

(2011) 06 PAT CK 0038

Patna High Court

Case No: CWJC No. 9659 of 2009

Awadhesh Tiwari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: June 21, 2011

Judgement

Jayanandan Singh, J.

Petitioner has filed this writ application for quashing of a notification issued under the signature of Deputy Secretary, Human Resources Development Department, dated 29.7.2009, as contained in Annexure-1, by which, in terms of the decision of the Departmental Promotion Committee, it was notified that the appointment of Petitioner shall be treated as on 25.4.1978, i.e. from the date of recognition of the school and, accordingly, his promotion to Selection Grade Scale and to the post of Headmaster shall stand cancelled and accordingly correction be made in the seniority list by removing his name from serial no.18 thereof. Thus, in terms of this decision of the Committee, the order of the Regional Deputy Director of Education (in short the R.D.D.E.) contained in memo No. 902 dated 23.9.1994, granting Selection Grade to the Petitioner, and memo No. 4272 dated 24.12.2006, promoting him as Headmaster, on provisional basis, stood cancelled. Petitioner has further prayed for a direction to the Respondents to allow him to continue in the said Scale and on the post of Headmaster by virtue of promotion granted to him by the said memo of the R.D.D.E. dated 24.12.2006.

2. Facts appearing from the pleadings of the Petitioner are that earlier the Petitioner was working as Teacher in Government Primary School, Noniya Tola, Narkatiyaganj in the district of West Champaran between 7th June, 1972 to 2nd April, 1978. However, he applied for appointment in Champa Kuwar High School, Lauriya, West Champaran, after this school received permission to establish from the Board on 19.7.1976. The Managing Committee selected him and appointed in the School on 6.2.1978. The school was granted recognition by the Board on 25.4.1978. It is pleaded that, in terms of the circular No. 891 dated 24.3.1967, all private schools, having permission to establish, were to have two posts of First Graduate Trained

Teachers, one each for Science and Arts faculties. At the time of his appointment Petitioner was P.G. Trained. Hence, the Managing Committee appointed him against the post of P.G. Trained Teacher and granted him the scale. In 1980 an Ordinance was promulgated for takeover of all the private secondary schools of the State. The Ordinance was succeeded by two more Ordinances and thereafter the same matured into Bihar Non-Government Secondary Schools (Management and Takeover of Control) Act, 1981 (Bihar Act 33 of 1981). Under the parent Ordinances provision was made, which continued in the Act also, for deemed takeover of such schools, which had been granted permanent, provisional or partial recognition by the Board, with effect from 2.10.1980. Accordingly, the said Lauriya School also stood taken-over by the Government with effect from 2.10.1980.

3. Case of the Petitioner is that, by an order of the Department dated 4.1.1982, the scales of Assistant Headmaster, Selection Grade Teacher and Post Graduate Trained Teacher were merged in the scale of Rs. 415-745 with effect from 1.4.1978. As per his case, at the time of his appointment, he was appointed in the pay scale of Rs. 510-1155, which was prescribed pay scale for P.G. Trained Teacher. However, after takeover of his services, he was placed in the junior selection grade scale of Rs. 415-745, treating him as appointed on 25.4.1978. Accordingly, he applied for correction of the same and, by Annexure-4 dated 24.3.1994, the same was corrected showing him appointed on 6.2.1978 and he was allowed P.G. Trained Scale. Later on, when the 5th Pay Revision was implemented, Petitioner's case was also considered for grant of pay revision. By office order of the R.D.D.E. dated 23.9.1994, large numbers of teachers were granted promotion in the revised selection grade scale of Rs. 2200-4000 including the Petitioner, in terms of the resolution of the Finance Department No. 6022 dated 18.12.1989, from the dates they became eligible on completion of the requisite length of service.

4. To determine the seniority of teachers for the purposes of promotion to the post of headmaster, an exercise began to identify the teachers who were put in Selection Grade/Post Graduate Scale between 21.5.1974 and 31.3.1978. Enquiry was made in respect of the Petitioner as well as other teachers by the Department. After examining the service book of the Petitioner, it transpired that Petitioner had been given P.G. Trained Scale from 25.4.1978, when, under the Rules of the Government, no P.G. Trained Scale was admissible after 31.3.1978. Hence, by letter dated 8.8.2002, R.D.D.E. was directed to submit a report as to under what circumstances, Petitioner was given the P.G. Trained Scale with effect from 25.4.1978 when the provision for grant of the scale was in force only till 31.3.1978. Accordingly, the R.D.D.E. through his letter dated 9.12.2004 (Annexure-7) informed the Director that the Secretary of the Managing Committee of the said School had appointed the Petitioner in the School through his letter No. 172(Ka) dated 1.2.1978 in the pay scale of P.G. Trained, where the Petitioner joined on 6.2.1978 and he worked till 11.2.1981, whereafter he was transferred to different places. It was also mentioned that the School had got permission to establish on 17.7.1976 and had got full

