

Most. Raj Mahal Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-27-2007

Judge : Barin Ghosh and Samarendra Pratap Singh, JJ.

Appeal No. : Letters Patent Appeal No. 1237 of 1998

Appellant : Most. Raj Mahal Devi

Respondent : The State of Bihar and ors.

Advocate for Def. : Madhuranand Jha, JC to AAG 7

Advocate for Pet/Ap. : Shivaji Pandey, Sr. Adv. and S.C. Giri, Adv.

Disposition : Appeal allowed

Judgement :

Barin Ghosh and Samarendra Pratap Singh, JJ.

1. One Sri Ram Chandra Thakur was drawing B.A. trained scale, whereas the husband of the appellant, Sri Raktu Singh was not getting B.A. trained scale. The husband of the appellant filed CWJC No. 3277/1979 and thereby contended that since Sri Ram Chandra Thakur, who started discharging the duties of a School Teacher after him, has been accorded B.A. trained scale, he should also be accorded the same. Sri Ram Chandra Thakur pointed out to this Court that at the time of his joining, he joined as Headmaster, though he was not then qualified for

being treated as a B.A. trained candidate but, however, before the taking over Act came into force, he had acquired the qualification for being treated as a B.A. trained candidate in the year 1971. The Court, therefore, held in CWJC No. 3277/1979 that Sri Ram Chandra Thakur, being a qualified person and having been appointed as Headmaster was also discharging the duties of Headmaster as on the date the taking over Act came into force could only be treated as Headmaster and as such he is entitled to B.A. trained scale. The husband of the appellant, however, disputed the appointment of Sri Ram Chandra Thakur as Headmaster from the day one. Accordingly, the matter was sent back to the authorities the State to enquire only that aspect of the matter. The matter was enquired and the authorities of the State upon such enquiry found that Sri Ram Chandra Thakur was appointed as Headmaster of the School on the date he joined the same. In such situation the authorities of the State held that Sri Ram Chandra Thakur by reason of the provisions contained in the taking over Act was entitled to B.A. trained scale. The matter was thus concluded.

2. However, the husband of the appellant once again approached this Court by filing CWJC No. 651 of 1982. What was claimed in that writ petition is not known for the records thereof are not available and the appellant has also not been able to produce copy of such records before us. It appears from the order dated 9th September, 1983 passed in LPA No. 20/1982 preferred by the husband of the appellant that CWJC No. 651 of 1982 was dismissed. While LPA No. 20/1982 was dismissed by the said order dated 9th September, 1983, this Court observed that the husband of the appellant may make a representation to the District Superintendent of Education, Patna or the Director of Education within a period of 10 days from the date of the said order regarding his claim for obtaining B.A. trained scale in preference to Sri Ram Chandra Thakur. The Court observed that if such a representation is filed, the same should be disposed of in presence of the appellant and Sri Ram Chandra Thakur in accordance with law.

3. Thereupon on 23rd August, 1989, i.e. after about six years from the date of the order of this Court dated 9th September, 1983 passed in LPA No. 20/1982, the District Superintendent of Education, Patna passed an order and thereby granted Graduate trained scale to the husband of the appellant. In that order although

there was a reference to the order of this Court passed on 9th September, 1983 in LPA No. 20/1982, but the order itself shows that the same was not passed in accordance with the directions contained in the said order, inasmuch as the order did not record that the said order is being passed in the presence of the husband of the appellant and Sri Ram Chandra Thakur or upon notice to them.

4. As would be evidenced from the order dated 23rd August, 1989, the same was issued for the reason that a junior to the husband of the appellant in the Gradation List was given promotion on the post of Headmaster. Though the name of this junior had not been mentioned in the said order dated 23rd August, 1989 but it has been accepted by the District Superintendent of Education, Patna that the said person was one Sri Ram Briksha Singh.

5. The order dated 23rd August, 1989 was not acted upon inasmuch as the husband of the appellant was not allowed to join the School in terms of the directions contained therein. Soon thereafter by the order dated 9th November, 1989, the said order dated 23rd August, 1989 was recalled. Challenging the order dated 9th November, 1989, the husband of the appellant filed a writ petition which was registered as CWJC No. 9953/1989. During the pendency of the said writ petition, the husband of the appellant died and accordingly the appellant was substituted in his place. Ultimately the writ petition was dismissed by the order impugned in the present appeal.

6. The principal reason for dismissing the said writ petition, as would be evidenced from the order impugned in this appeal, was that the order dated 23rd August, 1989 was passed not in accordance with the directions contained in the order of this Court dated 9th September, 1983 passed in LPA No. 20/1982.

7. In as much as the reason for granting Graduate trained scale to the husband of the appellant, as was depicted in the order dated 23rd August, 1989, was grant of such scale to a junior to the husband of the appellant, we wanted to know whether in fact a junior to the husband of the appellant was accorded such scale and, if so, why the husband of the appellant should not be accorded the same. This aspect of the matter, it seems, had not been gone in by the learned Judge who dealt with CWJC No. 9953 of 1989. Although in terms of the directions of this Court an

affidavit has been filed by the District Superintendent of Education, Patna as regards the said query of this Court, but therein practically no information has been furnished as regards grant of Graduate trained scale to Sri Ram Briksha Singh. We accordingly directed the District Superintendent of Education, Patna to produce before us the records pertaining to Sri Ram Briksha Singh. The District Superintendent of Education, Patna is present in Court and has submitted through learned Counsel engaged by the State that despite searches having been made he could not locate the records pertaining to Sri Ram Briksha Singh, but he has been able to locate an order dated 21st August, 1986 passed in CWJC No. 3088/1986, wherefrom it appears that subsequent to grant of Graduate trained scale to Sri Ram Briksha Singh, the same was purported to be cancelled upon notice to Sri Ram Briksha Singh. The Court found that the notice was insufficient and, in fact, Sri Ram Briksha Singh was not permitted to make appropriate representation in answer to the notice given to him. The Court, accordingly, by the said order while set aside the order cancelling grant of the said scale to Sri Ram Briksha Singh, remitted back the matter to the District Superintendent of Education, Patna. The District Superintendent of Education, Patna has submitted that he is not in the know as to what happened thereafter.

8. As pointed out above, the reason for passing the order dated 23rd August, 1989 was grant of B.A. trained scale to Sri Ram Briksha Singh, who admittedly is a junior to the husband of the appellant. Admittedly, the said grant was accorded to Sri Ram Briksha Singh after the taking over Act came into force. If the junior to the husband of the appellant could be accorded the said scale, there is no just reason why the husband of the appellant was not entitled to be accorded the same.

9. In those circumstances we allow the appeal and set aside the judgment and order under appeal and at the same time remit the matter back to the District Superintendent of Education, Patna with a direction upon him to accord B.A. trained scale to the husband of the appellant in the event his junior, Sri Ram Briksha Singh, has been accorded the said scale, from the date thereof. In such event the District Superintendent of Education, Patna shall issue an appropriate order recalling the order dated 23th August, 1989 as well as the order dated 9th November, 1989 and pass an appropriate order. In the event Sri Ram Briksha

Singh has not been accorded such scale, the District Superintendent of Education, Patna shall communicate the same in writing to the appellant and in such circumstances the order dated 9th November, 1989 shall hold good and remain valid.

10. The above exercise, in the background of what has been submitted to us by the District Superintendent of Education, Patna, be completed within a period of six months from today.

The appeal is accordingly stands disposed of.

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