Birendra Kumar Mishra Vs The State of Jharkhand and Others

Letters Patent Appeal No. 532 of 2005

Court: Jharkhand High Court

Date of Decision: Jan. 15, 2009

Acts Referred:
Jharkhand Primary Schools Appointment Rules, 2002 â€" Rule 2

Citation: (2009) 57 BLJR 1129 : (2009) 6 SLR 167

Hon'ble Judges: R.K. Merathia, J; D.G.R. Patnaik, J

Bench: Division Bench

Advocate: H.K. Mahto, M.A. Khan, for the Appellant; Manoj Tandon, S. Piprawal, for the Respondent No. 6, for the Respondent

Judgement

1. This intra court Appeal has been filed against the order dated 29.6.2005, passed in W.P.S. No. 2520 of 2005 dismissing the Writ petition of

the appellant.

2. On 22.3.2006, the following questions were framed in this appeal:

In this appeal, the following questions require to be determined:

(a) Whether there is any reservation of seat in the Schools/Colleges for disabled children:

(b) Whether general trained teachers or physical trained teachers can teach the disabled children or for that trained persons for mentally retarded

child should be appointed....

3. With regard to the said questions, Mr. Tandon referred to the following paragraphs of the affidavit filed on behalf of State-respondents:

12 That with reference to the first question as to whether there is any reservation of seals in the school/colleges for disabled children, the answering

respondents state that the Government of Jharkhand by Resolutions contained in Memo No. 5800 dated 10.10.2002 and Memo No. 5776 dated

10.10.2002 has come out with a policy of reservation of seals which are being brought on record.

Copies of the said Resolutions contained in Memo No. 5800 dated 10.10.2002 and Memo No. 5776 dated 10.10.2002 are annexed herewith

and marked as Annexure-B and B/1.

13. That with reference to the question No. 2 formulated by this Hon''ble Court as to whether general Trained or Physical trained teachers can

teach the disabled children or for that trained persons for mentally retarded children should be appointed, it is to respectfully submit that for

mentally retarded children specially Trained Teachers should be appointed. However, at the same time is clarified that a physically challenged child

can be taught by general trained teachers because although being physically handicapped the mental status of such child remains normal.

However, Mr. Tandon clarified that the said Resolution No. 5800 dated 10.10.2002 and Memo No. 5776 dated 10.10.2002 do not provide for

reservation of seats in the schools/colleges for disabled children.

In view of the aforesaid averments made by State-Respondents, we do not propose to go further into the said questions, in this appeal.

4. Mr. H.K. Mahto, appearing for the appellant, submitted that the appellant got a certificate of diploma in mental retardation issued by the

National Institute of Mentally Handicapped, Secunderabad (NIMH for short) after undergoing training at ""Deepshikha"" recognized by NIMH. He

submitted that in view of Rule 2(Kha) of Jharkhand Primary School Appointment Rules, 2002 (the Rules for short), a ""trained"" candidate includes

a candidate having diploma in education/diploma in teaching, which does not exclude any candidate having special training in education or teaching.

He also submitted that the case of Snehlata Kumari WPS No. 5276 of 2004 is not applicable to the case of the appellant in as much as the

appellant acquired diploma in 1992, whereas in the case of Snehlata Kumari , the diploma was acquired between 1999 to 2002 i.e. after

enforcement of National Council for Teachers Education Act, 1993 (NCTE Act for short), which came into effect from 1.7.1995. He further

referred to the following paragraphs of the affidavits filed on behalf of respondent No. 7.

4. I say and submit that prior to implementation of RCI Act 1992; National Institutes were handling the training programmes in the field of disability

and were responsible for the training and examination of the professionals. The appellant has undergone the training programme of National

Institute, Secunderabad which is an approved qualification in 1992. Even in the year 1990-1991, 1991-1992, National Institute for Mentally

Handicapped, Secunderabad was running diploma in Special Education Programme standardized by the Council, when the status of the Council

was a Society. As soon as the Institute applied for the recognition, the name has been included in the list of the recognized institute in the year

1993-94 (Annual report of the Council 1990-91, 1991-92, 1993-94 is annexed herewith)

7. I say and submit that Teachers Training Diploma in Mental Retardation at Deepshikha, Ranchi is a recognized training programme of the Council

and the qualified professionals would be considered for the appointment of primary teacher. In the said course, a candidates gets training in all

aspects to handle the disabled and how to teach them. However, these special educators are more competent in comparison to teachers in general

category as the Council has developed the programme in such a way that these special educators should be trained in all aspects so that they could

handle the disabled children as well as general children.

