

Yudhisthir Mahato and Others Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: June 25, 2008

Acts Referred: Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 "â€" Section 9

Citation: (2008) 3 JCR 693

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Judgement

Narendra Nath Tiwari, J.

The petitioners, who are teachers of different secondary schools, have sought a direction on the respondents to

consider them for promotion to the posts of Headmaster, as they, being the Acting Headmasters or senior most teachers of their respective

schools, were all eligible for promotion to the posts of Headmaster in terms of the provisions of Bihar Nationalised Secondary Schools (Service

Conditions) Rules, 1983.

2. All the petitioners were appointed as Trained Graduate Assistant Teachers and have possessed Master Degree with Teachers" Training

Diploma. They were given Selection Grade as also the Super Selection Grade and either they are Acting Headmasters or Senior Most Teachers in

their respective schools.

3. For the purpose of dealing with the service conditions, including the preparation of seniority list and promotion, rule was framed under the

provisions of Section 9 of the Bihar Non-government Secondary Schools (Taking Over of Management and Control) Act, 1981.

4. Rule 4 of the said Rules prescribed minimum eligibility and qualification for appointment/promotion to the post of Headmaster, which includes;

(i) B. Ed. Degree of recognized university;

(ii) B. Ed., Dip-in-Ed. Dip-in-teach/C.T. or any equivalent qualification of Teachers" Training by any recognized university or Board recognized by

the State Government.

(iii) In case of direct recruitment, B. Ed. Degree with ten years" teaching experience for general category and for the members of Scheduled

Tribes, Scheduled Castes and female candidates seven years" teaching experience or eight years" service in Selection Grade etc.

5. According to the Rule, 80% posts of Headmaster of Nationalised High School were/are to be filled up by promotion and 20% posts by direct

recruitment.

6. In the then existing State of Bihar, thousands of posts of Headmaster were vacant. The process of promotion to the posts of Headmaster

commenced in early 2000. The Secretary, Primary, Secondary and Adult Education Department, Government of Bihar, by its letter dated 27th

June, 2000 directed all the Regional Deputy Directors of Education to send the State Seniority List of Assistant Teachers for promotion to the

posts of Headmaster (Annexure-1). The Regional Deputy Directors of Education of united Bihar sent the seniority list of Assistant Teachers, who

were eligible for promotion to the posts of Headmaster.

7. The seniority list was prepared in terms of the Bihar Nationalised Secondary Schools (Service Conditions) Rules, 1983 read with Government

Order No. 519 dated 2nd July, 1983. Those teachers, who were/are in Post Graduate Trained Scale and Selection Grade in Graduate Trained

Scale, their inter-se-seniority was to be decided on the basis of date of grant of scale in Post Graduate Scale or Selection Grade Scale. The inter-

se-seniority of such teachers was decided on state level and the matter was pending for promotion on 80% vacant posts before the erstwhile

Government of Bihar.

8. The State of Jharkhand was created on bifurcation of the State of Bihar by virtue of Bihar Re-organisation Act, 2000 on 15th November, 2000.

9. Consequently, the vacant posts of the Headmaster of the schools, falling within the territorial jurisdiction of the Jharkhand State, were to be filled

up by the Government of Jharkhand. After bifurcation, the State of Jharkhand took steps for filling up the vacant posts of Headmaster of the

promotional quota of such Nationalised High Schools, which are situated within the State of Jharkhand. Various communications were made from

the Director, Secondary Education to the Regional Deputy Directors of Education and District Education Officers. One such communication was

issued under the signature of the Deputy Director of Education to all the Regional Deputy Directors of Education and District Education Officers

dated 3rd September, 2002. The said letter was accompanied with the bifurcated gradation list of such eligible Post Graduate/Selection Grade

Scale Holders, having all requisite qualifications. Objections were invited to the said gradation list.

