

(2014) 09 JH CK 0050
Jharkhand High Court
Case No: A.C.(S.B.) No. 22 of 2007

Amar Bahadur Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 26, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 309

Citation: (2015) 1 LJLR 458

Hon'ble Judges: Dhruv Narayan Upadhyay, J

Bench: Single Bench

Advocate: Rajesh Kumar, Advocate for the Appellant; Nehala Sharmin, J.C. to Sr. S.C.-II and Hardeo Prasad Singh, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.

This appeal has been preferred against the judgment dated 21.08.2007 passed by the Jharkhand Education Tribunal, Ranchi in connection with Case No. 15/2007(JET) whereby the petition filed by the appellant challenging the appointment/promotion of respondent no. 5 to the post of Headmaster of the B.P.M. Middle School, Jamshedpur has been dismissed.

2. The facts of the case in brief is that the appellant was appointed as a teacher in B.P.M. Middle School, Burma Mines, Jamshedpur by the Managing Committee (respondent no. 2) in the year 1976. The appellant also received benefit of higher pay scale and other monetary benefits from time to time. In the month of February, 1989 the appellant obtained master decree in arts (political science).

3. It is submitted that the Human Resources Development Department of the Erstwhile State of Bihar vide notification dated 8th July, 1993, as published in Bihar Gazette dated 9th July, 1993 (Annexure-3) had given guidelines which is also to be followed by the Government Aided School. As per the notification pay scale of

Headmaster of Middle School will be grade VII in the pay scale of Rs. 2000-3500. Clause 5(4) deals with promotion to grade VII and according to that clause trained post graduate teacher shall be eligible for promotion to grade VII. The appellant was deserving required qualification, experience for his promotion to the post of Headmaster and he was also senior among the teachers discharging their duties in that very school.

4. It is contended that the management of the school in utter surprise and violation of the Rules and guidelines published advertisement in daily newspaper "Hindustan" on 4th July, 2006 inviting applications for the post of Headmaster and Assistant Teachers (Annexure-5). After noticing aforesaid advertisement, the appellant filed representation dated 13.09.2006 before the respondent no. 2 requesting therein to consider his case for promotion to the post of Headmaster and the copy of said representation was also sent to the District Superintendent of Education, Range Education Officer (Annexure-6). In this context prior to filing of the representation the appellant personally met with respondent no. 2 and placed his candidature and eligibility for his promotion to the post of Headmaster. It was pointed out that the District Superintendent of Education on 3.10.2006 wrote a letter to the Range Education Officer giving order to stop further proceeding against the advertisement dated 4th July, 2006 published in daily newspaper "Hindustan". According to the averments of the appellant, the Director, Human Resources Development Department, Primary Education had clearly given directions that trained post graduate candidate is eligible for the post of Headmaster in non-Government Aided Schools and the earlier directions were set aside by letter no. 8/Ashadharan-028/2007 dated 20.02.2007 (Annexure-9).

5. It is disclosed that the School Managing Committee in highly arbitrary manner, overlooking the directions and notification of the Government, illegally appointed respondent no. 5 as Headmaster of the School on 2.2.2007. In this connection correspondences were made from the office of the Director, Primary Education with the School Managing Committee and also with the respondent no. 5.

6. Being aggrieved by and dissatisfied with the decision of the School Managing Committee, the appellant filed application before the Jharkhand Education Tribunal and on the basis of application so filed, case No. 15/2007 (JET) was registered and the parties concerned were served with a notice and they appeared and put their stand before the Tribunal. At the adjudication the petition filed by the appellant was dismissed. Since the impugned judgment is highly erroneous and passed by the Tribunal without considering required Rules and directions issued by the Government, the same is liable to be set aside and the appellant may be directed to be given benefit of pay scale of grade VII from the date on which the vacancy accrued and the date on which appointment process was concluded. It was brought to the notice of the Court that the appellant has now retired and therefore, the respondents may be directed to give him monetary benefit of pay scale of grade VII

from the date on which the vacancy accrued till the date of superannuation of appellant.

7. On the other hand respondents filed their respective counter-affidavits in support of their claim and contention and raised objection.

8. The respondent no. 2-Secretary, Managing Committee of the School has more or less supported the stand taken by him. It is contended that post of the Headmaster and teachers was duly advertised in the newspaper and the application were invited. The publication of advertisement was well within the knowledge of appellant but he did not appear to face the appointment process and simply made representation. It was submitted that incorrect facts were brought by the appellant before the Tribunal and also before this Court and it was also wrongly submitted that only senior most teacher working in the school shall be promoted to the post of Headmaster. As a matter of fact, the process for promotion/appointment to the post of Headmaster has to be adopted and for that the ability and quality of the teacher concerned, administrative capacity and Annual Confidential Report are also required to be looked into. Since the appellant had not participated in the appointment/promotion process, his candidature was not considered and therefore he cannot challenge the appointment of respondent no. 5 which was done after following the procedure and guidelines in accordance with law.

9. The respondent no. 5-Kundan Kumar Singh is a teacher promoted to the post of Headmaster. The respondent no. 3-D.S.E., East Singbhum Jamshedpur and respondent no. 4- Range Education Officer, Jamshedpur have also filed counter-affidavit. It is contended that the Government of Jharkhand Official vide their order dated 22.11.2008 issued by the D.S.E. have approved the appointment/promotion of respondent no. 5-Kundan Kumar Singh officiating as Headmaster with effect from 1.2.2007 in the pay scale of Rs. 6500-10500 (pre revised) subject to the fulfilment of eligibility criteria and verification of certificates. Respondent no. 3 & 4 have more or less taken a middle path and submitted that the appointment process was done by the School Managing Committee in which Government has nothing to say. Only with regard to the fixation of pay to the promoted post, the Government will see whether candidate who has been promoted/appointed to the post of Headmaster fulfill the criteria or not. It is pointed out that Article 309 of the Constitution of India is not applicable to B.P.M. Middle School, Burma Mines, Jamshedpur where the dispute arose.

