

Kumar Chandra Kant Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-26-2004

Judge : R.S. Garg, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 8589 of 2002

Appellant : Kumar Chandra Kant Singh

Respondent : State of Bihar and ors.

Advocate for Def. : A.K. Choudhary, Adv.

Advocate for Pet/Ap. : Mihir Kumar Jha and Vinay Kumar Verma, Adv.

Prior history : R.S. Garg, J. 1. Heard learned counsel for the parties. 2. The petitioner's father, late Chandra Sekhar Singh, was working as an Assistant Teacher in Kabir Keshaw Madhya Vidyalaya, Nawdiha, Hilsa (Nalanda) (A Government-aided-school) died on 21.3.1996. The petitioner being the son made an application for his appointment on compassionate ground, the District Compassionate Appointment Committee made recommendations on 16.12.1996, certain instructions were sought, thereafter the Managing Committe

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the parties.

2. The petitioner's father, late Chandra Sekhar Singh, was working as an Assistant Teacher in Kabir Keshaw Madhya Vidyalaya, Nawdiha, Hilsa (Nalanda) (A Government-aided-school) died on 21.3.1996. The petitioner being the son made an application for his appointment on compassionate ground, the District Compassionate Appointment Committee made recommendations on 16.12.1996, certain instructions were sought, thereafter the Managing Committee of the school passed Resolution No. 3 on 2.7.1998 and issued the order of appointment on 4.7.1998. The said appointment was approved by the District Superintendent of Education, Nalanda vide his letter No. 1968 dated 11.7.1998. The Special Director, Secondary Education vide his letter No. 329 dated 3.2.1999 required sanction for fixation of salary and pay, no orders were received from the Government, therefore, the petitioner came to this Court in CWJC No. 16204/2001. The petitioner made a submission that as he has been validly appointed in a Government aided School, the Government is obliged to provide certain funds to the school so that the salary to the petitioner is paid. The respondents in their affidavits submitted that the father of the petitioner was a teacher in a Government aided School and for the reasons mentioned in the affidavit, consent of the Personnel Department was being obtained and as soon as the same was received necessary orders regarding pay fixation and payment of salary would be issued.

3. This Court after considering the claim of the petitioner and the affidavit of the respondents directed the authorities to expedite the matter so that salary- arrears as well current, is paid to the petitioner in accordance with the Rules as early as possible preferably within three months of receipt/production of the a copy of the said order. On 28.6.2002 the Special Director, Secondary Education, Bihar, Patna vide his Memo No. 1076 issued the Office Order observing that the Personnel Department has refused to approve the Education Department's proposal dated 28.5.2002, therefore, the petitioner's order of appointment contained in letter No. 1108 dated 22.5.1988 stands cancelled.

4. The petitioner being aggrieved by the said order dated 28.6.2002 (Annexure-14) is before this Court.

5. Learned counsel for the petitioner submitted that a perusal of the documents would show that the petitioner was properly recommended by the District Compassionate Appointment Committee. The Government Circulars which relate to appointment of the Government Teachers say that retraining would not be a condition precedent and even in some cases for compassionate appointment, the requirement of retraining has been given up with a further condition that in service he can obtain the training and if he does not within the period prescribed he would stand terminated, the petitioner's appointment cannot be cancelled simply on the ground that on the date of his appointment he was not a trained teacher. It was also submitted that the teachers working in the Government aided Schools, in accordance with the Circulars of the State Govt. are entitled to the same benefits as are given to or bestowed upon the Government employees/ teachers, therefore, also the circulars which relate to compassionate appointment and the conditions therein would also apply to the petitioner. It is lastly contended that in the earlier matter the petitioner came to this Court seeking payment of the salary and if the respondents were of the opinion that the petitioner's appointment was bad and was required to be cancelled then before issuing such an order a notice to show cause ought to have been issued to the petitioner.

6. Learned counsel for the State on the other hand placing his strong reliance on Annexures-A and B, annexed to the counter affidavit submits that there is a fine distinction amongst the teachers who are working in the Government Schools and the Government Aided Schools. According to him, the Circulars if are read in their right perspective would clearly show that in the Government Schools the teachers can be employed with the condition that within a particular period they will have to obtain training and in case they fail their services may be terminated, for the teachers to be appointed in the government-aided-Schools, according to him, must be trained and in case they are not trained, no appointment can be made in their favor. He submits that the document, Annexure-17 on which a strong reliance is placed is not a Circular relating to the aided schools but is in relation to the Government Teachers. So far as the non-issuance of the notice to the petitioner is

concerned, he submitted that though notices were not issued to the petitioner but as the petitioner's appointment was void ab-initio and was contrary to the Government Circulars, this Court should not interfere in the matter.

7. After hearing the parties this Court must immediately observe that the petitioner came in CWJC No. 16204/2001 with a prayer that the petitioner be paid his salary. The issue before the High Court was that whether the petitioner is entitled to his salary or not. The respondents submitted before this Court that the matter pertaining to salary has been sent for consent of the Personnel Department and as soon as the consent is obtained the payment of the salary etc. would be made. The question of petitioner's appointment-whether it was valid or invalid or void-ab-initio, was not in issue in Annexure-13. If Annexure-13 was circumscribed only to the salary portion then taking an advantage from it the respondents could not be allowed to take further mileage by considering the question of appointment of the petitioner. The respondents, if wanted to take an action against the petitioner on the ground that his appointment was void-ab- initio then under the law the petitioner was entitled to show cause from the respondents. The respondents were obliged to inform the petitioner that for particular reasons in place of his father he could not be appointed as the policy of compassionate appointment is not applicable in Government-aided-Schools or an untrained person cannot be appointed either on regular or on compassionate basis. Unless a notice to show cause was issued to the petitioner the respondents could not issue such an order observing that the petitioner's appointment itself was bad. The respondents, in the opinion of this Court, were absolutely unjustified in issuing the order contained in Annexure-14. From a perusal of Annexure-14 it would appear that the respondents were alive to the fact that the writ petition, CWJC No. 16204/2001 was filed in the High Court because there was a delay in making the payment of the salary. If that was the issue and the respondents wanted to take further action against the petitioner then under the law they were obliged to issue a notice to the petitioner to show cause as to why his appointment itself be not disapproved as it runs contrary to the Government Circulars etc. The order contained in Annexure-14, Memo No. 1076 dated 28.6.2002 is hereby quashed. The respondents, if wish to consider the question of petitioner's appointment then they would be obliged to issue a notice to the petitioner to show cause. At this stage I must make it clear that the questions

regarding the Circulars and their applicability are not taken into consideration by this Court because the writ application is disposed of on a short ground of non-issuance of the show cause notice to the petitioner. After receiving the notice from the respondents, the petitioner would be entitled to raise all the pleas which are available to him under the law.

8. If the respondents want to take action against the petitioner then they would be obliged to issue the show cause notice within a period of two months from today, give proper opportunity of hearing and submitting the show cause to the petitioner and would pass a final order in the matter within a period of four months from today so that unnecessary delay is avoided.

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