

(1992) 10 PAT CK 0008**Patna High Court****Case No:** Civil Writ Jurisdiction Case No. 1876 of 1990

Jagdish Pandit

APPELLANT

Vs

State of Bihar and
OthersRESPONDENT

Date of Decision: Oct. 1, 1992**Citation:** (1992) 10 PAT CK 0008

Judgement

G.C. Bharuka, J.

The present writ application has been filed by the petitioner seeking two reliefs, (i) for quashing the notification dated 22-2-1990 by which Respondent No. 3 has been appointed as the headmaster of the school in question, and (ii) for a direction to consider the case of the petitioner for his promotion to the post of headmaster with retrospective effect from the date he has been acting as a headmaster.

2. The admitted facts, which have inspired the petitioner to claim the reliefs in question, may be stated in short. The petitioner was appointed as an Assistant teacher in Damin Janta High School, Kusma, lying in the district of Sahebganj in the year 1972. At the time of his appointment, his qualification was M.A. He passed his training course in the year 1975 and was granted postgraduate scale with effect from 30-6-1973. The school in question got partial recognition on 16-10-1969. It was granted full recognition in the year 1979. According to the petitioner, the post of the headmaster fell vacant in the school in the year 1974 and since then he has been discharging the duties of an acting headmaster in the school which was also approved by the District Education Officer on 29-10-1979. The school was nationalised on 2-10-1980 pursuant to the provisions contained in Non Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980, provisions whereof after successive Ordinances were enacted as Bihar Act No. 33 of 1981 (hereinafter to be referred to as the Act only). Pursuant to the powers conferred under the Act, the State Government framed rules laying down the service conditions for the employees-both for the teaching and non-teaching staff of the nationalised secondary schools under notification No. 398, dated 9th June, 1983, which has been published in

the Official Gazette on 26-9-1983 (thereinafter to be referred to as the rules only). The rules have come into force with effect from the date of its publication in the official gazette.

3. In the Rules elaborate provisions have been made regarding appointment of headmasters by way of promotion from assistant teachers as well as by direct appointment. It is apparent from the Rules that the procedure for filling up the vacancies as existing on the date of enforcement of the rules has to be governed by the provision contained therein irrespective of the date as to when the vacancies had fallen due. But the State Government keeping in view the circumstances as appearing at the material time, took a decision that the post of headmaster, which had fallen vacant before 2-10-1980, the date of nationalisation of the secondary schools will be filled up by promotion from amongst the eligible and qualified teachers of the respective schools by treating the school as an independent unit. This decision is contained in letter No. 510 dated 20-11-1981 and Annexure-2 to the writ application. After making of the Rules, by a notification dated 6th July, 1983 (Annexure-3), the State Government by exercising its powers under Rule 20(2) decided that in respect of the cases pending for promotion on the post of headmaster falling vacant prior to 2-10-80, the said Government Order (Annexure 2) will remain operative.

4. Learned Counsel appearing for the petitioner, relying upon the above referred Government Order, has submitted that since in the present case the post of headmaster had fallen vacant in the school of the petitioner on a date prior to 2-10-1980, therefore, the said post could have been filled up only by according promotion to the petitioner, who was the senior-most teacher in the school and had the requisite eligibility and qualification. According to the petitioner, keeping in view the Government decision as contained in Annexures 2 and 3 to this writ application, the petitioner has filed a representation before the Director, Secondary Education, (Respondent No. 2) claiming promotion on the post of headmaster and in that connection all necessary records were also sent by the District Education Officer to the Respondent No. 2 view his letter dated 25-8-84. But the case of the petitioner has been kept in abeyance on some pretext or the other. In the meantime by issuance of the impugned notification dated 22-2-90 as contained in Annexure-1 to this application Respondent No. 3 has been appointed and posted as headmaster in the school in question.

