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**(2014) 07 JH CK 0058**

**Jharkhand High Court**

**Case No:** L.P.A. No. 114 of 2013

State of Jharkhand

APPELLANT

Vs

Nirbhay Kumar Jha

RESPONDENT

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**Date of Decision:** July 9, 2014

**Citation:** (2015) 1 AJR 65 : (2014) 4 AJR 585

**Hon'ble Judges:** R. Banumathi, C.J; P.P. Bhatt, J

**Bench:** Division Bench

**Advocate:** Rajesh Kumar, G.P. V and Abhijeet Kr. Singh, J.C. to G.P. V, Advocate for the Appellant; V.P. Singh, Sr. Adv., A.K. Sinha, Amrita Kumari and Rashmi Kumari, Advocate for the Respondent

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### **Judgement**

P.P. Bhatt, J.

Being aggrieved and dissatisfied with the judgment and order dated 20.09.2012, passed by the learned single Judge in CWJC No. 764/2000(R), appellants (original respondents) have preferred the present appeal. The short facts of the case are as under: Petitioner-respondent was appointed as founder Headmaster of the School, which was opened in the year 1969 and was working as Headmaster since its inception. The said School is a private School and run by the Managing Committee. The State Government granted permission to establish the School in the year 1978 and thereafter recognition was given in the month of November, 1979. On 2.10.1980, the School was taken over by the Government. Petitioner-respondent has earlier filed a writ petition being CWJC No. 3653 of 1998(R), seeking direction to treat the petitioner-respondent as founder Headmaster of the Thakur Vishwanath Shahdeo High School, Jagannathpur, Dhurwa, Ranchi. The said writ petition was disposed of vide order dated 08.02.1999, directing the authorities to take decision on the representation of the petitioner-respondent, seeking regularization, as founder Headmaster of the School. Pursuant to the order dated 08-02-1999, petitioner-respondent had moved a representation, which was dismissed vide impugned order dated 11-2-2000 by the Director, Secondary Education, Bihar on the

ground that as per Government notification/resolution Nos. 511 dated 20-11-1981 and 1072 dated 9-11-1987 petitioner-respondent was not having seven years" teaching experience of a school reorganized by the State Government as on 02.10.1980, when the School was taken over by the Government. Feeling aggrieved, petitioner-respondent has approached this Court by way of filing CWJC No. 764 of 2000(R). The said writ petition was allowed by observing that the requirement of the Government Order Memo No. 511 dated 20.11.1981 read with Memo No. 1072 dated 09.11.1987 for the appointment of the founder Headmaster of the School is seven years" teaching experience continuously before 02.10.1980. According to the learned single Judge, there seems to be no such requirement that incumbent should be working as regular Headmaster of the Institution for more than seven years, on the date, the School was taken over by the Government, to consider the petitioner for the permanent appointment on the post of founder Headmaster of the School. Learned single Judge, while allowing the writ petition, the impugned order dated 11.2.2000 passed by Director, Secondary Education, State of Bihar was quashed and the respondents-appellants were directed to treat the petitioner as founder Headmaster of the School and to re-fix the pension of the petitioner within ninety days from the date of the order and to make payment of all the arrears, found due, to him within ninety days thereafter, failing which the petitioner shall also be paid interest at the rate of 10% per annum from the date of the order, till the actual payment is made to him. Being aggrieved and dissatisfied with the said judgment and order, present Letters Patent Appeal has been preferred by the State of Jharkhand.

2. Mr. Rajesh Kumar, learned G.P.-V, appearing on behalf of the appellants submitted that petitioner-respondent has earlier approached this Court by filing a writ petition being CWJC No. 3653 of 1998(R) and the matter was remitted back to the Director, Secondary Education, Bihar, who in compliance of the order of this Court has considered the claim of the petitioner and rejected the same vide Memo No. 150 (Vidhi) dated 11-2-2000. It is further submitted that the order (Annexure-3) of the Director, Secondary Education is self explanatory. It is also submitted that cut-off date for considering the service period of a founder Headmaster is 02.10.1980 and the concerned teacher should have completed seven years on 02.10.1980 as a teacher in a Government recognized School. Since the petitioner was not having required experience as per Government order/circulars & Rules, the claim of the petitioner is not maintainable. In this context, learned G.P.-V, appearing for the appellants has referred to and relied upon the circular of the State Government dated 16.10.1981, whereby it was provided that the service of those founder Headmasters who had already completed seven years of continuous service on the date of taking over of the Schools shall be recognized as regular Headmaster provided they possess necessary academic qualifications. In furtherance of the departmental circular dated 16.10.1981, another departmental circular was issued vide Memo No. 511 dated 20.11.1981 laying down the terms and conditions for

