

(2012) 04 JH CK 0077

Jharkhand High Court

Case No: Writ Petition (S) No. 2780 of 2006 with W.P. (S) No. 4954 of 2006

Bidhu Nath Acharya

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: April 5, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 4 JCR 127

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: J.S. Barnwal, S.S. Choudhary and D.D. Saha, for the Appellant; Rajesh Kumar, G.P.-V, J.C. To G.P-IV, for the Respondent

Final Decision: Allowed

Judgement

P.P. Bhatt, J

1. Heard the learned counsel for the petitioner as well as learned counsel for the respondents. The petitioners by way of filing the above mentioned two petitions under Article 226 of the Constitution of India have prayed for quashing/setting aside the office order as contained in Memo No. 07/Sahebganj dated 4.1.2006 passed by the District Superintendent of Education, Sahebganj; whereby, the pay scale of the petitioners have been reduced from 4500-7000/5000-8000 to 3050-4590, i.e. in the initial pay scale drawn by a teacher in primary school.

2. The shorts facts of the case are as under:-

A. That the petitioners were appointed prior to 1988 on the post of teachers in Primary/Middle School. All the petitioners completed their teachers' training from David Hare College of correspondence, Kolkatta between January 198.3 to April 1991. The certificate of Teachers' Training granted by David Hare College of

Correspondence, Kolkata goes under consideration before the Hon"ble Patna High Court in case of Md. Halim and Others Vs. State of Bihar and Ors. in CWJC 8829/89 and by order dated 18.12.1997 the Hon"ble Patna High Court taking into consideration the Division Bench decision as reported in 1985 PLJR 709 held that the persons who got their teachers" training from David Hare College of correspondence, Kolkata will be entitled for being appointed on the post of Assistant trained Teachers.

B. Accordingly, the petitioners made representation before the District Superintendent of Education, Sahibganj to the effect that since they are trained teachers and they should be granted higher pay scale of trained teachers. In pursuance thereto, the District Superintendent of Education, Sahibganj by letter dated 27.7.1998 requested the Director, Primary Education, Bihar Patna to give necessary guideline in respect of grant of higher pay scale to the petitioners and other similarly situated persons. The petitioners and others again made representation dated 7.1.1991 requesting the District Superintendent of Education, Sahibganj to grant trained teachers" pay scale in view of ratio laid down in CWJC No. 8829/1989. Thereafter, said order dated 18.12.97 passed in CWJC No. 8829/1989 complied with by office order as contained in Memo No. 89 dated 18.1.1999. Thereafter, the District Superintendent of Education, Sahibganj by letter No. 115 dated 27.1.1999 requested the Principal David Hare College of Correspondence, Kolkata to verify the certificate with respect to teacher training received by the petitioners. In pursuance thereof, the Principal of the said college after verification reported to the District Superintendent of Education, Sahibganj to the date of publication of result submitted on 17.2.99. Thereafter, the District Superintendent of Education Sahibganj by office order as contained in Memo No. 208 dated 12.5.99 taking into consideration the said judgment passed in case of Md. Halim (Supra) rendered on 18.12.1997 as also the verification of certificate dated 17.2.99 given by he Principal of David Hare College granted the higher pay scale to all the petitioners. Thereafter, the pay scale of the petitioners was reduced and they were getting the reduced pay scale of Rs. 3050-4590. Thereafter, the State of Jharkhand was created on 15.11.2000.

C. By letter no. 404 dated 16.2.2004 the Govt, of Jharkhand directed all the Dy. Commissioners /R.D.D.Es. and District Superintendents of Educations to examine the validity and genuineness with respect to the certificate granted by one or other training institutes located in different part of the country. The issue of genuineness of certificates granted by one or other training institute located in different parts of the country fell for consideration before this Court in LPA No. 235/04 (Dilip Kr. Gupta & Ors. Vs. State of Jharkhand an Ors.) and its analogous cases, which was decided on 30.3.2005. Thereafter, the District Superintendent of Education Sahibganj by its letter No. 780 dated 18.6.05 sought for certain clarification with respect to teachers who got their training from David Hare College of Correspondence. Kolkata. In pursuance to the said letter, the Director, Primary Education, Govt, of Jharkhand

