

Abdul Quadir and ors. Vs. the State of Bihar and ors.

Abdul Quadir and ors. Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/122896

Court : Patna

Decided On : Aug-22-2007

Judge : Sudhir Kumar Katriar, J.

Appellant : Abdul Quadir and ors.

Respondent : The State of Bihar and ors.

Disposition : Petition dismissed

Prior history : Sudhir Kumar Katriar, J. 1. This writ petition is directed against the order dated 2.2.2007 (Annexure 5), passed by this learned Collector of the district of East Champaran, Motihari, in Misc. Case No. 10 of 2006 (Arvind Mishra v. State of Bihar and Ors.), whereby he has set aside the selection process for appointment of Shiksha Mitra in the East Saraiya Panchayat, Paharpur Block, under a scheme of the department of Human Resources, known as 'Sarva Shiksha Abhiyan'. Elaborate submissions have

Judgement :

Sudhir Kumar Katriar, J.

1. This writ petition is directed against the order dated 2.2.2007 (Annexure 5), passed by this learned Collector of the district of East Champaran, Motihari, in Misc. Case No. 10 of 2006 (Arvind Mishra v. State of Bihar and Ors.), whereby he has set aside the selection process for appointment of Shiksha Mitra in the East

Saraiya Panchayat, Paharpur Block, under a scheme of the department of Human Resources, known as 'Sarva Shiksha Abhiyan'. Elaborate submissions have been advanced by learned Counsel for the parties in support of their respective stand.

2. According to the writ petition, the Gram Panchayat Purvi Saraiya had issued an advertisement inviting applications from eligible candidates for selection of Shiksha Mitra in the various centres of the Panchayat. The seven petitioners of this writ petition were also applicants. After completion of the selection process, the merit list was prepared. Aggrieved by the same, a few unsuccessful candidates moved this Hon'ble Court by preferring CWJC No. 7735 of 2005, which was disposed of by order dated 12.7.2006 (Annexure 4), whereby the petitioners were given the liberty to represent their cases before the Collector of the district to be disposed of by speaking order(s) within the time indicated in the order. Those petitioners did submit their representations leading to the impugned order whereby, for the reasons assigned therein, the entire selection process held earlier has been set aside, and the Panchayat has been directed to undertake fresh selection process. Hence this writ petition.

3. While assailing the validity of the impugned action, learned Counsel for the petitioners submits that the learned Collector overlooked the counter affidavit filed by the Deputy Superintendent of Education in CWJC No. 7735 of 2005, wherein she had stated that, '...there is no illegality in preparing the selection list for appointment of the Panchayat Shiksha Mitras.' It is next submitted that the learned Collector has not examined individual cases, particularly those of the present petitioners, and has instead set aside the entire selection process. Such an approach by the same Collector has been disapproved by this Court in its judgment dated 30.5.2005, passed in CWJC No. 2932 of 2007 (Santosh Kumar and Ors. v. State of Bihar and Ors.).

4. Learned Additional Advocate General in his elaborate submissions has taken me to the history of the scheme for appointment of such school teachers, and has also made submissions on the merits of the impugned order.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. The Bihar Government in the Department of

Human Resources issued resolution No. 1458, dated 11.8.2004 (Annexure 1), which was in the nature of administrative instructions being a policy decision of the State Government, making provision for appointment of school teachers designated as 'Shiksha Mitra' for primary schools which includes elementary and middle schools. Detailed procedure for selection process was prescribed therein. There is no need to go into the details of the scheme because of the subsequent development.

5.1 The State Government realised that the said resolution dated 11.8.2004 (Annexure 1) did not provide for a forum for redressal of grievances and, therefore, issued a supplementary resolution No. 1748, on 2.9.2005, whereby clause 14 was inserted in the said Resolution (Annexure 1). Clause 14 is reproduced hereinbelow for the facility of quick reference:

AA LkadYi la[k; 1458 fnukad 11-08-2004 ds var esa dafM+dk 14 fuEu izdkj tksM+k tkrk gS%

dafM+dk &14& ftyk inkf/kdkjh] iapk;rks }kjk vuqca/k ij fu;ksftr iapk;r f'k{kk fe=ks ds fu;kstu dh tkWap dj ldsxsa A vfu;ferrk dh iqf'V gksus ij ,sls fu;kstu dks jn~n djus ds fy, lacaf/kr xzke iapk;r dks fyf[kr vkns'k fuxZr dj ldsxs A fu;kstu jn~n ugha fd;s tkus ij ,sls iapk;r f'k{kk fe=ks dks fpfUgr dj muds ekuns; Hkqxrku dks jksd fn;k tk;sxk@ ugh fd;k tk;sxk A

ladYi la[k; 1458 fnukad 11-08-2004 dh vU; lHkh dafM+dk;sa ;Fkkor~ jgsxh A

After issuance of the resolution of 2.9.2005, a person aggrieved by the selection process had to approach the Collector of the district, and the mode and manner of disposal of the complaint is indicated therein.

