debarred the petitioners from the process of appointment of the Headmaster, whereby the action of the respondents not only illegal but smacks of arbitrary and colourable exercise of power. Learned senior counsel during course of hearing has referred to the supplementary affidavit, filed on behalf of the petitioners, dated 28.09.2010, whereby Annexure-1, 3 and 4 clearly demonstrates that Vocational Course is full time 2 years' course and after completion of the same specified, distinct and separate certificate/degree is given to such candidates who pass the vocational course, which is known as the Intermediate Vocational Course. Annexure-3, dated 12.08.1998 clearly declares that at + 2 level is equivalent to technical education and student passing out the 2 years' vocational courses would be eligible for admission directly in the second year and Annexure-4 to the supplementary affidavit also indicates that the

Instructor are teachers and they are also granted teachers' excellence award by the Ministry of Human Resources Department, Government of Jharkhand, therefore, the petitioners being Instructor/Laboratory Assistant are the only Teachers in the Vocational Course at + 2 level and upon their imparting of education, therefore, the petitioners are Full Time Teachers although they have been nomenclatured as Teachers/Laboratory Assistants. Learned senior counsel for the petitioners in support of his contentions has relied upon the decision reported in (2014 SCC Punjab & Haryana 2157) and (1992) online page 1381.

4. A supplementary counter affidavit on behalf of the respondents has been filed to the writ application as well as to the I.A. No. 311 of 2009. In the said affidavit, it has been stated that the JPSC has published the result of the Headmaster on 21.02.2008 but the provisional panel list was sent back to the J.P.S.C. vide letter dated 07.05.2008 and the provisional selection list, was not found as per the Service Rules, 2004 and modified 5 Service Rule, 2006 as per Annexure-A to the affidavit. Since the provisional panel list was returned back to the J.P.S.C., so no appointment letters were issued in pursuance to the result dated 21.02.2008. Therefore, the provisional panel list dated 20.02.2008 was sent back to the J.P.S.C. Vide letter dated 07.05.2008 vide Annexure-B to the affidavit and the Department has made certain clarifications vide letter dated 13.09.2008 and the clarification was sought by the JPSC on certain points accordingly vide letter dated 13.10.2008 The said clarifications were based on Service Rules, 2004 and the eligibility for direct appointment to the post of the Headmaster in High School has been described in paragraph 4 (i) and 4 (ii) of Chapter III of the Service Rule, 2004. From the provision of the aforesaid Rule, it is clear that the Primary School teacher or vocational instructor does not qualify that criteria. It has further been submitted that the petitioners do not have the requisite qualification of 10 years teaching experience as TGT in recognized High School as per paragraph 4 (ii) of the Service Rule, 2004 obviously, the petitioners are not qualified as per Service Rule, 2004 and as per the advertisement.

5. A second supplementary counter affidavit on behalf of the Respondent No. 2, dated 02.11.2010 has been filed since the clarification has been sought for by this Court on the following points : - (i) Why vocational instructors who were imparting

vocational teaching to students of + 2, who opted vocational course cannot be treated at par with other teachers? (ii) When vocational students are treated as regular students by the Jharkhand Academic Council then, why not vocational instructor ? (iii) How Service Rule, 2004 bar vocational instructor from being eligible for the post of the Headmaster ? (iv) Mode and method of appointment of vocational instructor ?

