

Rashmi Prasad Vs. Human Resource Development

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Court : Jharkhand

Decided On : Aug-20-2015

Appellant : Rashmi Prasad

Respondent : Human Resource Development

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No.1621 of 2013 with W.P.(S). No. 1653 of 2013 1. Rashmi Prasad Petitioner (In W.P.S. No.1621 of 2013 2. Deepak Kumar Petitioner (In W.P.S. No.1653 of 2013 Versus 1.State of Jharkhand 2.Director, Secondary Education, H.R.D Dept, Govt. of Jharkhand 3.District Education Officer, Ranchi 4.Secretary, Sri Doranda Balika Uchch Vidyalaya, Doranda, Ranchi 5.Head Mistress, Sri Doranda Balika Uchch Vidyalaya, Ranchi 6.Secretary, H.R.D. Dept., Govt. of Jharkhand Respondents (in both the cases) CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : M/s Rajendra Krishna, Amit Sinha & Jay Shankar Tiwary For the State : Mr. Prem Pujari Roy, J.C to Mr. Rajesh Shankar, G.A. For the School : M/s Shree Krishna Murari, Rohit 03/20.08.2015 Heard learned counsel for the parties. These two petitioners are amongst 5 Teachers who were selected by the Managing Committee for different posts of Teachers in Sri Doranda Balika Uchch Vidhyalaya, Ranchi(herein after referred to as the School), pursuant to an advertisement of April 2008. The proposal for approval of selection of these 5 Teachers were sent to the District Education Officer, Ranchi by the Managing Committee of the School. It is not in dispute that the appointment of 3

Teachers were approved other than these 2 petitioners. Since, the proposal of approval of these 2 petitioners remained pending, they were compelled to approach this Court in W.P.S. No. 2650 of 2012 and 2657 of 2012. The writ petitions were disposed of vide orders dated 17.5.2012 in the case of Deepak Kumar and 2.7.2012 in the case of Rashmi Prasad by directing the Director, Secondary Education, H.R.D. Department, Government of Jharkhand to take a decision on the claim of the petitioners for approval of their appointment. By the orders bearing memo no. 38 and 42 dated 8.1.2013 in the case of -2- both the petitioners, the proposal for approval of their services have been rejected by the respondent- Director, Secondary Education, H.R.D. Department, which are impugned in the present two writ petitions. Perusal of the reasoned order shows that the Director, Secondary Education has found that the letter no. 732 dated 5.11.1982 and the Government Order No. 88 dated 21.7.1982 are in respect of sanction of teaching units in Government High Schools and that the name at serial no.20 is actually a Government High School of the same name i.e. Rajkiyakirt Balika Uchch Vidyalaya, Doranda and not a school in which petitioners have been appointment, which is a minority school. He found that the School in question availed 2 units of the teaching posts meant for the Government High School, Doranda in a wrongful manner. Therefore, the appointment of the 2 petitioners could not be approved against such two posts which were sanctioned under the Government order dated 5.11.1982 and 21.7.1982. The respondent- Director, Secondary Education, found that the school had 10 sanctioned posts of Assistant Teachers and one post for Headmaster / Headmistress. The school also had been asked not to undertake appointment by a communication bearing letter no. 5392 dated 21.10.2008 in respect of such two posts, sanction of which was in dispute. Respondent- State in their counter affidavit have also sought to justify the order of rejection on the same ground that there was some confusion relating to the sanctioned strength of Teachers in the said School and the District Education Officer, Ranchi had directed the Management of the School not to undertake the process of selection till a view is taken on the question of the sanctioned strength of the Teachers in the said -3- school. On the contrary as is the case made out by the petitioners and the School Management, after creation of the 2 sanctioned post for Sri Doranda Balika Uchch Vidyalaya, Doranda through letter of 5.11.1982

and Government order dated 21.7.1982, the District Education Officer, Ranchi through his communication contained in letter no. 5555 dated 8.7.1984 also communicated that the 2 such posts have been sanctioned for the petitioner's school i.e. Sri Doranda Balika Uchch Vidyalaya, Doranda. Adding these 2 posts, he informed that 13 posts were sanctioned. It was also indicated that payments of salary of 11 Teachers is being made and there is a proposal for approval of appointment of 2 Teachers by the Managing Committee namely Smt. Sheela Jaipuriyar and Sushri Kajal Mukherjee. The relevant documents in relation to such selection were being sent for approval of their appointment. It is also made out on their behalf that Smt. Sheela Jaipuriyar in fact has continued as Teacher in the said school and presently is the Headmistress of the said school. The selection of the aforesaid 2 persons were also approved by the Vidyalaya Seva Board by the letter dated 29.12.1999 bearing memo no. 648, which is at Annexure-I to the counter affidavit filed by the Management of the School. The Management has also come out with the case that as late as November 2003 by Annexure-4 to the writ petition the District Education Officer, Ranchi communicated to the Director, Secondary Education about the existence of sanctioned post in the present school i.e. 13 posts for Assistant Teachers and 1 post for Headmaster. The Headmistress of the said School through a chart at Annexure-10 to the writ petition, prepared on 24.1.2012 also indicated the strength of Teachers in the present school from time to time and -4- those who have either resigned or retired over a period of time. The said chart also shows that since 1988 the salary of the Teachers is being paid by the grant obtained from the State Government in a regular manner. The chart shows the number of Teachers which ranges from 8 to 14 in different years ranging from 1991 to 2010. The Management of the school in fact had informed the District Education Officer, Ranchi on 10.3.2008 that 5 vacancies are existing in the School vide Annexure-J.