directed the District Superintendent of Education, Sahibganj that he should take into consideration the judgment rendered in LPA No. 235 of 2004. Thereafter, the District Superintendent of Education, Sahibganj by the impugned office order as contained in Memo No. 07 dated 4.1.2006 giving reference to the order dated 30.3.2005 passed by this Court in LPA No. 235/04 and letter no. 404 dated 16.2.2004 issued by the Govt, of Jharkhand has reduced the pay scale of the petitioner from 4500-7000/5000- 8000 to Rs. 3050-4590. Thereafter, immediately, the petitioners submitted representation dated 15.4.2006 to the Director Primary Education, Jharkhand containing therein that the action of the respondent to reduce the pay scale of the petitioners was totally unjustified. Learned counsel for the petitioners further submitted that the order impugned passed by respondent authorities is wholly illegal, arbitrary, without jurisdiction and unconstitutional. It is further submitted that the National Council of Teachers Education (for short NCTE) came into effect on 17.8.1995 but the petitioners got their teachers training much prior to the date when the NCTE came into effect. Learned counsel for the petitioners submitted that the respondent District Superintendent of Education, Sahibganj has referred the decision of this Court dated 30.3.2005 passed in LPA No. 235/2004 and its analogous cases in this context, is not at all relevant with respect to the petitioners. It is submitted that there is nothing in the said judgment with respect to appointments made prior to 17.8.95 and the letter and the direction also have got no concern with respect to the service career of the petitioners who were appointed in 1988 or prior thereto. It is further stated that the petitioners got their training from David Hare College of Correspondence, Kolkata prior to 17.8.95 and therefore, there is no question of reducing the pay scale of the petitioners of any count thereof.

D. It is further stated that before issuance of impugned office order dated 4.1.2006 no opportunity of hearing was ever given to the petitioners and they were not asked with show cause notice which is basic requirement to be followed for the observance of the principle of natural justice as the impugned order amounts to punishment because the petitioners were getting the pay scale of Rs. 4500-7000/5000-8000 but their pay scales have been reduced to the initial pay scale i.e. Rs. 3050-4590. Learned counsel for the petitioners has referred to and relied upon the order passed in CWJC No. 8829/89 and also the judgment reported in 1985 PLJR 709, which has been referred to and relied upon in CWJC No. 8829/89. Learned counsel for the petitioners has also referred to and relied upon the judgment reported in 2002(2) JCR 293, 2007(1) JCR 323, 2007(1) JCR 578, 2009(1) JCR 332 and 2010(3) JCR 565 and submitted that the case of the present petitioners is identical than that of the petitioners of above referred cases; therefore, the order impugned dated 4.1.2006 passed by the respondent authorities may be quashed and set aside.

3. The respondent No. 5 has filed counter affidavit stating inter alia that the petitioners and others have obtained their teachers' training certificate from an unrecognized institution namely David Hare College of Correspondence, Kolkata.

The Government of Bihar published a notification in which a Bihar Taken Over Elementary School Teachers' Promotion Rules, 1993 came into effect retrospectively from January 1986 and the petitioners of these petitions obtained certificate in the year 1987-88 of teachers training which was not recognized institute from the UGC or the State Government. In Clause 13(i) of the aforesaid notification (gazette) of promotion Rule, 1993 it is clearly mentioned and directed that an untrained teachers shall not be eligible for promotion to any of the grade. It is further submitted that the writ petitioners have been appointed in the year 1988 and some of them have been reappointed in the year 1995 and 1997 and they obtained teachers training certificate in the year 1987-88 and the Promotion Rule 1993 notified in the year 1993 but it has been made effective retrospectively from 1986 and thereafter a National Council for Teachers Education Act, 1993 has come into force. It is submitted that David Hare College of correspondence, Kolkata and eight others institutions of Kolkata have not been recognized by the NCTE Act, 1995. However, the then District Superintendent of Education, Sahibganj by ignoring the Promotion Rules 1993 and the NCTE Act, 1993 illegally and irregularly granted trained scale to the writ petitioners vide Memo No. 208 dated 12.5.99. The Secretary, Human Resources Development Department, Jharkhand also provided the guideline regarding the matter of teachers training institution and issued memo dated 16.2.2004. It is further submitted that this Court in LPA No. 235/2004 by order dated 30.3.2005 made certain observations regarding non-recognized institute and certificate issued by such institute while passing the order. It is submitted that the Hon'ble court also observed while passing the order in LPA No. 235/2004 that there is nothing on record to suggest that any of the institute of teachers training is either recognized by any of the State Government such as State of West Bengal or State of Bihar or State of Jharkhand or Central Government or any of the Statutory Body /institute or affiliated with any University. It is further submitted that therefore, those who have obtained such certificate of Sr. teacher's training course can not claim their appointment in terms of Recruitment Rules, 2002, read with Teachers Training Qualification laid down in the advertisement published by the JPSC in August" 2002. It is further submitted that certificate obtained by the petitioners of teachers training from unrecognized institution can not be called authentic and on that basis, the petitioners were illegally obtained trained scale between January 1983 to April 1991 and when it came to the knowledge of the authority, the authority concerned rightly reduced the trained pay scale of the petitioners as they are not entitled to the said pay scale and issued Memo No. 7 dated 4.1.2006.