5.2 By circular No. 1458, dt. 11.8.2004, the educational qualifications were raised. This completed the scheme for the selection and appointment under the policy decision by executive instructions. There is no need to go into the details of the scheme because of the subsequent developments discussed hereinbelow.

The aforesaid policy decision was substituted by the Bihar Panchayat Elementary Teachers' (Employment & Service Conditions) Rules 2006 (hereinafter referred to

as 'the Rules'), issued in terms of Article 243G (11th Schedule, Item No. 17) of the Constitution, along with Section 47 and Section 48 read with Section 146 of the Bihar Panchayat Raj Act 2006 (hereinafter referred to as 'the Act'), providing detailed procedure for selection of teachers for the schools in a panchayat. It also provides for the forum for redressal of grievances.

7. It is essential to notice the salient provisions of the Rules. Rule 1 gives the name to the Rules stated hereinabove. Rule 2 prescribes the definitions. Rule 3 provides the nomenclature of the teachers who are in two categories. The first category is known as Prakhanda Shikshak (Block Teachers), and the second one Panchayat Teachers. Rule 5 provides for reservation of vacancies for appointment. Rule 6 provides for appointment of Urdu teachers, and rule 7 provides for appointment of Physical Education teachers. Rule 8 lays down the eligibility criteria, and rule 9 prescribes the procedure for conducting the selection process. Rule 10 provides for appointment on compassionate ground. Rule 11 provides for scrutiny of the certificates and testimonials. Rule 12 provides for service conditions. Rule 13 provides for transfer of teachers. Rule 14 provides for (maintenance of service records, and rule '15 provides for leave. Rule 16 provides for payment of salary. Rule 17 provides for disciplinary action. Rule 19 vests the requisite power in the State Government to issue notification/circulars for clarification etc.

7.1 Rule 18 and 20 ,which are vital in the present context, may be noticed closely. Rule 18 provides the forum for redressal of grievances, and is set out hereinbelow:

18- f'kdk;r %& bl fu;ekoyh ds v/khu iz[k.M+ f'k{kdksa ds fu;kstu] LFkkukarj.k Isok 'krksZ laca/kh ekeyksa esa fdLh Hkh izdkj dh f'kdk;r ij fu.kZ; ysus dh 'kfDr mi fodkl vk;qDr dks gksxh rFkk iapk;r f'k{kdk ds ekeys esa iz[k.M+ fodkl inkf/kdkjh dh gksxh A lacaf/kr inkf/kdkjh vf/kdre 30 fnuksa ds vUnj f'kdk;rks ij fu.kZ; ns nsxs A

Rule 20 is the repeal and savings clause and is reproduced hereinbelow:

20- fujlu ,oa O;ko`fRr%& A bl fu;ekoyh ds izHkkoh gksus dh frfFk ls xzkeh.k {ks= esa izkjfEHkd f'k{kdk @ 'kkfijhd f'k{kdk @ iapk;r f'k{kk fe= ds fu;kstu ls lacaf/kr iwoZ dh IHkh fu;ekoyh] ladYi] vkns'k] vuqns'k vkfn fujLr ekus tk;sxs A

AA fdUrq bl fujlu ds gksrs gq, Hkh iwoZ ds fu;ekoyh] ladYi] vkns'k] vuqns'k vkfn ds rgr fu;qDr f'k{kdksa ds osrukfn ,oa lsok 'krksZ ij bldk izHkko ugh iM+sxxk A

AAA fdUrq iwoZ ds ifji=] vkns'k] vuqns'k ds vkyksd esa fu;ksftr ,oa dk;Zjr iapk;r f'k{kk fe= bl fu;ekoyh ds rgr iapk;r f'k{kd ds :i esa fu;ksftr ekus tk;ssxsa A

8. It is thus manifest that except the forum for redressal of grievances found in rule 18, the duties, functions, and powers in the Rules entirely vests in the panchayat. In other words, teachers are' employees of the concerned panchayat. The nomenclature of the teachers under the Rules is different. The earlier policy decision provided for appointment of Shiksha Mitra which has been abolished, and has been substituted by the Prakhanda Shikshak to, be posted at the Block level, and the Panchayat Shikhsak at the Panchayat level. The mode and manner of selection, and the forum for redressal of grievances, are different. It is clear from a plain reading of rule 18 that the aggrieved person can file an application before the Deputy Development Commissioner of the district with respect to the grievances arising out of the selection process or service conditions, etc. of a Prakhanda Shikshak, and with respect to the Panchayat Shikshak before the Block Development Officer. The same has to be disposed of within thirty days of submission of the application.

