

(2003) 07 JH CK 0048

Jharkhand High Court

Case No: Writ Petition (S) No. 5460 of 2002

Balram Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 24, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 4 JCR 87

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: M.S. Anwar, M. Sadique and Afaque Ahamd, for the Appellant; M.J. Rahman, JC to GP II, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the order dated 16.5.2002 passed by respondent No. 2, Secretary, Secondary Education, Human Resources Department, Government of Jharkhand, Ranchi whereby the request of the petitioner for making payment of his salary from May, 1998 onwards has been rejected and further a direction has been issued to the Director, Secondary Education to initiate a proposal for termination of the services of the petitioner.

2. Petitioner's case is that he is B.Sc. in Silk Technology. In response to the advertisement the petitioner applied and was appointed as Laboratory Assistant, and posted at S.S. High School, Kuru, Ranchi. The petitioner submitted his joining on 21.7.1993. The Director, Secondary Education, vide letter dated 9.12.1993 confirmed the appointment of the petitioner as Lab Assistant, Sericulture. It is contended by the petitioner that he has regularly been paid salary but all of a sudden his salary was stopped from April, 1998. It is stated that the petitioner moved this Court by filing CWJC No. 383/2001 for a direction to the respondents for payment of salary.

The writ application was disposed of on 25.1.2001 directing the District Education Officer to consider the case of the petitioner and pass order for payment of salary. In compliance of the said order the request of the petitioner for payment of salary has been rejected by the impugned order.

3. The case of the respondents is that the petitioner was appointed for S.S. High School, Kuru but instead of joining there he submitted his joining in Gandhi Memorial High School, Kuru which, according to the respondents, is another school which is not + 2 and vocational school and there was no post of Lab Assistant there in Sericulture. The contention of the respondents is that the petitioner's appointment was against a non-existing school and with the connivance of the local authorities the petitioner submitted his joining in a school where post of Lab Assistant was not in existence and, as such, the salary paid to the petitioner was wrong.

4. This matter was heard on 3.1.2003 and this Court passed the following order :

"Counsel for the petitioner is allowed eight week's time to file supplementary affidavit enclosing photostat copy of advertisement, the letter of interview and order of appointment to find out whether he was appointed after following the procedures or not. Place the case for admission in the month of April, 2003."

5. Pursuant to the aforesaid order the petitioner filed supplementary affidavit annexing copies of advertisement, interview letter and also the letter of appointment. It appears that the advertisement was issued by the Vidyalaya Seva Board, Bihar, Patna, which was published in the newspaper dated 19.12.1991 in which the post of Lab Assistant in Sericulture was advertised. From perusal of the interview letter, it appears that the petitioner was called upon to appear before the Interview Board on 22.2.1993. The appointment letter dated 15.7.1993 which is Annexure 18 to the supplementary affidavit shows that the petitioner was appointed in S.S. High School, Kuru, Ranchi. After joining of the petitioner the Headmaster of the aforesaid school intimated about the joining of the petitioner on the post of Lab Assistant, Sericulture to the District Education Officer, Ranchi-cum-Lohardaga. It further appears that in 1993 an inquiry was made by the District Education Officer, Ranchi who, through his letter dated 8.9.1993 addressed to the Director, Secondary Education, Government of Bihar, Patna, sent a list of the Instructors/Lab Assistants for approval on their joining at the place in pursuance of the letter of appointment. In the said list the name of the petitioner has been mentioned at serial No. 2 and against his name Gandhi Memorial High School, Maradih, Lohardaga has been mentioned. A copy of that letter has been annexed as Annexure 4 to the writ application. The Director, Secondary Education, Bihar, Patna, vide letter dated 9.12.1993 confirmed the appointment of the petitioner as Lab Assistant.

5. It has been categorically stated by the petitioner in paragraph 11 of the writ application that S.S. High School, Kuru and Gandhi Memorial High School, Kuru is

the same school as there is one Government High School at Kuru which is also evident from the letter of the Director, Secondary Education dated 9.12.1993. This statement has not been controverted by the respondents in their counter affidavit. It is also not in dispute that after joining of the petitioner in the said school he has been regularly paid his salary but it was stopped from May, 1988 on the basis of the letter written by the Headmaster to the effect that the appointment of the petitioner was for different school.

6. Taking into consideration all these facts I am of the opinion that the impugned order rejecting the claim of the petitioner for payment of salary has been passed on misconception and on wrong appreciation of facts of this case. It is not the case of the respondents that the appointment of the petitioner was illegal or without following the recruitment rules. It is the admitted case of the respondents that the appointment of the petitioner was subsequently confirmed and he was paid his salary till 1998. Even assuming that the post of Lab Assistant was not available in the School, it was the fault of the respondents. There is no misrepresentation or fraud from the side of the petitioner inasmuch as the petitioner joined in the same school which was mentioned in the letter of appointment. The rejection of the claim of the petitioner, therefore, is illegal and unjustified.

7. For the aforesaid reasons, this writ application is allowed and the impugned order is quashed. The respondents are directed to release the entire arrears of salary to the petitioner and also pay the current salary as expeditiously as possible.