4. The learned counsel for the petitioners submitted that the petitioners were obtained their training certificate prior to 1995 i.e. NCTC Act came into force and that is why their cases is considered by the respondent authorities. Accordingly, the benefit of trained pay scale was given to them. It is further submitted that that the Division Bench of Hon'ble Patna High Court in CWJC No. 8829/89 has decided the matter vide order dated 18.12.97 and thereby the persons who got their training

from David Hare College of correspondence, Kolkata were given the benefit of trained teachers and the said institution was also recognized /treated at par with the government recognized institution and on that basis, fresh teachers were appointed, which is evident from Annexure- 5 and Annexure-6 to the writ petition. It is further stated that NCTE Act came into force in 1995 and as such the respondent authorities have rightly extended the benefit to the petitioners in view of the order passed by the Court therefore, it is submitted that there is no illegality or irregularity committed by respondent authorities in giving the trained pay scale to the petitioners. It is further stated that initial date of appointment of the petitioners have been brought on record as shown in Annexure-1 of the writ petition. In course of service career, some of the petitioners were terminated and they have challenged their termination by way of filing CWJC Nos. 1555/85, 99/85, 297/85, 575/85 and 585/85 and their termination orders were quashed and they were allowed to enjoy the benefit of service and hence, it cannot be treated as re-appointment of the petitioners. It is further stated that the judgment dated 30.5.2005 passed in different LPAs is a common judgment and as per the said judgment and order after the NCTE Act came into force the certificate of training issued by the institute recognized by the NCTE shall be considered as valid, whereas, the petitioners obtained their training prior to 1995 and therefore, the same is not applicable in the facts of the present case. It is also submitted that the petitioners have not played any fraud or any misrepresentation when the decision for grant of trained pay scale was taken by the respondent authorities and therefore, they are legally entitled to the reliefs as sought for in writ petitions. It is further submitted that a similar nature of case was decided by this Court vide WPS No. 5412/05 by order dated 18.5.06 and the order of cancellation was quashed and respondent authorities were directed to reinstate the petitioners by giving all consequential benefits. It is further submitted that the State Government challenged the order dated 18.5.2006 by filing LPA No. 400/06 which was finally dismissed on 24.11.2006 observing that there is no merit in this appeal. Thereafter, the said order was also challenged in the Hon"ble Apex Court, but the same was also dismissed vide order dated 14.5.07 by the Hon"ble Apex Court.

5. Learned counsel for the petitioners further submitted that the petitioners have obtained their training certificate from David Hare College of Correspondence, Kolkata much prior to the NCTE Act came into force and it is submitted that the NCTE Act can not be applied retrospectively. Learned counsel for the petitioner has also referred to and relied upon the judgment delivered in the case of Mahendra Prasad Mehta Vs. District Superintendent of Education, Katihar reported in 1985 PLJR 709 and also the order passed in CWJC No. 8829/89 wherein, the judgment reported in 1985 PLJR 709 was referred to and relied upon. Learned counsel for the petitioner also referred to and relied upon the orders passed in WPS No. 5412/2005 as well as LPA No. 400/2006 and the order passed in SLP. Learned counsel for the petitioners has also referred to and relied upon the judgment reported in 2002(2)

JCR 293, 2007(1) JCR 323, 2007(1) JCR 578. 2009(1) JCR 332 and 2010(3) JCR 565 and submitted that the case of the present petitioners is identical than that of the petitioners of above referred cases; therefore, the order impugned dated 4.1.2006 passed by the respondent authorities may be quashed and set aside.