8. I say and submit that the Council is a statutory body to regulate the training programme in the field of disability and it came into existence in

1992 when there was no existence of NCTE. Hence there is no need for approval of NCTE for the teachers training course for special educator

which is under the purview of the Council only.

9. I further say and submit that the competency of such educators to go for normal streams should be considered more fruitful because in any case

if there is any disabled child in the class then it won''t be difficult to handle that child. Under the policy of Govt. ""Sarva Shiksha Abhiyan"", it is

required that the special educator should be appointed in every primary school to achieve the target of the Govt. ""Education for all"".

10. It is pertinent to mention here that some of the States have already declared the special educators at par with the teachers in general category.

In this matter, petitioner is a well qualified candidate as he succeeded in primary teachers recruitment test and his name was recommended for

appointment as primary teacher. Hence, there is no doubt about his competency and the concerned authority must give him an opportunity to

prove his caliber.

Therefore, he submitted that a direction should be issued to the State-respondents to consider the appellant''s case for his appointment as a

Primary School Teacher as the appellant is qualified to teach the general students also. He also referred to paragraph 5 of the affidavit filed on

25.7.2008 on behalf of the appellant saying that in Hazaribagh District, the District Superintendent of Education is arranging Camp Training

Programme for teaching the mentally retarded children by regular teachers.

5. Mr. Tandon, appearing for the State, on the other hand submitted that the impugned order is based on the case of Snehlata Kumari (supra),

which was in turn based on a Division Bench Judgment rendered in the case of Dilip Kumar Gupta and Others Vs. State of Jharkhand and Others,

. He further submitted that as the appellant does not possess required training for the purpose of appointment, pursuant to the advertisement made

for appointment of primary teachers in general schools, his claim was rightly rejected.

6. Mr. Khan, appearing for the Union of India, supported the stand of the appellant referring to the aforesaid paragraphs of the counter affidavit

filed on behalf of respondent No. 7.

7. Pursuant to the advertisement for appointment of primary teachers, petitioner applied and he was selected by Jharkhand Public Service

Commission (JPSC); and recommended for appointment in Hazaribagh District in general category, but on the ground that he was not given

appointment, though he was entitled, he filed a writ petition being WPS No. 5032 of 2004, which was disposed of on 27.9.2004 with liberty to

the petitioner to file a representation before the Secretary Human Resources Department, Government of Jharkhand, Ranchi which was to be

considered and a final decision was to be taken within a given time. Accordingly, petitioner filed a representation but the same was rejected by

order dated 27.1.2005 (Annexure-2) on the ground that he does not possess training qualification as per Rule 2(Kha) of the Rules.

Challenging the said order, petitioner filed the writ petition in question. It was dismissed on 29.6.2005, mainly on the ground that the appellant''s

case was squarely covered by the judgment delivered in the case of Snehlata Kumari (supra). This order is under challenged in this appeal.

8. The following portion of the Division Bench Judgment of Dilip Kumar Mahto (supra) is relevant:

Therefore, on a proper construction of expression ""Recognized Training Institute"" (Manyata Prapt Prakshikshan Sansthan), as occurring in Rule

2(kha) of Rules, 2002, I hold that the expression ""Recognised Training Institute"" means a Training Institute, recognized or established either by

State Government or Union of India or Statutory Bodies, such as N.C.T.E., U.G.C. etc./Organizations, maintained and controlled by either State

Government or Central Government or a Training Institute, recognized or affiliated by a University, or a Board for imparting Teachers Training

Course....

A person, who has completed and obtained a Degree/Diploma/Certificate in Teachers Training Course prior to 31st January, 1996 i.e. six months

after promulgation of the N.C.T.E. Act, 1993 from an institute, recognized or established by the State Government or Union Government or by

Statutory Bodies/Organisations, maintained and controlled by either State Government or Central Government or recognized University or

affiliated by a recognized University for imparting Teachers Training Education, is eligible for appointment to the post of Primary Teacher, if

otherwise found fit and....

9. Thus, from the aforesaid averments made in the affidavits filed by respondent No. 7, it appears that the National Institute for the Mentally

Handicapped, Secunderabad is a training institute recognized by the R.C.I.-, a statutory body. It further appears that the candidates obtaining

training from N.I.M.H., can teach the general students also as the Council has developed the programme in such a way that these special

educators are trained in all aspects so that they could handle the disabled children as well as general children.

10. In view of such stand of respondent No. 7 and in view of the general definition of trained candidates given in Rule 2(kha) of the Rules, which

does not debar the trained candidate like the appellant, the State Government is directed to take a decision whether the appellant can be treated as

the trained candidate under Rule 2(kha) of the Rules.

It is expected that such decision is taken within two months from the date of receipt/production of a copy of this order.

With these observations and directions, this appeal is disposed of.