

## Madhab Chandra Mahto and Others Vs The State of Jharkhand and Others

**Court:** Jharkhand High Court

**Date of Decision:** April 18, 2013

**Acts Referred:** Constitution of India, 1950 Article 309, 311

**Citation:** (2013) 3 AJR 593 : (2013) 3 JLJR 127

**Hon'ble Judges:** Aparesh Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Bhanu Kumar and Ms. Bharti Kumari, for the Appellant; Abhijeet Kr. Singh and J.C. to G.P. V, for the Respondent

**Final Decision:** Allowed

### Judgement

Aparesh Kumar Singh, J.

Heard counsel for the parties. By Annexure-16 dated 26.9.2000 the B.Sc. Trained Scale granted to the

petitioners earlier w.e.f. the date of their joining has been cancelled pursuant to the decision taken by the District Education Establishment

Committee dated 21.8.2000 (Annexure-14) and the amount paid earlier has been ordered to be recovered. The impugned order has been issued

under the signature of District Superintendent of Education, Dumka.

2. According to the petitioner vide Annexure-4 dated 24.1.1987, the second advertisement was issued for filling up of the post of different

categories of teachers in the Government schools in the district of Dumka. The posts which were available for such recruitment included Matric

Trained, Intermediate Trained, B.Sc. Trained/Untrained and also in respect of other subjects like Sanskrit, urdu etc. These petitioners applied and

were interviewed by the selection committee and were consequently appointed as B.Sc. Trained Teachers" on the basis of the decision of the

District Education Establishment Committee meeting held on 18.4.1988 (Annexure-7).

3. Counsel for the petitioner has relied upon the Agenda No. 19 which concerns the present petitioners under which the District Education

Establishment committee resolved to fill up the posts of B.Sc. Trained from those persons named in the enclosed list between serial no. 1 to 5, 7 to

27 and 29 to 31 who were admittedly in the B.Sc. Trained Scale. These petitioners are said to be falling between the said serial numbers. Pursuant

to the said decision of the District Education Establishment Committee the District Superintendent of Education, Dumka issued the order of

appointment contained at Annexure-5 dated 23.5.1988 where under in respect of the category of B.Sc. Trained teachers, the names of the

petitioners are reflected. Learned counsel for the petitioner, however has pointed out that the appointment order so issued had an anomaly as the

District Superintendent of Education in the appointment letter had indicated that the named persons including the petitioners herein, who were

B.Sc. Trained being appointed in the B.SC. Trained category are being granted Matric Trained Scale. In any case these petitioners submitted their

Joining in the respective middle schools in proof of which Annexure-6 series, certificate issued by the Principal of the respective middle schools are

annexed. On the representations of the petitioners, vide the decision of the District Education Establishment Committee dated 30.10.1989 the

anomaly in the appointment order relating to the grant of Matric Trained Scale was corrected by individual order issued by the District

Superintendent of Education in respect of each persons of different date, however content of the individual letters was common and benefits of

B.Sc. Trained Scale were given effect from 30.10.1989. This did not satisfy the petitioners as they had submitted joining earlier pursuant to the

appointment letter issued on 23.5.1988. The District Education Establishment Committee once again considered their objections and vide its

resolution dated 15.1.1996 allowed these petitioners the B.Sc. Trained Scale from the respective: date of their joining, which is reflected in the

order at Annexure-11 series issued by the District Superintendent of Education, Dumka, however the financial benefits of the said scale were

accruable from 1.3.1989. The petitioners, therefore, claimed to have been appointed in the B.Sc. Trained category, joined in respective schools as

B.Sc. Trained category teachers and were granted the B.Sc. Trained Scale pursuant to the decision of the District Education Establishment

Committee dated 18.4.1988, 30.10.1989 and 15.1.1996.

4. However, the grievances of the petitioners arose as the B.Sc. Trained Scale granted to them as aforesaid were revoked by the impugned order

of the District Superintendent of Education, Dumka vide order dated 26.9.2000 acting upon the decision of the District Education Establishment

Committee dated 21.8.2000. By the said decision, the decision of the Committee dated 30.10.1989, 15.1.1996 and 21.10.1997 respectively

were revoked and it was directed that the amount of excess salary drawn by the petitioner would be recovered within a period of 45 days. It was

also indicated in the said order that henceforth their inter-se seniority etc. would be decided after roster clearance and after observing the

reservation rule and also in terms of the Elementary School Teachers Promotion Rules. 1993. However, according to the petitioners the genesis of

their appointment being Agenda No. 19 of the Resolution dated 18.4.1988 of the District Education Establishment Committee was not revoked by

the respondents through the impugned order.

5. In these facts and circumstances, learned counsel for the petitioner submit that the petitioners have acquired a vested right to continue on the

post in which they were directly appointed pursuant to the decision of the District Establishment Committee, which has been undone by reverting

them to the lower grade of Matric Trained Scale which amounts to reduction in rank without following the procedure prescribed in respect of such

an action as contemplated under Service Rules framed under Article 309 proviso of the Constitution of India and also without following the

mandate of Article 311. Counsel for the petitioner has relied, upon the Judgment of the Hon"ble Supreme Court reported in the case of

Purushottam Vs. Chairman, M.S.E.B. and Another, para 4 thereof that once a person is duly selected for a particular post, he has legal right to be

appointed to that particular post which cannot be illegally reduced to lower grade of post. Counsel for the petitioner has further relied upon another

judgment of the Hon"ble Supreme Court in the case of Hussain Sasansaheb Kadalgi Vrs. State of Maharashtra reported in (1988)4 SCC 168 to

submit that no reversion of the direct recruit person like the petitioner is to be undertaken to the lower grade or post since they are borne on that

post at the time of their initial appointment, Counsel for the petitioner has further relied upon judgment of the Hon"ble Supreme Court rendered in

the case of R.S. Ajara and Others Vs. State of Gujarat and Others, in order to advance his submission that petitioner had acquired the vested right

after grant of such B.Sc. Trained Scale to them by a proper decision of the District Establishment Committee as aforesaid, which cannot be taken

away by the respondents by relying upon the Rules of 1993 to defeat their vested right.