6. As against this learned counsel appearing for the State by referring counter affidavit filed by respondent State submitted that David Hare College of Correspondence, Kolkata is not a recognized institution by the State of Jharkhand or any other State or UGC or any other University. In support of his submission, learned counsel for the State referred to and relied upon letter dated 16.2.2004, which was issued by the State of Jharkhand, Human Resources Development Department, Govt, of Jharkhand, Ranchi. It is also submitted that the Government of Bihar established and published a notification in which Bihar Taken Over Elementary School Teachers' Promotion Rules, 1993 came into effect from January 1986 and the petitioners of these petitions obtained certificate in the year 1987-88 of teachers training which was not recognized institute from the UGC or the State Government. In the aforesaid notification (gazette) of promotion Rule, 1993 Clause 13(i) clearly provides that an untrained teachers shall not be eligible for promotion to any of the higher grade. It is further submitted that the NCTE Act, which came into force in the year 1995 also it does not recognize the David Hare College of Correspondence, Kolkata and therefore, the petitioners are not entitled to the relief(s) as prayed for by the petitioners.

7. Considering the rival submissions advanced by the learned counsel for the parties and from perusal of material facts on record, it appears that the short question which arises in the matter for determination is as to whether principle of natural justice has been followed before issuance of the impugned decision dated 4.1.2006 with respect to reduction of pay scale of the petitioners. From perusal of order impugned vide Annexure-13 it appears that it is nowhere mentioned in the said order that before taking such decision any show cause notice was ever issued upon the petitioners calling upon their explanation as to why their pay scale which was granted earlier should not be reduced to the lower scale. From perusal of Annexure-1 to the petition, it appears that the petitioners obtained their training certificate from David Hare College of Correspondence, Kolkata between 1983 to April 1991 and consequently, they were granted the trained scale w.e.f. 12.5.1999. Meaning thereby, the petitioners were enjoying the trained pay scale since last many years i.e. more than six years and therefore, the respondent authorities are expected to issue show cause notice calling upon the explanation from the petitioners as to why they should not be placed under untrained pay scale, but it appears that no such exercise has been undertaken by the respondents authority before passing the order impugned dated 04.1.2006. The respondent authorities were required to follow the principle of natural justice before taking such a decision which is adverse to the petitioners. As stated above, it is evident from the order impugned (annexure-13 to the petition) that no such notice calling upon explanation

from the petitioners was given to the petitioners and thus it appears that the petitioners have not been provided reasonable opportunity of rendering their explanation before the said adverse decision was taken by the respondent authorities and therefore, this Court of the view that only on this ground, the impugned order (annexure-13 to the petition) requires to be quashed and set aside and the respondent authorities are required to be directed to issue show cause notice to the petitioner calling upon their explanation as to why their pay scale should not be reduced from trained pay scale to untrained pay scale.

8. The another aspect which requires consideration by the respondent authorities is with regard to obtaining the training certificate from David Hare College of Correspondence, Kolkata, it appears that after the NCTE Act came into force in the 1995, only the institution recognized under the Act can be considered to be valid for grant of trained pay scale but in the instant case, as it appears from the record that the petitioners have obtained their training certificate from David Hare College of Correspondence, Kolkata in the year 1991 or prior to that. It also appears that the question with respect to the certificate of teachers' training granted by David Hare College of Correspondence came up for consideration before the Patna High Court in the case of Md. Halim and Ors. Vs. State of Bihar and Ors. in CWJC No. 8829/89 "Which was decided on 18.12.1997. The Patna High Court taking into consideration the Division Bench Decision as reported in 1985 PLJR 709 held that the persons who got their training certificate from David Hare College of Correspondence, Kolkata were entitled for being appointed on the post of Assistant trained teachers. It also appears that the District Superintendent of Education, Sahibganj by office order as contained in Memo No. 208 dated 12.5.1999 taking into consideration the said judgment in the case of Md. Halim (Supra) rendered on 18.12.97 as also the verification certificate dated 17.2.1999 given by the Principal of David Hare College of Correspondence, Kolkata, granted the higher pay scale of Rs. 1200-2040 to all the petitioners. The observation made by the Patna High Court in CWJC No. 8829/89 is relevant for the purpose of deciding the present case and therefore the same is reproduced herein below;

It appears that the appointments have been refused to the petitioners because they had not undergone training in the institution within the State of Bihar but had undergone training in David Hare College of Correspondence at Kolkata within the State of West Bengal. it appears that a question where a person who had undergone training outside the State of Bihar, was raised before a Division Bench of this Court in the case of Sri Mahendra Prasad Mehta Vs. District Superintendent of Education, Katihar 1985 PLJR 709. That was a case where candidates were trained from on educational institution within the State of West Bengal and in that case it was categorically laid down that the appointments could not be refused to such persons merely because they were not trained within the State of Bihar but had undergone training in the State of West Bengal. We find that the point involved in this writ application is concluded by the aforesaid Division Bench decision of this Court. In

the aforesaid case the respondents were directed to consider the cases of the writ petitioners for their appointment on the post of Assistant Teacher, We are of the view that the petitioners are entitled to the similar treatment. As the period of the seven years have expired it is directed that if any of the petitioners have crossed the age bar, the authority shall make relaxation in their age.