9. It is thus manifest on a plain reading of rule 20 that all circulars/orders/administrative instructions/policy decision(s), issued on the subject earlier, shall henceforth be deemed to have been superseded and lose their existence, subject to two exceptions to be found in sub-clause (ii) and sub-clause (iii) of rule 20. Clause (ii) provides that inspite of supersession of the earlier circulars/administrative instructions, the terms and conditions of service of those of the teachers appointed earlier, shall remain unaffected. Clause (iii) provides that Panchayat Shiksha Mitra appointed earlier, shall now be deemed to have been appointed under the present Rules and shall be known as Panchayat Shikshak.

10. The Panchayat has althrough been the hub of the scheme, under the earlier policy decision as well as the present Rules. This is manifestly to promote the objects of Part IX of the Constitution and the Act. The primary responsibility of the selection process is vested in the local panchayat. Section 11(3) of the Act makes

every gram panchayat a body corporate and a separate legal entity, shall have perpetual succession and common seal, and shall sue and be sued in its name. In other words, teachers are employees of the concerned panchayat. The contention to the effect that they are employees of the State Government has already been rejected in the judgment dated 23.5.2007, in CWJC No. 2261 of 2006 (Vijay Shankar Pathak v. The State of Bihar) reported in 2007(3) PLJR 621.

11. The legal position is now clear for disposal of the present writ petition on merits. I must first of all deal with the question of forum. Learned Counsel for the petitioner contends that the Collector has been divested of his jurisdiction and could not have passed the impugned order. In view of the provisions engrafted in Rule 20(ii), all previous circulars/administrative instructions etc. shall cease to have any force. Those were in the nature of administrative instructions, whereas the Rules is under the rule-making powers and has statutory flavour. Law is well settled that in case of creation of such a new forum by fresh enactment, adjudication of pending matters depends on the provisions in the new Act. If no contrary intention is indicated in the new Act, the pending matters would ordinarily stand transferred to the forum(s) under the new Act.

11.1 The Administrative Tribunal Act 1985, created Administrative Tribunals for adjudication of disputes relating to service conditions of the employees of the Union of India. All matters as on the date of enforcement of the Act, pending in different courts stood transferred to the Tribunal in terms of Section 29 of the Act, with the exception of the appeals pending before a High Court.

11.2 Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, provides that, all matters with respect to the subject matter covered by the Act, shall automatically stand transferred to the Tribunals created under the Act. The judgment of the Supreme Court reported in : [2000]2SCR1102 (Allahabad Bank v. Canara Bank and Anr.), and that of this Court in CWJC No. 1248 of 2000, reported in 2000 (2)PLJR 122 (M/s Ram Lakshman Glass (P) Ltd. v. State of Bihar and Ors.) have interpreted the provisions of the 1993 Act to the same effect. The latter judgment was upheld by a Division Bench of this Court reported in (2001) 1 BLJR 59 (Ram Lakshman Glass (P) Ltd. v. The State of Bihar and Ors.).

11.3 The Bihar Reorganisation Act 2000, reorganised the undivided State of Bihar into the present State of Bihar and the State of Jharkhand. In view of the provisions of Section 89 of the Act, the matters which fell within the jurisdiction of the newly created Jharkhand High Court as on the date of the enforcement of the Act, but pending before the Patna High Court, stood transferred to the High Court of Jharkhand.

11.4 The Constitution Bench of the Supreme Court in its judgment reported in : 2000(119)ELT257(SC) (Kolhapur Canesugar Works Ltd. v. Union of India and Ors.) has illumined the position and has, in Paragraphs 34 and 37 ,held to the same effect.