10. The Petitioner No. 1 filed his objection through proper channel, as his name was not properly placed in the gradation list. Other teachers, who

were not properly placed in the provisional gradation list, also filed their objections.

11. After disposal of all the objections and after finalization of the gradation list for promotion to the posts of Headmaster, communication was

made by the Respondent No. 3 on 20th July, 2005 to all the District Education Officers for sending the original service book, CCR for five years,

performance report etc. The District Education Officer communicated the same to the Headmasters and In-charge Headmasters by Memo No.

1232 dated 27th July, 2005 asking them to send all the relevant papers of the concerned teachers.

12. The Headmaster concerned after collecting the required details and documents sent the same to the Director, Secondary Education,

Jharkhand. The District Education Officer, East Singhbhum sent the documents by his Memo No. 1258 dated 28th July, 2005 (Annexure-9).

13. When the process of promotion was in progress, the Respondent No. 3 suddenly issued letter dated 17th July, 2006, enclosing a provisional

gradation list of Assistant Teachers, holding qualification of Post Graduate, Second Class and B. Ed. Training for promotion to the posts of

Headmaster. Objections were also invited against the provisional gradation list. The petitioners came to learn that subsequently new provisional

gradation list was prepared on the basis of Rules framed on 5th November, 2004 in exercise of power u/s 9(1) of the Jharkhand Non-government

Secondary Schools (Taking Over of Management and Control) Act, 2002. The said Rules named as Jharkhand Nationalised Secondary Schools

(Service Conditions) Rules, 2004 (hereinafter to be referred as the "Rules 2004").

14. In the said Rules 2004, eligibility for promotion on the post of Headmaster has been changed. Now the prescribed eligibility for promotion to

the post of Headmaster is; (i) Post Graduate; (ii) Bachelor of Education; and (iii) ten years" teaching experience in recognized High School. In the

case of members of Scheduled Tribes and Scheduled Castes, 45% marks in Post Graduate Degree and B.Ed. Degree. It has further been

provided that the promotion to the post of Headmaster will be given on the basis of date of grant of Selection Grade Scale among the Selection

Grade-holder Teachers. If the Selection Grade Teachers are not available, then such teachers also can be considered for promotion, who have

completed 24 years of service and in the case of members of Scheduled Castes and Scheduled Tribes, 18 years of service.

15. In the new rule, the Post Graduate trained teachers, who are having diploma in teaching, diploma in education, diploma in physical education

and basic training certificate shall be disqualified. Even if a teacher is senior most in the State in Selection Grade, he would be ineligible, if he is not

a Post Graduate Degree holder.

16. According to the petitioners, since the process of filling up all vacant posts of Headmaster in Nationalised High Schools commenced in early

2000, which was for all purposes at the stage of completion, after issuance of the letter dated 20th July, 2005 (Annexure-8). The appointments

were to be made against the vacancies occurred much before 5th November, 2004. The petitioners contended that eligible candidates cannot be

denied consideration by imposing upon them a new rule in the midst of consideration process. The petitioners, who were all eligible, cannot be

rendered ineligible by issuing a fresh rule when the process of promotion commenced much earlier and was about to complete, intervention in the

process of selection by bringing a new rule amounts to retrospective application of the rule, which was not intended and provided in the said Rules

2004.

17. The petitioners have claimed that process of consideration for promotion commenced in accordance with the then existing Rules 1983 has to

be completed and considered under the said provision, but the petitioners have been discriminated against and they have been arbitrarily and

illegally denied consideration for the post of Headmaster by bringing a new provision to their prejudice.

18. The petitioners' claim has been contested by the respondents. It has been stated, *intra alia*, that the petitioners are teachers of Taken Over

Secondary School i.e. Rajkiyakrit High School. The Government of erstwhile State of Bihar had revised the pay scale of teachers, including the

Headmasters, with effect from 1.1.1986 by which the petitioners were given the Central Pay Scale by Resolution No. 6022/F dated 18th

December, 1989. Detail order and guidelines were issued, regarding prescribed qualification, training requirement and eligibility for recruitment and

promotion and crossing efficiency bar.