5. Learned Advocate General appearing for the State has very fairly conceded that all pending cases relating to promotion to the post of headmaster, which had fallen vacant on a date inferior to the date of nationalisation have to abide by the decision of the Government as contained in Annexure 2 and 3 and therefore, the petitioners would be entitled for promotion to the post of headmaster provided he is otherwise qualified keeping in view the requirement of eligibility and qualification. But according to him, the petitioner cannot raise any grievance with regard to the appointment of the Respondent No. 3 as headmaster of the school in question because the right acquired by the petitioner for his promotion to the post of headmaster does not vest a further right in him

of being appointed the headmaster of that very school. It is further submitted that in case he is found fit for promotion, he can be appointed on the post of headmaster but his posting in a particular school will depend on the discretion of the State Government in accordance with the policy adopted in this regard.

6. After having heard the rival contentions, I am of the considered view that the case of the petitioner is to be governed by the decision of the Government as contained in Annexure "3" to this writ application and the Government is bound to take a decision in respect of granting promotion to the petitioner in accordance with the criteria laid down therein. The petitioner, if he was eligible and otherwise fit and qualified for being promoted to the post of headmaster on 2-10-1980, then he will be deemed to have acquired a right to be considered for being promoted to a post in the cadre of headmasters as envisaged under the Rules. But in my opinion the right of promotion so acquired does not vest any further right in the petitioner to claim a posting as headmaster in the school in which he was an assistant teacher no or before 2-10-80. It is so because after the nationalisation, the headmaster and the assistant teachers all became Government servants and their posts are transferable. Therefore, under the circumstances, it will be reasonable to construe that once promotion is accorded to the petitioner to a post in the cadre of headmaster, he can be posted in any school in accordance with the rules framed in this regard. Therefore, the prayer of the petitioner for quashing of the appointment of the Respondent No. 3 as headmaster of the school in question does not merit any consideration and it is, accordingly, rejected.

7. Having arrived at the aforesaid conclusion, the next question, which immediately falls for consideration is as to whether the petitioner, if otherwise found eligible and qualified, will be entitled to claim promotion to the post of headmaster retrospectively from the date on which the said post had fallen vacant in the aforesaid school,

8. It is well settled that even if a Government employee is held to have a right to be considered for promotion to the higher post or that he has a chance of promotion, that by itself does not confer a further right that he is entitled to be promoted from a given date. The promotion to a post under normal circumstances becomes effective only from a date when it is granted. No doubt, the State Government, as a employer, can grant promotion from the retrospective effect pursuant to any rational or reasonable policy adopted by it in this regard to meet the administrative exigencies. It is also well settled that a Government servant can also claim promotion from the retrospective effect after it is found that any person junior to him and otherwise similarly situated was granted promotion from such an interior date by ignoring a legal and sustainable claim of such Government servant. The Supreme Court in the case of [Union of India and Others Vs. K.K. Vadara and others](#), has held that,

We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted

and not from the date on which such post falls vacant. In the same way when additional post are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion.

9. The promotion to the post of headmaster can be effected both under the Circular No. 510 dated 20-11-81 (Annexure-2) as also under the rules only on the basis of recommendations of the School Service Board keeping in view the eligibility and fitness of the candidate as prescribed under the above said Circular. Therefore, for this reason as well as held by the Supreme Court, the promotion can take effect only from a date subsequent to the recommendations of the Board.

10. In the above of the matter, it is hereby directed that the representation of the petitioner for his promotion to the post of headmaster should be disposed of by the State Government or an officer authorised in this behalf within a period of two months from the date of communication of this order. If the petitioner is found fit for promotion then appropriate order for his posting in that capacity will be passed by the concerned authority.

11. The writ application is partly allowed in terms of the observations made above. A sum of Rs. 500 (Five hundred) is granted as cost payable by the Director, Secondary Education-cum-Additional Secretary, Human Resource Development, Respondent No. 2. to the petitioner for his inaction for not disposing of the representation of the petitioner within a reasonable time.

S.B. Sinha, J.

12. I agree.