appointment to the post of Headmaster. It is further submitted that the aforesaid departmental circular dated 20.11.1981 was partially amended vide Memo No. 1072 dated 9-11-1987. In the light of the aforesaid circulars, the petitioner was not found having the minimum seven years" teaching experience on 2-10-1980. It is further submitted that learned single Judge has failed to consider that as per the provisions contained in 1981 Act in order to become eligible for the post of Headmaster of a High School, a person should possess requisite qualification of teacher with ten years" experience in a recognized High School and subsequently ten years" experience was modified vide Government circular No. 85, dated 16.10.1981 from ten years to seven years. It is further submitted that learned single Judge has failed to consider that it is an admitted fact that the petitioner was appointed as founder Headmaster on 25.12.1969 and the said institution was taken over w.e.f. 02.10.1980 and the said School was recognized on 4.12.1978 and the petitioner has not completed seven years" experience as founder Headmaster as per the Government circular. It is further submitted that after coming into existence of the State of Jharkhand, the Jharkhand Government Secondary School Service Condition Rules has been framed and the same has been published in official gazette on 5.11.2004. By this Rule all the rules/orders etc. notified earlier by the erstwhile Bihar has been repealed.

Mr. Rajesh Kumar, learned G.R-V, appearing on behalf of the appellants has referred to and relied upon the judgment, in the case of [Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others](#), and has submitted that in the said judgment it has been held that a Headmaster of the taken over School does not automatically become the Headmaster of the School after its take over in view of Section of the Act and that also without any scrutiny in respect of his qualification and suitability. It is also submitted that the said decision has been approved by the Hon"ble Apex Court in 1988 PLJR 70 (SC) . Learned GP.-V, appearing on behalf of the appellants has also referred to and relied upon paragraphs - 11 & 13 of the judgment, in the case of [Deobansh Pandey Vs. The State of Bihar and others](#), .

3. Mr. V.P. Singh, learned senior counsel, appearing on behalf of the respondent (original petitioner) submitted that certain facts, which are not in dispute - that the School was opened in the year 1969 and respondent is working there as a Headmaster since its inception, which was run by the Managing Committee. The State Government permitted to establish the School in the year 1978 and thereafter recognition was given in the month of November. 1979 and in the year 1980 the School was taken over by the Government. The writ petitioner was having requisite qualification of being a founder Headmaster, having qualification of M.A. & B.Ed. It is also submitted that after taking over of the School, petitioner was given recognition as Acting Headmaster.

It is submitted that the only dispute which exists is in relation to experience of the writ petitioner that he was not having seven years of service of a Government

recognized School on 2.10.1980.

It is further submitted that in the year 1980, the State Government decided to nationalize all private Schools and accordingly, it issued an ordinance which is known as Bihar Non-Government Secondary Education (Taking Over of the Management and Control Ordinance), 1980. The same ordinance subsequently resulted into Bihar Non-Government Secondary Schools (Taking Over of the Management and Control Act), 1981 (Act 33 of 1982).

It is further submitted that the State Government had issued an instruction that the services of those Headmasters will be recognized as Headmaster who have completed 10 years" service in a recognized School. Subsequently, the State Government modified the above direction in relation to those persons who are founder Headmaster or belong to aboriginal class or Scheduled Caste or female and reduced the period from 10 years to 7 years. The said direction of the State Government is contained in Letter No. 79 dated 16.10.1981, Letter Nos. 511 dated 20.11.1981 and 1072 dated 9.11.1987.