12. In view of the foregoing discussion, it appears to me that all matters with respect to the selection process of teachers under the old policy decision, shall now have to be adjudicated by the authorities contemplated by rule 18. Rule 20 repeals all policy decisions and administrative circulars, etc., except the service conditions in terms of rule 20(ii), and continuance of Panchayat Shiksha Mitra in terms of rule 20(iii),and the earlier forum loses its existence. The Rules do not by an express provision or necessary intendment provide that the pending matters shall continue to be adjudicated by the previous forums. I am, therefore, of the view that all matters pending before any other authority including the Collector of the district, shall automatically stand transferred to the forums provided by rule 18, except those of the applications which have been directed to be filed before the Collector or any other specific authority in terms of the order of this Court in a specific case, otherwise it will cause serious complications and review petitions will be required to be filed for modification of the orders in cases which have been disposed of. Such an order (passed by the Collector or so under orders of the Court) may or may not be irregular, may suffer from excess of jurisdiction, but is not voidable, let alone being void, inter alia, for the reason that right of appeal is not affected, because no such right of appeal had been created under the quondam dispensation nor under the Rules. In the represent case, the impugned order has been passed by the Collector in view of the specific direction of this Court.

13. This takes me on to the last question canvassed on behalf of the petitioners on the factual aspects of the matter. He has contended that it was incumbent on the Collector to examine the grievance of every individual candidate as per the direction in the aforesaid order in CWJC No. 2932 of 2007, which was, inter alia, allowed on the ground that individual cases were not examined. The contention on first flush appears to be attractive but does not survive a deeper scrutiny. The facts obtaining in the said CWJC No. 2932 of 2007 stood on a different footing compared to the present one. Paragraphs 4 to 7 of the impugned order in the present case may be reproduced:

4- es/kk lwph esa vfHk;qDr dkWye es dzeKad&9 ij vksoj jkbZfVax ij p;fur fy[k fn;k x;k gS ftldh iqf'V gsrq dk;Zokgh iath ds vfUre ikjk esa p;fur n'kkZ;k x;k gS] tcfD iwoZ esa izfrdwy fVli.kh dh xbZ gS blls fu;qfDr izfdz;k ikjn'khZ izrhr ugh gksrk gS ,oa dk;Zokgh esa lansg mRiUu gksrk gS A

5- ftyk f'k{kk v/kh{kd] iwohZ pEikj.kk }kjk vafdr fVli.kh ds ;kfpdkdrkZ vfjoUn 'kekZ 'kj.k izlkn dks euekus ax ls vuqifLFkr ,oa izek.k&i;= vizklr fn[kkdj vf/kd vf/kHkkj jgrs gq, ,oa lHkh vgZrkvks dks iw.kZ djus ds i'pkr~ Hkh budk vkosnu jn~n dj fn;k x;k gS] tcfD lkekU; oxZ ls budh fu;qfDr dh tkuh pkfg, Fkh A

6- dk;Zokgh iath ,oa es/kk lwph es vfHk;qDr dkWye fDr jgus ls Hkh dk;Zokgh lansgkLin izrhr gksrk gS A

7- es/kk lwph esa vf/kd vf/kHkkj ds vH;fFkZ;ksa dks izkFkfedrk ugh nh xbZ gS A ij of.kZr ijh{k.k ,oa foospuk ls ;g Li'V gks tkrk gS fd lq[k lqfo/kk lfefr lg p;u lfefr }kjk foHkkxh; funsZ'kks ,oa ekuo lalk/ku] fcgkj iVuk] }kjk fufeZr fu;qfDr fu;ekoyh dk ikyu ugh fd;k x;k gS rFkk vkj{k.k dksfV dk ikyu ugh fd;k x;k g SA efgyk oxZ ,oa iq:'k oxZ ds inks dks ,d lkFk lekfgR djrs gq, fu;qfDr dh xbZ gS] tcfD vkj{k.k jksLVj ds vk/kkj ij fu;qfDr djus dk izko/kku gS A iapk;r lfpo }kjk izLrqr tckc ds dkWye 5 eaas ;g vafdr gS fd iapk;r lsod eqf[k;k dk dksbZ fojks/k ugha dj ldrk gS ;fn fdlh izdkj dh vfu;ferrk gksrh gS rks fojks/k djus ij og eqf[k;k dk dksi Hkktu curk gS A ;g okD; Hkh bl fu;qfDr izfdz;k ij lansg mRiUu djrk g SA

14. It is thus manifest on a plain reading of the findings recorded by the Collector that he has, on examination of the entire materials before him, come to the

conclusion that serious defects/irregularities pervaded the entire selection process. It has been held in a long line of cases, which are particularly with respect to examinations either of students or for appointments, that notice to individuals need not be issued or individual cases need not be examined where enquiry reveals a mass scale irregularity. In my opinion, the present case is clearly covered by that line of cases. Therefore, he was justified in setting aside the selection process as a whole without considering individual cases.

15. In the result, I do not find any merit in this writ petition and is accordingly dismissed. There shall, however, be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com