The District Education Officer also responded through letter of the same date i.e. 10.3.2008 that there was some confusion about the total sanctioned strength of Teachers in the said School and School should not proceed with the process of appointment. In the midst of all these facts, the Management has also shown that in the year 2004 vide Annexure-F dated 14.12.2014 the District Education Officer, on the retirement of one Uniki Kisku, issued directions to adjust the services of

Smt. Sumita Banerjee, who was working under plan head as under non-plan head. Petitioners have also tried to make out a case that all along salary is being paid by the State Exchequer to 13 Teachers including the Headmistress. Earlier the sanctioned strength was 10 plus 1 and by sanction of 2 units in 1982, it became 13. The School had also got one additional sanctioned unit in 1991, but it lapsed. In sum and substance, petitioners as well as the Management of the School have claimed that the School has sanctioned strength of 13 including 1 Headmistress and all along the salary of these Teachers have been paid by the State Exchequer. In the wake of these facts, the order of Director, Secondary Education bearing memo no. 173 dated 19.1.2010(Annexure-17) -5- shows that a direction was issued to the District Education Officer, Ranchi to obtain necessary information in relation to the extension of the 2 units sanctioned in 1982 by the erstwhile State of Bihar in respect of the present School. From perusal of the said letter and other pleadings also, it appears that the extension order for continuance of these 2 sanctioned units after its creation in 1982 are not there. But the petitioner and the respondent- Management of the School have asserted that irrespective of such orders of extension, which may have been issued by the Government from time to time, the State Exchequer has always borne the salary expenses of 13 Teachers in the said School. It is their contention that after retirement of Teachers under the non plan head, those Teachers like the present Headmistress and Smt. Sumita Banerjee have been adjusted in the non plan head though they were initially appointed under plan head and they are still continuing. In the wake of the aforesaid facts noticed, the question required to be dealt with is whether the reason to disapprove the appointment of the petitioners by the respondent- Director, Secondary Education is proper in the eye of law. The sequence of facts taken note of in the earlier part of the order would show that the inference of the Director, Secondary Education that sanction of 2 units by the Government of Bihar through letter dated 5.11.1982 and Government order dated 21.7.1982 at serial no.20 was in respect of another school and not the present school, as it is a minority school, is not based upon proper application of mind to all attendant facts and documents. As a matter of fact, the letter dated 5.11.1982, which is on record also as Annexure-2 and the Government order dated 21.7.1982 (Annecure-C to the counter affidavit of the Management), -6- indicate that apart

from the name of Doranda Balika Uchch Vidyalaya, Doranda at Serial no.20 against which 2 units were sanctioned, there is another school at Serial no.5, Rajkiyakirt Balika Uchch Vidyalaya, Doranda, in respect of which also 2 units of Science and Maths Teachers were sanctioned. If that be so and as it is informed that there is another Government Girls High School of the same name at Doranda then there was no reason why the Director, Secondary Education would have interpreted the letter dated 5.11.1982 /21.7.1982, otherwise to disbelieve that 2 units were not sanctioned for the present Sri Doranda Balika Uchch Vidyalaya, Doranda. More so, in view of the communication of the District Education Officer dated 9.7.1984 (Annexure-H) and 20.11.2003 bearing memo no. 5375(Annexure-4). It, therefore appears that though the process of selection was not found to be suffering from infirmity by the Director, Secondary Education despite the communication made by the District Education Officer, Ranchi on 10.3.2008 to the Managing Committee of the School, as selection of 3 Teachers were approved but selection of these 2 petitioners have been disapproved without any proper application of mind. The relevant records relating to sanction of units, payments of salary of the Teachers up to the strength of 13 working in the School by the State Exchequer all these facts and documents were required to be minutely scrutinized by the concerned respondents before coming to such decision. The impugned orders dated 8.1.2013 rejecting the approval of appointment of petitioners has been passed without proper application of mind by the Director, Secondary Education, H.R.D. Department. They are accordingly quashed. The Secretary, Human Resources Development Department, -7- Government of Jharkhand, Respondent no.6 is directed to take a considered decision in the matter in accordance with law within a reasonable time, preferably 12 weeks from the date of receipt of copy of this order. The writ petitions are allowed in the manner and to the extent indicated hereinabove. (Aparesh Kumar Singh, J.) A. Mohanty /J.K