He further submitted that the cut-off date of considering the service period of a founder Headmaster is 2.10.1980 and it is not disputed that the concerned teacher should have completed seven years on 2.10.1980 as a founder Headmaster in a recognised School.

Learned senior counsel has submitted that as per Section 15 of the Non Government Secondary School (Taking Over of Management & Control) Act, 1981, the Government has decided to fill the vacant post of Headmaster prior to date of taking over (2-10-1980) in the Government Secondary School from teachers possessing required eligibility and qualification after considering all the schools as independent unit and vacancy arising after 2.10.1980 should be filled by promotion.

In view of the above, the learned senior counsel submitted that since the respondent was having only two years experience on 2.10.1980, he ought to have been given promotion upon completion of seven years on the post of Headmaster since he was working as a founder Headmaster since beginning. The learned senior counsel further submitted that when the benefit"s of Headmaster was not given to the respondent, he preferred writ petition (CWJC No. 3653/1998(R) before this Hon"ble Court, whereby this Hon"ble Court was pleased to direct the authorities of the State Government to consider the case of the respondent. When the case of the respondent was not considered by the authority, the respondent was compelled to file CWJC No. 764 of 2000(R) and this Hon"ble Court was pleased to allow the said writ petition. The learned senior counsel supported the judgment and order passed by the learned single Judge.

The learned senior counsel submitted that the authorities have misinterpreted the statute, rules and circulars in this regard. He has submitted that it is a settled principle that when there is conflict between statute and rules then statute will

always prevail; similarly, when there is conflict between rules and circulars, certainly rules will prevail.

The learned senior counsel for the respondents, in support of his contention, has relied upon the decision rendered in the case of [A.K. Pradhan Vs. State of Bihar and Others,](#) which reads as under:--

"1. The appellant was the Headmaster of an unrecognized high school which was taken over by the Government of Bihar under Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 (33 of 1982). The appellant represented to the State Government for regularization of his services which was not accepted and by order dated 6.12.1985, the Government rejected the prayer of the appellant on the ground that he had not completed seven years of service from the date of taking over of the institution. The appellant then approach the Patna High Court, which relying upon a Full Bench decision of its own, dismissed the petition. That is how the matter is before us.

2. It is pointed out by the learned counsel appearing on behalf of the State of Bihar that the Full Bench decision has since been upheld by this Court in Ram Ballabh Prasad Singh v. State of Bihar by the following order:

"We affirm the view taken by the High Court to the effect that Headmaster has no right to be automatically absorbed as a Government servant in case of an unrecognized school being taken over by the Government. The special leave petitions are dismissed with these observations.

We are told by the learned counsel that even if the petitioners are liable to be scanned by the appropriate committee there should be no delay in completing the screening insofar as the petitioners are concerned. We have no doubt that when these observations are pointed out to the appropriate authority the committee concerned will deal with the matter expeditiously and dispose of the same in accordance with law."

3. The controversy, therefore, that the services of the employees working in an unrecognized institution are not automatically taken over by the Government, is to be treated as settled by the order passed in the above petition.

4. The fact, however, remains that the appellant has since completed more than seven years of service and is now eligible and for being considered for regularization.

5. We, therefore, dispose of this appeal with the observation that the appellant, if not already regularised as Headmaster, shall be considered for regularization w.e.f. the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government."

The learned senior counsel therefore submitted that the respondent is entitled to be treated/regularised as Headmaster of the said School.

4. Now aforesaid submissions are required to be analyzed in view of certain undisputed facts, such as, the School, in question, was established after obtaining permission from the Bihar Secondary Education Board, Patna vide letter dated 04.12.1978 and subsequently, it was granted permanent recognition by the Board with the teachers including the petitioner vide Memo Nos. 22234-40 dated 27.11.1979 as In-charge Headmaster. Subsequently, the School was taken over by the State Government under the provision of the Bihar Non-Government Secondary School (Management and Control) Ordinance, 1980 w.e.f. 02.10.1980. On that day also, the petitioner was In-charge Headmaster.

5. The short significant question arises in the present appeal is,

"Whether even the Headmaster of the School taken over under Section 3(3) shall automatically "become Headmaster of the School" after its take over in view of Section 4(2) without any scrutiny in respect of his qualification and suitability?"