recognition by letter of the Board dated 25.4.1978 in which the school had been sanctioned one post of teacher in P.G. Trained Scale. Hence from the date of full recognition of the School he was getting his pay in the P.G. Trained Scale. However, again one query was made by the Director from the R.D.D.E. through letter dated 23.3.2005 (Annexure-8), in which it was mentioned that there was no clear mention in his earlier letter as to from which date the Petitioner had been granted the P.G. Trained Scale and whether that was approved by the office of the Director or not and what was the ranking of the Petitioner in the Divisional Seniority List. This letter was replied by the R.D.D.E. through his letter dated 19.6.2005 (Annexure-9), clarifying that the Managing Committee, through its letter No. 172 dated 1.2.1978, had appointed the Petitioner in P.G. Trained Scale and the District Education Officer, West Champaran through his letter dated 6.6.1987 had informed that the Petitioner was getting P.G. Trained Scale from 6.2.1978. However, the Combined Seniority List had already been prepared in 1984 and stood approved by the Director also, whereas the said letter of the District Education Officer was issued on 6.6.1987. Hence, the ranking of the Petitioner in the seniority list remained at serial No. 2880 and could not be corrected. It was suggested that, after receipt of the letter from the District Education Officer, the then R.D.D.E. had already issued orders, vide letter dated 24.3.1994, accepting Petitioner's appointment as on 6.2.1978 and allowing him P.G. Trained Scale. So the Petitioner was fit to be placed at serial No. 697(Ka), and accordingly he was entitled for his promotion to the post of Headmaster.

5. From Annexure-10, it appears that there was some enquiry in respect of the Petitioner and in the light of the report of the District Education Officer, he was exonerated. Finally, by notification dated 24.12.2006 (Annexure-11), a list of teachers was notified who were granted promotion/appointment to the post of Headmaster, provisionally for six months, or till the recommendation of the Bihar Public Service Commission was received (whichever was earlier). This notification was issued in terms of the provisions of the Act and Rules, as amended. It was inter alia mentioned that the date of full/partial recognition of the school had been accepted as date of appointment of the teacher appointed by the Managing Committee. In case the date of full/partial recommendation was prior to the date of appointment of the teacher then the date of his actual appointment was to be taken as relevant. It was also mentioned that in case some teacher had not informed about his actual date of appointment, the order would not take effect in his case and he was not to be allowed to join the post of Headmaster. It was also mentioned in the notification that, if in future, any information with regard to the date of appointment, grant of scale, qualification and training etc. was found wrong the promotion would be cancelled and action would be taken. The list enclosed included the name of the Petitioner also and his school of posting as Headmaster was indicated as High School, Narkatiyaganj, West Champaran. Petitioner accordingly joined the post. It appears that the promotion/appointment of Petitioner and others was cancelled later on, as no concurrence was granted by the Bihar Public Service Commission to

their provisional appointment for six months, nor any regular appointments were made. Hence, Petitioner and others filed CWJC No. 3464 of 2009 in this Court for quashing of the said cancellation order.

6. It also appears that one Bhot Chaturvedi who was functioning as acting Headmaster of the High School at Narkatiyaganj, where the Petitioner was posted, had filed a complaint before the Department against the appointment of the Petitioner, on the ground that, from 7.6.1972 till April, 1978, Petitioner had worked in another school and had drawn his salary which was also entered in the audit register of the school. Accordingly, with a copy of the complaint, a show cause notice was issued to the Petitioner to show as to why his promotion as Headmaster be not cancelled. Petitioner, accordingly, submitted his reply which was examined at the departmental level and it was found that Petitioner was appointed in Champa Kuwar High School on 6.2.1978; the school was granted permission to establish on 19.7.1976 and was granted full recognition on 25.4.1978. However, the stand of the Petitioner, that from day one of his appointment he had been granted P.G. Trained Scale, in terms of the letter of the Board dated 1.3.1977, and hence was rightly granted the selection grade scale with effect from 1.4.1991, was found not applicable in his case, as the letter was of the period when the School had not been taken-over. It was noticed that, as per the Department's letter dated 12.8.1983, the date of recognition of the School had to be taken as the date of appointment of the teacher. Since the School in question had been granted recognition on 25.4.1978 the appointment of the Petitioner therefore had to be treated as made on that date. It was also found that by the Resolution of the Government dated 4.1.1982 the pay scale of Assistant Headmasters, P.G. Trained Teachers and Graduate Trained Teachers were merged with effect from 1.4.1978 and 20% of the posts of merged cadre were put under the Selection Grade Scale. Since the Petitioner's appointment was to be treated as on 25.4.1978, he could not be allowed P.G. Trained Scale and could not be treated as R.G. Trained Teacher. Therefore, on that basis, he could not get Selection Grade Scale and therefore could not get his promotion as Headmaster. Counting from 25.4.1978, on completion of 12 years of service, Petitioner was found entitled for senior scale only as on 25.4.1990. The matter was hence considered by the Departmental Promotion Committee which resolved to cancel the promotion of the Petitioner. Accordingly, impugned Annexure-1 was issued canceling the promotion granted to him in the selection grade scale by the R.D.D.E. by order dated 23.9.1994 and the provisional promotion of the Petitioner to the post of Headmaster by the Department's letter dated 24.12.2006.