6. In reply to the query to the point no. 1, it has been stated that the vocational instructors are not at par with trained teachers of the High School and they cannot be at par with regular teachers because they have been appointed on certain different service conditions and eligibility criteria, published through newspaper advertisement. They are not in the 6 category of the regular trained teachers at the Nationalized school, hence they cannot be equated and equalized as general teachers. With regard to the query to the point no. ii, it has been stated that the Jharkhand Academic Council has no power to decide the service condition of vocational teachers. The vocational students can be treated as regular students by the Jharkhand Academic Council but the Council has no power to treat the vocational instructors as regular trained teachers of the Nationalized School because latter has a well-established cadre as well as Service Rule, 2004, whereas, the former has no cadre and service rule of its own. With regard to the query to the point no. iii, it has been stated that the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004 definitely bars vocational instructor from being eligible for the post of Headmaster, because this, service rule has been made for regular trained teachers of the Nationalized School. It is not made for vocational instructors, therefore, they cannot get the benefit of promotion to the post of Headmaster under the Service Rule. With regard to the query to the point no. iv, it has been stated that mode and method of appointment of vocational instructors have not yet been finalized and decided, so new appointment have not been made on these posts. Earlier, they are appointed under the Scheme of the Central Government and at that time also, no norms were decided, however, some eligibility criteria and qualification were decided by the Government of Bihar and the Guidelines for the scheme was issued by the Central Government as per Annexure-A and A/1 to the supplementary affidavit, therefore, it has been emphatically submitted that Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004 does not apply to the

vocational instructors and they are not covered under the said Rule. Their service rule and mode and method of appointment have not yet been framed. Therefore, vocational instructors are certainly not at par with regular trained teachers of the Nationalized School, hence, vocational teachers are not eligible to get promotion to the post of Headmaster and cannot claim to be covered by the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004.

7. Learned S.C. (L&C) appearing on behalf of the Respondent-State has assiduously submitted that Service Rule, 2004 which mentions about 7 Teachers but nowhere the Vocational Teachers posts have been mentioned, therefore, the petitioners being vocational instructors are not eligible to be considered for the post of the Headmaster.

8. Controverting the averments made in the writ application, a supplementary counter affidavit dated 28.04.2010 has been filed on behalf of the respondents. It has been submitted that the Chapter II of Rule, 2004 consists of definition of terms, wherein, teachers have been defined in Rule 2 (chha) as teacher means the person appointed for teaching in Nationalized High School, it includes Headmaster of the School. Chapter III, Section 4 (1) of Rule 2004 deals with requisite qualification and experience for promotion to the post of the Headmaster. It does not include vocational instructor. Again further Chapter III, Section 4 (3) of the Rule 2004 further explains the definitions of trained graduate teacher and requisite qualification for appointment as trained graduate teacher, therefore, the requisite teaching experience for promotion to the post of the Headmaster as 10 years' teaching experience as Post-Graduate Teacher. It does not include Vocational instructor, hence the same has not been mentioned in the Rule. In the counter affidavit, photocopies of the Rules/notification published in the Jharkhand Gazette Notification dated 05.11.2004 and different Notifications vide Notification dated 04.04.2017 and 14.06.2008 have been annexed as Annexures D, D/1 and D/2 to the affidavit.

9. A counter affidavit has been filed on behalf of the Respondent No.3, wherein, it has been submitted that after publication of the provisional result, the respondent no. 2 vide letter dated 07.05.2008 has directed to issue the revised merit list for

appointment on the post of the Headmaster in terms of the rules under Jharkhand Rajkiyakrit Secondary Education Service Condition Rules, 2004 vide Annexure-B to the counter affidavit. Thereafter, vide letter dated 13.10.2008, details have been sent for providing and preparation of the gradation list for appointment on the post of the Headmaster vide Annexure-C to the counter affidavit.

10. Learned counsel for the Respondent-J.P.S.C. has vociferously submitted that after considering the entire thing in term of the direction of respondent no. 2, the merit list for direct appointment on the post of Headmaster has been revised and the matter has again been sent for final decision by the respondent no. 3 vide letter dated 28.01.2009 as per 8 Annexure-D to the counter affidavit. Learned counsel further submitted that therefore, from mere perusal of Annexure-D to the counter affidavit, it will be evident that a panel list has been prepared for the candidates, covered under the criteria and the list has been prepared as per the Rules and the petitioners are not entitled to the relief, as sought for, in the writ petition, and hence, the writ petition is liable to be dismissed in limine.