For the foregoing reasons this writ application is allowed and the respondents are directed to consider the petitioners' candidature and appoint them as Assistant Teachers if they fulfill other requirements and otherwise entitled for appointment. In the circumstances of the case, however, the parties shall bear their own costs.

The observation made by this Court in the case of Sarbani Bose Vs. State of Jharkhand passed in WPS No. 5412 /05 is also relevant for the purpose of deciding the present case and para 8 to 11 of the said case are reproduced herein below;

8. It is a settled law that a judgment cannot be given effect from retrospective date, till the Court so directs. Any action taken prior to the judgment cannot be annulled automatically, giving reference to such judgment, if the court has not decided such individual case, the petitioner having passed Teachers Training Course in the year, 1992 and having been appointed by the School on 20 [December, 1993, the judgment rendered by this Court on 30th March, 2005 in the case of Dilip Kumar Gupta & Ors (Supra) cannot be made applicable in the case of this petitioner.

9. It has been held by the Court tat the NCTE Act, 1993 came into force since 1st July, 1995 and after six months thereafter i.e. after 1st January, 1996 nobody, offering a course or training in teachers education, can run the institute without prior recognition by the National Council for Teachers Education. The petitioner having passed the examination in the year, 1992 itself, the question of recognition of Dr. B.C. Roy College of Education, Calcutta, by the National Council of Teachers Education at that relevant point of time does not arise. The Director, Primary Education. Jharkhand Ranchi has failed to appreciate the aforesaid facts and simply giving reference to the High Court's decision, rendered in the case of Dilip Kumar Gupta & Ors. (Supra), cancelled the provisional approval, as was given by the District Superintendent of Education, Singhbhum West, Chaibasa.

10. For the reasons aforesaid, the impugned order, contained in Memo No. 2292 dated 9th July, 2005 issued at the instance of the Director, Primary Education, Jharkhand Ranchi under the signature of the District Superintendent of Education, Singhbhum West Chaibasa, cannot be upheld and the same is, accordingly, set aside. The petitioner stands reinstated with all consequential benefits, including the arrears of wages, to be paid by the respondents, within two months from the date of receipt/production of a copy of this order.

11. The writ petition is, thus, allowed with the aforesaid observations and directions, but without any order as to costs.

it appears that being aggrieved by and dissatisfied with the said judgment and order passed in WPS 5412/05, the State preferred LPA No. 400/06 but the said LPA also came to be dismissed vide order dated 24.11.2006. Thereafter, the State again preferred SLP before the Hon''ble Supreme Court but the said SLP was also dismissed by the Hon''ble Supreme Court. Thus it appears that in similar set of facts and this issue has been crystallized and decided by the learned Single Judge of this Court and said view has been endorsed by the Division Bench of this Court and also confirmed by the Hon''ble Apex Court. Moreover, this court is of the view that the impugned decision dated 4.1.2006 is taken without issuance of any show cause notice and therefore, the same is deserved to, be quashed and set aside on the ground of non observance or violation of principle of natural justice. Accordingly, the order dated 4.1.2006 is hereby ordered to be quashed and set aside. The respondent authority shall re-consider the case of the petitioners in light of observation made by this Court while following the decision in the case of Sarbani Bose Vs. State of Jharkand and Ors. as decided in WPS No. 5412/2005, which has been confirmed by the Division Bench of this Court in LPA No. 400/06 as well as by the Hon''ble Apex Court in SLP, preferred by the State. Before taking any decision in the matter authority shall provide an opportunity of being heard in the matter. For" that purpose the respondent shall issue show cause notice calling upon the explanation from the petitioners and thereafter in response there to the petitioner may raise all the contentions raised before this court to justify their claim. Accordingly, with the aforesaid observation and direction, the impugned order dated 4.1.2006 is set aside. These writ petitions are allowed accordingly