10. Shri Diwa Kant Choudhary, a teacher of the school had also filed petition under Section 151 of the C.P.C. to array him party to this appeal and this intervenor has more or less supported the contention of appellant. During the pendency of this appeal the appellant has filed supplementary affidavit with Annexure-12 which is a letter written by the D.S.E., Jamshedpur to the Secretary, B.P.M. Middle School, Burma Mines, Jamshedpur. The contention of the letter indicates that pay fixation of promoted Headmaster Kundan Kumar Singh has been rejected.

11. Having heard the parties and after perusing the documents and material placed before me, it is evident that the appellant has superannuated from service and he is no more in service now. Annexure-12 to the supplementary affidavit filed by the appellant indicates that the fixation of pay of respondent no. 5 to the grade pay VII that grade payable to the Headmaster has not been considered and rejected by the D.S.E. In that view of the matter, this appeal practically appears to have become infructuous because the appellant cannot be given opportunity to serve the School as Headmaster since he has been superannuated. Even then certain facts and related provisions for promotion/appointment to the post of Headmaster are required to be discussed and dealt with. The B.P.M. Middle School, Burma Mines is a Government aided school run by Managing Committee. Since the salary of the teachers and staff is being paid from the aid given by the Government, the teaching and non-teaching staff have to be eligible for their appointment as per the Rules, circular and general orders issued by the Government from time to time. No doubt the School Managing Committee is absolute authority to provide appointment to teaching and non-teaching staff but as per the norms of the Government. The Department of H.R.D., Govt. of Jharkhand have a little say in the process of appointment but then candidate appointed against the sanctioned post in the Government aided school must deserve the required qualification and criteria. In the Human Resources Development Department notification dated 8th July, 1993 (Patna) published in Bihar Gazette (Extraordinary) 9th July, 1993 Rule 4 indicates the condition for promotion and it is nowhere indicated that only senior most teacher working in the school shall be promoted to the post of Headmaster rather other required conditions are also to be followed. It is admitted case of the appellant that the advertisement published in newspaper inviting application for the post of Headmaster and teachers was well within his knowledge but he did not appear and participate in the appointment process. Had he been appeared, his candidature ought to have been considered according to above Rule. This information is also available on record that other eligible teachers who were also senior, had appeared for the test and interview for their promotion to the post of Headmaster. In the aforesaid circumstances claim of the appellant cannot be considered favourably but the impugned order passed by the Tribunal and the appointment process adopted by the School Managing Committee also do not appear to be tenable for the following reasons:-

i. it reveals from the letter no. BPMM/S/35/07 dated 06.04.2007 addressed to the District Superintendent of Education, East Singhbhum, Jamshedpur that the School Managing Committee had sought for permission to fill up the vacancies of Headmaster and two Assistant Teachers existing in the School vide letter No. BPMM/S/08/2005 dated 21st November, 2005. It is disclosed that due to oversight the School Managing Committee were permitted to publish advertisement for inviting application for the post of three Assistant Teachers vide letter No. 1495 dated 10.06.2006 sent by the D.S.E., Jamshedpur to B.P.M. Middle School. This

content itself indicates that permission from D.S.E. to initiate appointment process for Headmaster and Teachers is necessary. Thus it is clear that no permission to advertise the vacancy inviting application for the post of Headmaster was given, might be under any confusion but the facts remain that permission to advertise the vacancy to fill up the post of Headmaster was not given.

ii. The School Managing Committee knowingly full well that permission to publish advertisement for inviting application against the vacancy of Headmaster was not given, even then they proceeded with the process of appointment for filling up the post of Headmaster and published the advertisement inviting application in the newspaper "Hindustan" dated 4.07.2006. It is apparent that in absence of permission the process of appointment was concluded and hurriedly appointment letter was issued to the respondent no. 5 and after that the School Managing Committee has tried to bring on record vide letter no. BPMM/S/15/06 dated 24.08.2006 that they had made request to make necessary correction and copy of advertisement published was sent to the office of D.S.E. but that letter number has not been indicated in the letter dated 6.4.2007. Thus it is clear that before sending letter no. BPMM/S/15/06 dated 24.08.2006 the appointment process was concluded and respondent no. 5 was appointed as Headmaster of the School on 2.2.2007.

In view of the correspondences referred to above appointment/promotion of respondent no. 5 to the post of Headmaster in the School do not appear to have taken in fair and transparent manner.

12. Learned Tribunal has not taken note of these correspondences made between the School Managing Committee and the District Superintendent of Education, Jamshedpur and passed the impugned order dismissing the petition of appellant.

13. In the aforesaid circumstances and discussions made above, the impugned judgment as well as appointment of respondent no. 5 to the post of Headmaster stands set aside with the observation that the School Managing Committee shall proceed with the process of filling up the post of Headmaster in the School following the directions of the concerned Department of the Government and that too in accordance with law.

14. Respondent No. 5 shall not be debarred from appearing in the subsequent process of appointment of Headmaster if he is otherwise found eligible for the post without being prejudiced with this order.

15. With the above observation and discussion, this petition stands disposed of.