

(2017) 07 JH CK 0069
JHARKHAND HIGH COURT
Case No: 477 of 2009

Suresh Sahu

APPELLANT

Vs

The State of Jharkhand & Anr.

RESPONDENT

Date of Decision: July 4, 2017

Hon'ble Judges: Aparesh Kumar Singh, B. B. Mangalmurti

Bench: DIVISION BENCH

Advocate: Lalan Kumar Singh, S. K. Pandey

Judgement

1. Heard learned counsel for the parties.

2. The respondent-State of Jharkhand in W. P. (S) No. 2700 of 2006 is the appellant, being aggrieved by the judgment dated 12.12.2008 passed by the learned Single Judge whereby they have been directed to treat the petitioner as regular Headmaster of the School from the date of his completing seven years from the date of his official appointment as Incharge Headmaster of the School on 20.08.1986 and to pay him all the consequential benefits on the post of Headmaster which accrue to him, till the date of his retirement.

3. The writ petitioner had approached this Court being aggrieved by the order dated 04.02.2005 passed by the respondent no. 2, Director, Secondary Education, Jharkhand by which the claim for treating him as permanent Headmaster of Raghunath Shahi Project High School, Govindpur in the district of Deoghar has been rejected. He had also sought a direction to be treated as regular Headmaster of the school from the date of taking over of the school by the State government under the project scheme and to pay all consequential benefit thereupon. The case of the writ petitioner as pleaded before the writ Court was inter alia as follows:-

Raghunath Shahi Project High School, Govindpur in the district of Deoghar was established as private school in the year 1978 by the Managing Committee after permission of the Bihar Secondary Education Board. He was appointed by the Managing Committee of the School on 18.01.1978 as a first teacher. Later the Managing Committee appointed him on the post of Headmaster on 19.07.1978. Under the policy decision of the State Government dated 27.05.1981, the School was taken over by the State Government under the project scheme on 15.03.1982. Petitioner pleaded that Bihar Non-Government Schools Secondary (Management and Control) Act, 1981 was enabling Act for taking over the School. He made representations for regularization on the post of Headmaster of the School. Having failed to elicit any result, he preferred CWJC No. 7638 of 1991, which was disposed of on 02.09.1992 with a direction to the respondents to consider his case. After pursuing Contempt Petition being MJC No. 330 of 1993, the impugned order dated 04.02.2005 was passed by the Director, Secondary Education, Government of Jharkhand rejecting his claim.

4. According to the petitioner, Bihar Nationalized School (Service Condition) Rules, 1983 relating to Secondary School Teachers was adopted in respect of Project Schools Teachers vide Notification No. 300 dated 01.06.1999. After bifurcation of the State of Bihar, the school and the district of Deoghar fell within the territorial jurisdiction of the State of Jharkhand. Rules of 1983 were made applicable to the Teachers of Government Schools and Project Teachers also. The District Education Officer, Deoghar through letter dated 24.01.2002 made a recommendation to promote the petitioner as permanent Headmaster of the school. Petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in the case of A. K. Pradhan Vs. State of Bihar & Ors. in Civil Appeal No. 4032 of 1988 vide judgment dated 07.01.1998 reported in 1998(2) SCC 411 in support of his claim and also cited examples of other teachers, who had been continuously working for more than seven years as Headmaster in their respective schools and were regularized on the post of Headmaster.

5. The respondent State through their counter affidavit took a categorical stand that petitioner was appointed by the Managing Committee on 19.07.1978 though he had no Teacher Training Qualification at that time. They categorically denied his claim of being appointed as In-charge Headmaster of the School even by the Managing Committee. According to the specific averment made at para-7 of the counter affidavit, the In-charge Headmaster was one Sri Nand Kishore Lal, who was a post graduate and the only trained teacher of the School. Thereafter, as per the Government's letter dated 01.08.1982, Yugal Kishore Sahi was made In-charge Headmaster of the School. Thereafter, Sri Sita Ram Mishra was made Incharge Headmaster of the School. Therefore, they controverted the claim of the petitioner of working as In-charge Headmaster since 1978 being false and baseless. However,

it was accepted by them that petitioner became trained teacher on 18.06.1986. Thereafter, he was made In-charge Headmaster as per the order dated 20.08.1986 issued by the District Education Officer. They also took a stand that since the petitioner was working in a Project High School, Bihar Nationalized Secondary School (Service Condition), Rules, 1983 did not apply to the petitioner. Therefore judgment in the case of A. K. Pradhan (Supra) is not applicable to his case.

6. Learned Single Judge took note of the rival contention of the parties and also recorded that the claim of the petitioner that he was working as Incharge Headmaster not only prior to taking over of the School by the State Government but even after taking over of the school by the State, is denied and disputed by the respondents. It was also recorded that petitioner after having acquired training as a teacher was appointed as In-charge Headmaster of the School from 20.08.1986. Learned Single Judge also took into account the provisions of the Government Notification dated 01.06.1999 and arrived at the opinion that teachers of all such Project Schools have been considered as Government Teachers and the Rules relating to Bihar Nationalized Secondary School were also adopted in their respect. The same was also adopted by the State of Jharkhand.