6. For the purpose of considering the question, which has been formulated hereinabove, the position of law and rules applicable in the instant case is required to be seen, under Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981.

"2. Definition. - In this Act unless there is anything repugnant in the subject or context:--

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(g) "Headmaster" means the head of the teaching staff of a nationalized secondary school by whatever name designated;

(h) "Teacher" means the teacher of a nationalized Secondary School;

(i) "Non-Teaching Staff" means the whole time staff of a nationalized secondary school, other than the teachers;

x x x"

"3. Taking over of the management and control-Taking over of the management and control of Non-Government secondary schools by the State Government:

(1)... (2)..

(3) The State Government may, by notification in the official gazette take over the management and control of such schools and on such terms and conditions as the Government may deem proper, which have already received permission of establishment from the Bihar Secondary Education Board or of such schools imparting Secondary Education which have applied for permission or establishment

to the said Board immediately before the date of promulgation of this Act and the utility of such school is proved in the eye of the Government and which fulfill within 3 years of the promulgation of the Act the conditions laid down by the State Government with regard to land, building, furniture equipment and enrolment.

The qualification and suitability of teachers working against 9 posts of the school, one clerk and two orderlies of such school before the promulgation of this Act, shall be examined by a committee constituted by the State Government for the purpose and if found suitable for appointment in Government service they shall be appointed in the Government service along with taking over the management and control of the school."

"4. Consequence of taking over management and control.-(1) All the moveable and immoveable assets and properties owned and possessed by Secondary Schools taken over by the State Government under section 3 including land, building, documents, books and registers relating to the school, shall stand transferred to the State Government and be deemed to have come into the possession and ownership of it.

(2) The services of every Headmaster teacher or other employees of the school taken over by the State Government shall be deemed to have been transferred to the State Government, with effect from the date of taking over of the school and become employees of the State with such designation as the State Government may determine.

(3) The age superannuation of Headmasters, teachers and other employees of the schools taken over by the State Government shall be 58 years. The other terms and conditions of their services shall continue to be the same as it was before taking over the management and control of the school until any alteration is made therein by the State Government in the prescribed manner.

X X X"

7. In conformity with the second paragraph of Section 3(3) of the Ordinance of 1980, the notification No. 129 dated 30-11-1981, in terms laid down as under:--

"(ix)...

(x) Headmaster:--(i) It will be compulsory for the Headmaster of the school to possess the minimum qualification fixed for an ordinary teacher of a secondary school and at the same time minimum teaching experience for ten years in a recognised secondary school within the territory of Indian Republic.

(ii) It will be compulsory to get the certificate of teaching experience in the recognised secondary school of this State countersigned by the District Education Officer and also the certification of teaching experience in the recognised secondary school of other State countersigned by the Director, Education Dept. of that State.

The appointment of Headmaster will be made by authorised officer of the State Government on recommendation by Education Service Board."

8. Admittedly, in the instant case, petitioner has not completed seven years on 2.10.1980 i.e., the cut-off date for considering the service period of a founder Headmaster. Petitioner was given charge of the post of Headmaster. In view of Rule 4 of the Rules, petitioner is not entitled to claim the post of regular Headmaster as after coming into force of the Rules promotion/appointment could have been made only in accordance with the provisions contained in Rules. Therefore, in our opinion, petitioner, who is claiming post of Headmaster on the basis of services rendered prior to recognition and taking over the School by the Government and in the alternative on the basis of service rendered subsequent to recognition and taking over the School by the Government, cannot be accepted. Likewise, the submission advanced by the learned senior counsel for the petitioner-respondent that petitioner-respondent is eligible for appointment on completion of seven years after taking over the School by the Government, cannot be accepted for the following reasons:--

(i) After coming into force of the Rules, the promotion/appointment could have been made only in accordance with the provisions contained in the Rules,

(ii) The Government letter/circulars/orders in question stood repealed in view of Rule 21 of the Rules and

(iii) Under the Rules a teacher could be deemed to be a founder Headmaster, who, apart from other requirements is also, possessed with the requisite educational qualifications and eligibilities right from the beginning of his joining the service in the School, which the petitioner was not possessing as he passed B.Ed. examination on 5-2-1976 much after joining the service on 25-12-1969.