19. In the said resolution dated 18th December, 1989, it was mentioned that the State Government have decided to extend the revised pay scale

in Schedule-II to the teachers in the school and the provision of Central Government, regarding eligibility for appointment and promotion and other

service conditions shall be applicable to them as far as possible. The recommendation was made by the Fitment Committee. The Principal of +2

school will be in the revised pay scale of Rs. 10,000-15,200/- and Headmaster/Principal in the School where education is imparted upto Class-X

will be in the pay scale of Rs. 7,500-12,000/- provided those Principals/Headmasters fulfill all the requirement for appointment as laid down by the

Central Government/Kendriya Vidyalay Sangathan.

20. As per the recruitment rules of the post of Vice Principal of Kendriya Vidyalay Sangathan the qualification eligibility prescribed for the post of

Principal is at least; (a) second class master degree in one of the subjects taught in the Kendriya Vidyalay; (b) University Degree/Diploma in

Education/Teaching; and (c) ten years" experience as PGT in a recognized High/Higher Secondary Schools with at least three years should be in

Kendriya Vidyalay.

21. Keeping in view of the said provisions applicable to Kendriya Vidyalays, State of Jharkhand have framed the said Rules 2004 and published

the same by Notification No. 3169 dated 5th November, 2004 (Annexure-12).

22. According to Rules 2004, 50% vacancies of the posts of Headmaster will be filled up through promotion and rest 50% will be filled up by

direct recruitment on the basis of recommendation of the Jharkhand Public Service Commission. A merit list, thereafter, would be prepared on the

basis of the written competitive examination.

23. It has been contended by the respondents that the writ petitioners, who have no requisite qualification, according to the new Rule, are not fit to

be considered for the post of Headmaster and are not entitled to the relief prayed for.

24. Learned Counsel for the petitioners, in the aforesaid backdrop, submitted that the petitioners were eligible with proper qualification for

consideration for promotion to the posts of Headmaster under the provision of the Rules 1983, which was applicable before 2004. Since

consideration for promotion to the posts of Headmaster having started in the year 2000 by publishing provisional seniority list after bifurcation of

the State and on that basis directions were issued to the District Education Officers to send the names of suitable candidates with all the particulars

and documents, the petitioners cannot be deprived of their right of consideration by bringing a new rule in the midst of process in 2004.

25. Learned Counsel referred to and relied on a decision of the Hon"ble Supreme Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and

Others, , Learned Counsel submitted that the delay in preparing the panel resulted in deprivation of consideration of the petitioners" promotion to

the posts of Headmaster. Any amendment in the rules for promotion cannot be made applicable in the process, which was earlier initiated and

about to be finalised. The petitioners were eligible under the earlier Rule. Vacancies occurring prior to the amendment have to be dealt with in

accordance with the then existing rules. It has been submitted that once the process started under the then existing rule, the same cannot be

stopped and new rule cannot be imposed in the pending cases of consideration, particularly when the said Rules 2004 has not been made

applicable with retrospective effect. The petitioners were eligible for the posts under Rules 1983 and the process of promotion having been started

much before coming into force the new Rules 2004, the respondents cannot deny the right of consideration of the petitioners on the ground of the

new Rules 2004. The action and attitude of the respondents are, thus, wholly arbitrary and illegal.

26. Learned Counsel for the respondents, on the other hand, submitted that the erstwhile State of Bihar had adopted central pay scale in the year

1989. There was a commitment on behalf of the teachers that the service conditions applicable to the Central School can be adopted for the

schools under the control of the State Government. The State of Bihar, however, did not frame any rule, but after bifurcation of the State of Bihar,

the State of Jharkhand has framed the said Rules 2004. The Government of Jharkhand have recently adopted the course of Central Board of

Secondary Education (CBSE) for the schools. It was necessary to frame rules for promotion in line with the rules of Central Government. The

petitioners may be the senior most teachers and in-charge headmasters, but they do not fulfil the prescribed criteria for being promoted to the post

of Headmaster under the provisions of the new Rule. Learned Counsel submitted that a candidate not possessing prescribed qualification under the

present rule, although he possesses qualification under the old rule, is not entitled for consideration for promotion even if the same is for the unfilled

vacancies arising prior to the amended rule.

