

Pramod Kumar Mandal Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-14-2017

Appellant : Pramod Kumar Mandal

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.5130 of 2008
Pramod Kumar Mandal, S/o Sri Shiv Narayan Mandal, R/o Village-Jamua, P.O. & P.S.Sariyahat, District-Dumka Petitioner Versus 1.The State of Jharkhand 2.The Secretary, Human Resources Development Department, Govt. of Jharkhand, Ranchi. 3.The Director, Primary Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi. 4.The Deputy Commissioner, Dumka. 5.The District Superintendent of Education, Dumka. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Shresth Gautam, Advocate For the Respondent : M/s.C.Prabha,S.C.IV & Rohit J.C. to S.C.IV0714.11.2017 In the instant writ petition, the petitioner has, inter alia, prayed for quashing the order dated 01.07.2008 (Annexure-12 to the writ petition) pertaining to cancellation of appointment without any departmental proceeding or any enquiry by the District Superintendent of Education, Dumka. The petitioner has further prayed for a direction on the respondents to reinstate his services with all consequential benefits.

2. The factual matrix, as delineated and described in the writ petition, in a nutshell is that the Government of Jharkhand issued an advertisement, which was

published in the year 2002 for appointment of Primary Teachers through Jharkhand Public Service Commission. In pursuance of the said advertisement, process of selection was held and the petitioner being found successful by the selection process, was placed at serial no.20 of the selection list. Thereafter, the petitioner was allowed to join Primary School, Kushmaha No.2, Jarmundi, as is evident from Annexure-1 to the writ petition. Due to Code of Conduct during Election, earlier joining of the petitioner could not be accepted and again the petitioner gave his joining on 14.05.2004, which was accepted. After joining of the said post, the petitioner continued to discharge his duties diligently. It is pertinent to mention that after verification of the educational qualifications and certificates, the petitioner was allowed to join the said post. Thereafter, the petitioner was deputed to the High School, Mahura. After joining to the said School, the petitioner continued to discharge his duties sincerely. On the basis of complaint received by Director regarding certificates obtained by petitioner from Varanasi Sanskrit University, which was de-recognized by UGC, a direction was given to re-examine all the certificates of the petitioner and till then, salary of the petitioner was stopped from February,2005, though the petitioner continued to discharge .2. his duties. Thereafter, the petitioner submitted representation before the Director-respondent no.3 ventilating his grievance by narrating about the qualifications and the certificates vide Annexure-5 to the writ petition, which was also followed by another representation vide Annexure-6 to the writ petition. Thereafter the representation of the petitioner was forwarded by District Superintendent of Education, Dumka-respondent no.5 to the Director, Primary Education-respondent no.3 requesting him for completion of the enquiry expeditiously. It would be relevant to mention that in the representation, the petitioner has mentioned that the de- recognition was done on 15.10.1993 and the degree granted to the petitioner prior to the said date could not be de-recognized as per the decision of the Punjab & Haryana High Court, which has been confirmed by the Hon'ble Apex Court in the case of Paramjit Kaur Vrs. State of Punjab. After completion of the enquiry, the District Superintendent of Education, Dumka-respondent no.5 submitted his report on 22.06.2007 before the Deputy Commissioner stating therein that the petitioner has completed his B.Ed. training in the year 1988-89 and has obtained 'Shiksha Shastri' (B.Ed.) from R.G. Polytechnic, which was affiliated

to Varanasi Sanskrit University and the said University was earlier recognized by the UGC, but it was de-recognized on 15.10.1993 for not fulfilling the conditions and degree granted prior to 15.10.1993 was not effected and the same was held to be valid by the decision of Punjab & Haryana High Court in the case of Paramjit Kaur(supra). The copy of the enquiry report was forwarded to the Deputy Commissioner, Dumka, who directed to place the same before the District Establishment Committee. Due to inaction on the part of the respondents, the petitioner approached this Court in W.P.(S) no.1809 of 2008 for payment of salary. During pendency of the said writ petition, the petitioner was issued a show cause notice dated 04.06.2008 by the DSE,Dumka vide Annexure-10 to the writ petition and the petitioner gave detailed reply indicating that the custodian of the Varanasi Sanskrit University appointed and gave a certificate, which was deposited basing on which the appointment letter was issued, but to the utter surprise, the order dated 01.07.2008 has been passed by respondent no.5 terminating the services of the petitioner vide Annexure- 12 to the writ petition, which is impugned in this case.