9. The decision cited by Mr. Rajesh Kumar, learned G.P.-V, appearing on behalf of the appellants in the case of [Ram Ballabh Pd. Singh and etc. Vs. State of Bihar and Others,](#) is applicable to the facts of the present case. The relevant paragraphs-17, 41, 42 & 43 are reproduced here in below:--

"17. Once question No. 1 has been answered in the terms above, the same would go to the very root of the succeeding question No. 2 as well. Plainly enough, if the Headmaster is within the ambit of the "teachers" in the second paragraph of section 3(3) then both his qualifications and his suitability are to be scrutinised by the committee constituted by the State Government, and it is only if he is found suitable for such appointment that he may be appointed in the Government service. Indeed, the larger question that emerges is that if the Headmaster is also one of the teachers working against nine posts of the school, then are the qualifications and suitability of all these teachers to be meticulously scrutinised before appointment to Government service? Or is it that all these teachers (including the Headmaster) automatically and ipso facto become Government servants and their services stand



transferred to the State Government on the same terms and conditions as in the earlier unrecognized school? Second paragraph of section 3(3) meticulously provides for the closest examination of both the qualifications and the suitability of these teachers. This is to be done by a committee constituted by the State Government for this purpose. It is only if these teachers are found suitable that they are to be appointed in the Government service and not otherwise when the management of the school is taken over. Is such scrutiny and detailed procedure to be reduced to a mere farce by the theory of automatic appointment to these posts on the take over? If what the second paragraph of section 3(3) provides is a meaningful and purposeful scrutiny and assessment of first the basic qualifications and then the suitability of teachers in an unrecognized school for appointment to Government service then, obviously enough, there can be no question of the Headmaster of an unrecognized taken over school becoming automatically its Headmaster after it is taken over. To hold so would, in essence, be wiping away the second paragraph of section 3(3) and rendering the whole process of the scrutiny of the qualification and suitability of these incumbents and the creation of a committee by the State Government wholly nugatory. In the context of teachers in general and the Headmaster in particular on the plain language of the second paragraph, therefore, there is not the least semblance of any teacher or Headmaster becoming automatically a Government servant thereunder. In particular, the post of a Headmaster in a school is too crucial to be thrown empirically into a mindless automatic routine that once the take over of the school is ordered, the existing Headmaster must necessarily become the Headmaster of the nationalized school in an integrated education service.

41. To finally conclude, the answer to question No. 2 posed at the outset is rendered in the negative. It is held that the Headmaster, of a school taken over under section 3(3) does not automatically become the Headmaster of the school after its take over under section 4(2) of the Act.

42. Now it is common ground that at no stage whatsoever the case of the petitioners had been referred to the Education Service Board far from there being any recommendation by such Board in their favour of any appointment as such by the authorised officer of the State Government. To hold otherwise that the petitioners became the Headmasters of the newly nationalized schools would thus be running into the teeth of the categorical statutory instructions and violation of the letter and spirit of the standard methodology of appointing Headmasters to the Government or nationalized schools. It remained undisputed before us that earlier the Headmasters of all Government schools and equally of recognised private schools could only be appointed on a reference to and recommendation by the Service Board. On larger policy that is an eminently meritorious one and the same has now been codified by statutory instructions on the point. Equally reference must also be made to Section 10 of the Act which provides for the establishment and function of School Service Board. A reading of its 10th sub-section leaves no manner

of doubt that the larger purpose of this section is that appointments or promotion of Headmasters of nationalised schools are not to be made empirically but after consideration and recommendation of such statutory Board. The relevant part of sub-section (9) provides as follows:

"(9) The Board shall make recommendations for appointment of teachers and for appointment of promotion of Headmaster of nationalised secondary schools to the Director in accordance with this Ordinance and the rules framed thereunder:

Provided that for promotion of teachers to selection grade post the recommendation of the Board shall not be necessary:

Provided further that the absence of the recommendation of the Board, and in special circumstances and in anticipation of the recommendation of the Board, the State Government shall be competent to make ad hoc promotion to the post of Headmaster for a period not exceeding six months and to make ad hoc appointment in the prescribed manner to the post of teachers for a period not exceeding six months.

xx xx xx

To my mind, both letter and spirit of this provision indicate that there is no automatic transfer of the existing Headmasters of the private unrecognised schools as the Headmasters of the nationalised schools as well. Such a finding would be the antithesis of the process of selection and recommendation by an expert body like School Service Board.