11. Having given my thoughtful consideration to the rivalized contentions on behalf of the learned counsel for the respective parties and on perusal of the records, I am of the considered view that the petitioners have not been able to make out a case of interference due to the following facts, reasons and judicial pronouncements : - (i) Admittedly, the petitioners, who are vocational instructors, applied for the post of the Headmaster in pursuance to the advertisement though initially, they were selected provisionally for the said post, but when the matter was decided as per the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004, it has been made clear that vocational instructors are not eligible for the post of the Headmaster, therefore, the petitioners could not have been considered for selection to the post of the Headmaster, therefore, the petitioners' challenge to the Decision dated 20.06.2008 vide Annexure-13 to the writ petition is thoroughly misconceived both on facts and on law. (ii) Before advertng to the rivalized submissions, it would be apposite to refer to Rule 4 (i) (ii) of the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004.

4. (ii) Ten years teaching experience in recognized High School which is situated in Jharkhand State. On perusal of the Jharkhand Rajkiyakrit Madhyamik Vidyalaya, (Seva Sart Niyamawali) 2004, it is explicitly clear that the said Rule bars vocational instructors from being eligible for the post of the Headmaster, therefore, due to non-applicability of the aforesaid Rule, in the case of the vocational instructors, the petitioners could not have been considered for selection to the post of the Headmaster nor the petitioners can claim to be covered by the aforesaid Rules of 2004. In that view of the 9 matter, the impugned Decision dated 20.06.2008 vide Annexure-13 to the writ petition does not warrant any interference by this Court. (iii) The decision of the Hon'ble Apex Court in the case of K.S. Mahalingegowda & Ors v. Secy. to Govt., Deptt. of Vocational Education Karnataka & Ors. reported in 1995 Supp (2) SCC95 throws light on the functioning of the vocational teachers and the relevant paragraph of the aforesaid judgment is quoted hereinbelow : -

9. We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties. We are of the view that the claim of the appellants, to be regularised as teachers and be paid the same salary as is being paid to the non-vocational teachers - based on the principle of equal pay for equal work - is wholly misconceived. It is entirely within the executive domain of the State Government to take a policy decision and frame any scheme for the benefit of the people of the State. The vocational training scheme is one of such schemes. The avowed object of the scheme is to provide vocational training for a period of one/two years to the students who do not wish to pursue academic studies beyond 10th class. It is a useful scheme which helps young men to acquire eligibility for employment in skilled jobs while they are still in the educational institutions. The scheme was a result of the policy decision of the State Government. It was entirely for the State Government to lay down as to what type of teaching staff was required to implement the scheme; duration of the scheme, the financial involvement, type of the vocational training and various other aspects must have been taken into consideration by the State Government while providing the mechanism to implement the scheme. When the scheme has been made to operate with the help of the part-time teaching staff it is not for this Court, ordinarily, to modify the scheme and direct the State Government to employ

whole-time staff to implement the scheme. This Court in *Delhi Development Horticulture Employees Union v. Delhi 1 Admn.* speaking through P.B. Sawant, J.

observed as under: (SCC p. 111, para 22) Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and 10 guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. Even otherwise we see no parity on facts between the vocational teachers under the scheme and other teaching staff in an educational institution. Vocational training is not a part of regular teaching in the institutions where the appellants are working. It is only as a result of the implementation of the scheme that the educational institutions have been given option to introduce vocational training. The method of teaching, the extent of responsibility and the requirement of academic intellect in the two sets of teaching is entirely different. Teaching academic subjects like English, History, Mathematics, Geography, etc. is not the same as giving practical training in clock and watch repair, photography, printing and book binding, optician and refractionist, horticulture, sericulture.

12. In view of the aforesaid reasons coupled with the judicial pronouncements, the impugned Decision dated 20.06.2008 vide Annexure-13 does not call for any interference by this Court. Accordingly, the writ petition is hereby dismissed, being devoid of any merit. (Pramath Patnaik, J.) APK

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