3. Learned counsel for the petitioner has strenuously urged that the impugned order (Annexure-12) is not legally sustainable since the appointment of the petitioner has been cancelled without any fulfilled department proceeding. Learned counsel further submits that respondent .3. no.5 contrary to the earlier enquiry report shedding sufficient light on the genuineness of the certificates resiled from his earlier stand by terminating the services of the petitioner on totally unsustainable and untenable ground. Learned counsel for the petitioner, during course of hearing, has referred to the judgment of the Hon'ble Punjab & Haryana High Court, which has categorically held in a judgment passed in Civil Writ Petition no.8990 of 2000 in which it was held with regard to the same University Even if it is assumed that de-recognition took place by the Punjab Government, it was only after October 15, 1993. This should not affect the candidate who had got degrees prior to the date or had got admission in the said University prior to October 15, 1993. The aforesaid case has been upheld by the Hon'ble Apex Court and the judgment has attained finality, as is evident from Annexures-3 & 4 to the rejoinder. Learned counsel for the petitioner has also referred to paragraph-14 to the rejoinder, wherein it has been submitted that similarly situated employee by the

name of Umed Ali, who has completed the Teachers' Training from the same college as that of the present petitioner passed in the year 1989- 90 is working as Teacher in the district of Pakur and also being paid salary, as is evident from Annexure-5 to the rejoinder. Learned counsel for the petitioner has also referred to supplementary affidavit dated 02.08.2017, wherein it has been mentioned that the case of the petitioner is squarely covered by the decision of this Court in the case of Atul Ansari Vrs. State of Jharkhand & Ors. passed in W.P.(S) no.274 of 2008. After the said judgment, the petitioner has joined the services, as is evident from Annexures-S-1 and S-2 to the said affidavit. Learned counsel further submits that the case of the petitioner is squarely covered by the aforesaid decision and he is entitled for reinstatement in services.

4. Controverting the averment made in the writ petition, a counter affidavit has been filed on behalf of respondents, wherein it has been submitted that the petitioner was appointed as Assistant Teacher provisionally in the scale of Rs.4500-125-7000/- and there was a direction in the appointment letter that the appointee will have to produce the educational and trained documents from recognized college/school and training college. It was specifically mentioned that if the certificate/documents is found fake, the appointment of the petitioner will be cancelled. On enquiry held by Regional Deputy Director Education, Santhal Parganas, Dumka, the certificate of training of the petitioner was found fake. It has been further submitted that the enquiry report of the said RDDE, Dumka put up before Establishment Committee held on .4. 28.12.2007 and the appointment of petitioner was cancelled in the said Establishment Committee. In that view of the matter, the writ petition is not maintainable either in law or facts of the case.

5. Learned counsel for the State has reiterated the submission made in the counter affidavit. Learned counsel has assiduously submitted that since the training certificate produced by the petitioner was found fake, the services of the petitioner was terminated by the Establishment Committee and the termination of the petitioner has been done in accordance with terms and conditions of the appointment letter. In that view of the matter, there is absolutely no infirmity or illegality in the impugned order.

6. Having bestowed my anxious consideration to the rival submissions and on perusal of the records, this Court feels inclined to interfere in the impugned order dated 01.07.2008 (Annexure-12) issued by the District Superintendent of Education, Dumka-respondent no.5 since the petitioner has been able to make a case for interference due to the following facts, reasons and judicial pronouncement: (i) The controversy regarding validity of the petitioner's certificate obtained from R.G.Polytechnic, New Delhi is misconceived in view of the fact that the provisions of the National Council of Teacher Education (NCTE) Act, 1993 (hereinafter referred to as the 'NCTE Act') came into effect since 1st July, 1995, which cannot be applied with retrospective effect, which came into existence subsequently could not possibly have been applied retrospectively to defeat the benefit of appointment genuinely granted on the basis of valid certificate issued by the Institution, which was duly recognized. (ii) Moreover, the counter affidavit filed by the respondent no.5 supports the case of the petitioner so far as genuineness and correctness of the certificate is concerned. (iii) In pursuance to the amendment carried out in the year 2006 in the NCTE Act, it has been declared that the certificate obtained by the candidates, prior to coming into force of NCTE Act, 1993 from any institution, which may not have been recognized, shall continue to be treated as valid, therefore, under such circumstances, the certificate produced by the petitioner, cannot be treated as invalid prior to coming into force of the NCTE Act, 1993. In that view of the matter, the services of the petitioner could not have been terminated on 01.07.2008 vide Annexure-12 to the writ petition. (iv) The respondents without hearing the petitioner has come to a .5. erroneous decision that the Institution, namely, R.G.Polytechnic, New Delhi from where the petitioner has obtained his certificate, is a fake Institute and this conclusion is contrary to the enquiry report submitted by respondent no.5.

7. On careful consideration of the aforesaid facts and documents available on record and after hearing the parties at length, I am of the considered view that the petitioner has been able to demonstrate foundational facts, warranting interference by this Court. Accordingly, the impugned order dated 01.07.2008 (Annexure-12) passed by the District Superintendent of Education, Dumka is hereby quashed and the respondents are directed to reinstate the petitioner in his former post with all consequential benefits including continuity in service without back wages, if the

petitioner has not attained the age of superannuation, in the meantime.

8. With the aforesaid observations and directions, this writ petition is allowed.
(Pramath Patnaik, J.) s.b.

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