43. It is in the light of the aforesaid statutory provisions that the firm stand of the respondent State has to be noticed. In paragraph 5 of the counter-affidavit in C.W.J.C. 1946 of 1984, it is clearly stated that the appointment of the petitioner as Headmaster was not approved by the Service Board and there was no appointment of the petitioner by the Board of Secondary Education, which alone was competent to make the appointment to the post of Headmaster in any non-Government Secondary School. It thus seems plain that the respondent State has legitimately arrived at a policy decision against any automatic and ipso facto transfer of the services of existing Headmasters of unrecognized schools after their take over. The policy to make such appointments only after reference to the School Service Board and on the basis of their recommendation the appointments made by the Government at the State level are wholly in accordance with justice and, indeed, mandate of Article 16. No quarrel can possibly be made with such a decision."

10. Likewise, another decision cited by the learned G.P.-V, appearing on behalf of the appellants, in the case of [Deobansh Pandey Vs. The State of Bihar and others,](#) is also relevant and applicable to the facts of the present case. The relevant paragraphs - 11 & 13 read as under:--

"11. Rule 4 of the Rules provides for eligibility for appointment/promotion to the post of headmaster and rule 7(Ka) provides the procedure for such appointment/promotion. Rule 4(Ka)(3)(3A) provides that in the matter of direct appointment to the post of headmaster, the candidates must have 10 years teaching experience in a recognised school after graduation but in the case of scheduled tribe, Harijan and founder headmaster, 7 years minimum teaching experience will be deemed to be sufficient. In the note appended to the said Rule, it has been provided that the founder headmaster will mean a teacher, who has been appointed in the school prior to 2.10.80 and who has been in service of the school since the date of its establishment continuously without any break and who was having the requisite educational qualification and eligibility for the post of incharge headmaster right from the beginning.

13. In my opinion, neither the petitioner nor the Respondent No. 4 who lay their claims on the basis of the said Government letter, for seeking promotion on the post of headmaster of the school, are entitled to claim such promotion nor it was competent on the part of the respondent authorities to accord any benefit to the respondent No. 4 pursuant to the said Government letters, because of following reasons; (i) After coming into force of the Rules, the promotion/appointment could have been made only in accordance with the provisions contained in the Rules, (ii) The Government letter in question stood repealed in view of Rule 21 of the Rules and (iii) Under the Rules a teacher could be deemed to be a founder headmaster, who, apart from other requirements is also, possessed with the requisite educational qualifications and eligibilities right from the beginning of his joining the service in the school, which neither the petitioner nor the respondent No. 4 had inasmuch as they passed their B.Ed. examination and Diploma in teaching much after their joining the service."

11. In view of above cited case laws, Headmaster of a School does not automatically become the Headmaster of the School after its take over under Section 4(2) of the Act. Headmaster, being a promotional post, can be made only after consideration of recommendation of such statutory Board and the petitioner, who was absorbed as Government Teacher after getting recognition of the School on 2.10.1980 cannot get automatic status of a Headmaster since he has not completed seven years continuous services in a Government recognized institution and even after completion of seven years in Government School, he cannot be made Headmaster as the post of Headmaster is a promotional post and selection and appointment on promotional post is governed by Rules.

12. For the reasons aforesaid, the judgment and order dated 20.09.2012, passed by the learned Single Judge in CWJC No. 764/2000(R) deserves to be quashed and set aside. Accordingly, the judgment and order dated 20.09.2012, passed by the learned Single Judge in CWJC No. 764/2000(R) is ordered to be quashed and set aside. This Letters Patent Appeal is allowed, accordingly.