7. The case of Smt. Nayan Rai, petitioner in CWJC No. 6023 of 1998 was relied upon by the learned Single Judge, facts of which reveal that she being the senior most teacher of the school was appointed by the Managing Committee as Headmistress of the School. Thereafter vide Government Order dated 12.02.1985, the School was selected and taken over by the Government under the Project Scheme. Having completed more than 7 years experience as senior teacher in the school and claiming for regularization as Headmistress of the School, the respondents were directed to consider the case of the said petitioner for appointment on the post of Headmistress in accordance with law. These directions were carried out by the respondents. Therefore, according to the learned Single Judge, argument that since the petitioner was a teacher of Project School, ratio of the judgment of the A. K. Pradhan (Supra) and Smt. Nayan Rai (Supra) would not apply to his case, was not tenable. Finally learned Single Judge held as under:-

"9. From the facts noted above, even though the petitioner may have been appointed as a Headmaster In-charge of the School by the Managing Committee and even through he may have continued to function as such after the school was taken over by the State Government, but his candidature could not have been considered by the State Government in view of the fact that admittedly he had not possessed the requisite qualification of possessing a B. Ed degree and teachers training. He had acquired such degree and training in 1986 whereafter he was given to act as an In-charge Headmaster. The petitioner having continued to function as Incharge Headmaster for more than seven years from the date of his appointment

as such, he was certainly eligible for consideration for his regularization for the post of Headmaster at least with effect from the date on which he had completed seven years of service after having completed the teacher training and appointed as In-charge Headmaster. From the impugned order, it does appear that the respondent No. 2 has not considered the petitioner's case in proper prospective. The respondents have committed an error by distinguishing the petitioner's case on the ground that the rules as applicable to the teachers of Government schools did not apply to the Project School Teachers. When as pointed out by the petitioner by several instances, other teachers in similar circumstances were given the benefit of their regularization in the post of Headmaster on their completing seven years of teaching experience from the date of taking over of the school, the petitioner could not be discriminated and denied of the same benefit. Since admittedly, he being the senior most teacher of the school and having been appointed as an In-charge Headmaster of the School from 1986, he was certainly eligible for regularization on the post of Headmaster on his completing seven years of teaching experience since after 1986.

10. It is now informed that the petitioner has though prayed for his regularization on the post of Headmaster of the School but he has since retired from his service on 29.09.2008. Even though, the petitioner has now retired but he was entitled for being regularized to the post of Headmaster at least seven years from the date of his official appointment by the concerned authorities of the respondents as In-charge Headmaster of the School since 20.08.1986.

11. In the light of the above discussions, the respondents are directed to treat the petitioner as regular Headmaster of the School from the date of his completing seven years from the date of his official appointment as In-charge Headmaster of the School on 20.08.1986 and to pay him all the consequential benefits on the post of Headmaster which accrue to him, till the date of his retirement.

12 With these above observations, this writ application is disposed of."

8. From perusal of the operative portion of the impugned judgment itself, it is clear that the respondents have been directed to treat the petitioner as a regular Headmaster of the School from the date of his completing 7 years from the date of his official appointment as In-charge Headmaster of the School on 20.08.1986. Learned Single Judge was also conscious of the fact that the claim of the writ petitioner of having been appointed as In-charge Headmaster of the School right from 1978 by the order of the Managing Committee and that he continued as such after taken over of the School as a Project School in the year 2002 was not admitted

state of facts. The Judgment rendered by the Hon^{ble} Supreme court on the instant subject in the case of A. K. Pradhan (Supra) is apposite to be quoted hereinunder:-

"1. The appellant was the Headmaster of an unrecognised 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 regularisation 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 approached 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 (SLPs (C) Nos. 4828-30 of 1986 decided on 5-5-1986 : 1988 PLJR 70) by the following order :

"We affirm the view taken by the High Court to the effect that a Headmaster has no right to be automatically absorbed as a government servant in case of an unrecognised 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 screened 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 the same in accordance with law."

3. The controversy, therefore, that the services of the employees working in an unrecognised 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 regularisation.

5. We, therefore, dispose of this appeal with the observation that the appellant, if not already regularised as Headmaster, shall be considered for regularisation 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. There will be no order as to costs. "

9. It is clear from the reading of the said judgment that a direction for consideration for regularization was issued upon the respondent-State in respect of the said appellant with effect from the date on which he completed 7 years of service reckoned from the date when the institution was taken over by the Government. In the instant case, as is clear the claim of the writ petitioner of having continued as Headmaster right since 1978 is in the realm of disputed question of facts. The writ petitioner acquired Teacher Training on 18.06.1986 and only thereafter he was made In-charge Headmaster as per the order dated 20.08.1986. In the case of Smt. Nayan Rai (Supra), relied upon by the learned Single Judge, it is clear that from the findings recorded at para-8 that she was appointed as Headmistress of the school by the Managing Committee being the senior most teacher and thereafter by the Government Order dated 12.02.1985, the school was selected and taken over by the Government under the Project Scheme.

10. In the aforesaid background, when the learned Single Judge did not accept the claim of the writ petitioner as having worked as In-charge Headmaster of the School from 1978 onwards, the direction to treat him as regular Headmaster of the School from the date of his completing 7 years from 20.08.1986 when he was appointed as In-charge Headmaster of the School by the Order of the District Education Officer, was not inconsonance with the ratio rendered by the Hon^{ble} Supreme Court in the case of A. K. Pradhan (Supra).

11. In such circumstances, the reliance of the writ petitioner upon the recommendation of District Education Officer as enclosed at Annexure-5 cannot improve upon his case any further. Though counsel for the writ petitioner, respondent herein has relied upon the Notification No. 300 dated 01.06.1999 whereunder the Bihar Nationalized School (Service Condition) Rules, 1983 were adopted in respect of the Project Schools teachers, but learned counsel for the writ petitioner has failed to show that after having taking over as a Project School, such appointment of the writ petitioner was confirmed by the Vidyalaya Seva Board either.

12. In the totality of the facts and circumstances and the reasons discussed hereinabove, we are of the view that the impugned judgment dated 12.12.2008 suffers from errors of law warranting interference. Accordingly it is set aside. The appeal is allowed.