27. Learned Counsel relied on a decision of the Hon"ble Supreme Court in Union of India and Ors. v. Yogendra Singh 1994 (2) SCC 226. It has

been submitted that since the petitioners are not qualified under the provisions of the Rules 2004, they are not entitled for consideration for the

posts of Headmaster.

28. Having heard learned Counsel for the parties, I find that the petitioners have required eligibility and qualification according to Rule 1983.

According to the provision of the said Rule, the process for their promotion had begun in the then State Government. Before the process could

complete, the Bihar Reorganisation Act, 2000 came into being. After bifurcation, gradation list of the teachers, who were posted within the

territorial jurisdiction of the State of Jharkhand, was prepared afresh. After preparation of tentative gradation list, it was circulated, inviting

objections, on 3rd September, 2002. After consideration of objection etc., the gradation list was finalised. A letter dated 20th July, 2005

(Annexure-8), thereafter, was circulated for sending documents of the teachers, who were eligible for promotion to the posts of Headmaster. The

required details and documents were also sent by the respective District Education Officers for consideration for the promotion to the said posts.

But before the process could be finalised, another provisional gradation list was surprisingly issued on 17th July, 2006. The said provisional list is

said to be prepared under the provisions of the Rules 2004, excluding the names of the petitioners on the ground that the said Rules prescribe a

different qualification under which the petitioners are ineligible for consideration for promotion to the posts of Headmaster.

29. From the facts admitted, it is clear that the petitioners are not at fault for the delay in process of consideration for the promotion to the posts of

Headmaster. The petitioners, according to the then existing Rules 1983, are the senior most teachers of their respective schools. They hold the

required qualification and eligibility under Rules 1983 for being considered for promotion to the posts of Headmaster. The process started much

earlier was near completion.

30. Admittedly, the vacancies had also occurred prior to framing of the new rule against which the process of appointment/promotion was initiated.

The respondents were responsible for the delayed process. They cannot deny or deprive the petitioners' consideration on the plea of coming into

force of Rules 2004 in the meanwhile for no fault of the petitioners. The said Rules 2004 came into effect on 5th November, 2004. The said Rule

has not been made applicable with retrospective effect. In that view, the petitioners must be held to be eligible for consideration for promotion to

the posts of Headmaster for which the process was initiated, much prior to coming into force of the Rules 2004. The respondents cannot deny

consideration of the petitioners on the ground of not fulfilling the required criteria of the new Rules 2004.

31. The decision of the Hon^{ble} Supreme Court in Union of India and Ors. v. Yogendra Singh (Supra) has been rendered on different facts. In

that case, when the applications were invited for the post in question, the candidate had no eligibility and qualification. The candidate had no

prescribed qualification on the date when the process of appointment was initiated. In the instant case, the petitioners had requisite qualification and

eligibility when the process of consideration for promotion was initiated. The Rules 2004 came into force much thereafter when the process of

consideration was at the advance stage. Thus, the said decision has no application to the facts of the instant case.

32. In view of the above discussions, I find and hold that the consideration of the petitioners for promotion to the posts of Headmaster, who were

qualified and eligible in accordance with the rule applicable at the time of initiation of the process of consideration, cannot be denied on the ground

of coming into force the new Rule of 2004, which has not been made applicable with retrospective effect. For that purpose, Rules 2004 cannot be

applied in the cases of the petitioners with retrospective effect.

33. This writ petition is disposed of in the aforesaid terms. There is no order as to costs.