6. It is also submitted that decision which formed the basis of reversion was passed on the report of the Regional Deputy Director of Education

who was subsequently dismissed from service for serious charges. As such much reliance should not be placed upon such report to take away the

benefits already given to the petitioners. It is also submitted that the 1993 Rules are not retrospective in nature, rather prospective in nature. In

support of his contention, he has relied upon the judgment passed by the learned Single Judge of this Court in the case of Arbind Bhushan Dey and

Others, Suresh Kumar Sharma and Others and Ashok Kumar Prajapati Vs. State of Jharkhand and Others, where under it has been held that the

1993 Rules cannot be said to be retrospective in nature in order to defeat the vested right of a person. Accordingly, the impugned order deserves

to be quashed.

7. Respondents on the other hand have justified the issuance of the impugned order by submitting that the said appointment in the B.Sc. Trained

Scale were illegally done as the petitioners could only have been appointed in the Matric Trained Scale as indicated in their appointment letter

issued vide Annexure-5 by the District Superintendent of Education. Respondents have submitted that the resolution which the petitioners are

relying dated 18.4.1988 (Annexure-7), in its Agenda No. 3 enumerated that only Matric and I.A. Trained persons can be appointed. The

respondents have also relied upon the circular which has been referred to in the report of the Regional Deputy Director of Education (Annexure-

14) in order to submit that at the time of appointment clearance of roster and reservation rules were not followed by the respondents-authorities

and on being detected petitioners were issued show cause notice and after consideration of their objections the impugned order has been passed.

He has further submitted that the Elementary Promotion Rules, 1993 came into force and were made effective from January 1986. In that view of

the matter direct recruitment to the post of B.Sc. Trained scale could not have been done as the said post could only be filled on promotion from

the working teachers as per their seniority and availability of the vacant post in the higher grade and also on completion of certain period on the

basic grade post.

8. I have heard counsel for the parties at length and gone through the relevant materials including the impugned order as also Annexure-7 resolution

dated 18.4.1988 more specifically Agenda No. 19 thereof, one which concerns the present petitioners. By the said resolution at Agenda No. 19

of the District Establishment Committee presided over the Deputy Commissioner, Dumka and other functionaries a decision was taken to fill up the

B.Sc. Trained Post for which persons placed in serial no. 1 to 5, 7 to 27 and 29 to 31 were selected and were to be given B.Sc. Trained Scale

and would further be posted against the B.Sc. Trained posts. It is also not in dispute that the petitioners were already having B.Sc. Trained

qualification at the time of their appointment. The order of appointment of the petitioners" along with others was issued vide Annexure-5 dated

23.5.1988. The order of appointment itself shows that these persons including others were appointed in B.Sc. Trained Category but were placed

in the Matric Trained Scale in the scale of 580-860 and were asked to submit their joining in the respective middle schools where such B.Sc.

Trained posts are in existence.

9. However, petitioners noticed an anomaly in the order which led to the correction of the description of their scale and by the resolution dated

30.10.1989 of the District Establishment Committee itself, petitioners were granted B.Sc. Trained w.e.f. 30.10.1989 (Annexure-9) issued in

respect of individual petitioners by the District Superintendent of Education, Dumka. This could not however resolve their grievances and again the

District Establishment Committee considered their representation and resolved vide decision dated 15.1.1996 to granted B.Sc. Trained scale to

them w.e.f. their respective dates of joining in the year 1988 but financial benefits to accrue w.e.f. 1.3.1989. Admittedly, these petitioners by virtue

of the decision of the District Education Establishment Committee taken from time to time continued to avail the B.Sc. Trained Scale from

respective dates of their joining which is sought to be revoked by the impugned order based upon the report of the Regional Deputy Director of

Education. The contention of the respondents that the petitioners could not have been appointed in the B.Sc. Trained scale is contrary to the

records as not only advertisement were issued vide Annexure-4 for appointments to such posts but even the District Education Establishment

Committee in its first meeting held on 18.4.1988 itself decided to appoint the persons like the petitioners placed under the panel in the B.Sc.

Trained Post with B.Sc. Trained Scale. The promotion Rules, 1993 have been said to have been notified on 9.7.1993 but before the enactment of

the Rules petitioners had got vested right on being placed in the B.Sc. Trained Scale pursuant to their appointment in the said scale in the year

1988 itself. In any case in the judgment relied upon by the petitioner in the case of Arbind Bhushan Dey Vrs. State of Jharkhand (supra) it has

been held that the Rules of 1993 cannot have retrospective application to defeat the vested right of the persons who have already been granted

higher scale. The petitioners, obviously were not at fault at any stage when these decision were being taken. In these circumstances, the revocation

of the grant of B.Sc. Trained Scale to the petitioner and their reversion to that of Matric Trained Scale cannot be sustained in law as well as facts.

Accordingly, the impugned order dated 26.9.2000 (Annexure-16) is quashed. The writ petition is allowed however with no order as to costs.