7. The said Bhot Chaturvedi, who had filed the complaint before the Department, has also appeared before this Court and has filed I.A. No. 5377 of 2009. He has also filed a counter affidavit and has also replied to the rejoinder of the Petitioner. By order dated 27.8.2009, learned counsel for the Petitioner was directed to file counter affidavit to the I.A. filed by the said Bhot Chaturvedi. In his I.A. the intervener has claimed that he is a necessary party as the Petitioner has been

posted in his school as Headmaster where he was working as Acting Headmaster before the Petitioner joined. Hence, it is claimed that his intervention application is fit to be allowed and he is fit to be added as Respondent in the writ application.

8. Learned counsel for the Petitioner has seriously objected to the said intervention. He submitted that the Intervener himself was not eligible for his appointment as Headmaster as he was too junior and was not included in the list for consideration. In fact, he himself was at serial No. 1233 of the list, much below in the list of teachers found eligible for appointment as Headmaster. There were in fact altogether 800 teachers above him. Hence, he could not claim that on the appointment of the Petitioner as Headmaster his any right got infringed in any manner. In support of the submissions, learned counsel for the Petitioner relied upon a judgment of this Court in the case of *Dr. Suprit Saha v. State of Bihar* [2004 (4) PUR 829] and a case of the Apex Court in the case of [Dr. Umakant Saran Vs. State of Bihar and Others](#),

9. From the facts of the case, it appears that the entire claim of the Petitioner, in support of grant of Selection Grade Scale and promotion to the post of Headmaster, hinges upon the fact whether his appointment in the Lauriya School is to be treated as in the P.G. Trained Scale with effect from 6.2.1978 and to have continued as such, in terms of the Board's letter dated 1.3.1977, or his appointment has to be treated as on 25.4.1978, the date of grant of recognition to the School, in view of the letter of the Department dated 12.8.1983. The grant of pay scale and promotion is only consequential to the same. This Court also finds that the Intervener was never a claimant for being appointed as regular Headmaster nor had he challenged his placement in the Combined Seniority List of teachers of the concerned grade. In the circumstances, except for getting the satisfaction of working as Acting Headmaster, to which no teacher has a right, the Intervener was not going to get any advantage from cancellation of promotion of the Petitioner nor by such promotion of the Petitioner any of his right stood prejudicially affected.

10. In the circumstances, this Court is of the view that the Intervener has no locus standi in the matter before this Court, even though he may have filed the complaint in the Department on account of which enquiry was made and the impugned order was passed. The public complaint in the Department or before executive functionaries does not create any right in the complainant to intervene in any matter where a personal claim of right of writ Petitioner is being considered by this Court. In the circumstances, his I.A. No. 5377 of 2009 is rejected.

11. Now coming back to the case of the Petitioner, the official Respondents have filed their counter affidavits in the case. In the counter affidavit it is stated that the order of provisional promotion of the Petitioner dated 24.12.2006, as contained in Annexure-11, was conditional. Inquiry in the Department started on the complaint of the Acting Headmaster of the school that the Petitioner had worked in another school till April, 1978, but has claimed his appointment in the School in question on

6.2.1978, meaning thereby that he had played fraud with the Department and had gained undue advantage of promotion in the Selection Grade Scale and as Headmaster, to which he was not entitled. This issue necessitated an inquiry. Hence, a charge-sheet was issued to the Petitioner by letter dated 24.1.2007 to which he replied. On examination, it was found that Petitioner was, in fact, appointed in the School concerned on 6.2.1978, whereas the School was granted permission to establish on 19.7.1976 and was granted full recognition on 25.4.1978. Hence, as per the Government letter dated 12.8.1983, the date of recognition, i.e. 25.4.1978, was to be treated as the date of appointment of the Petitioner. As the pay scales of Assistant Headmaster, P.G. Trained Teacher and Graduate Trained Teacher were merged with effect from 1.4.1978, the Petitioner could not be granted the P.G. Trained Scale on 25.4.1978. As a consequence, Petitioner could not be treated as placed in the merged scale and could not get seniority so as to consider him for promotion to the post of Headmaster. It is stated that the matter was placed before the Departmental Promotion Committee which, after considering the entire facts and circumstances, resolved to cancel the grant of Selection Grade to the Petitioner and his promotion to the post of Headmaster.

12. After having noticed the facts and rival cases of the parties, it appears that the main ground of complaint of the said Bhot Chaturvedi before the authorities, on the basis of which the enquiry started, was that the Petitioner had worked in other school till April, 1978. Hence, he could not claim for counting his services in the Lauriya School with effect from 6.2.1978, the date on which he claims to have been appointed there. The impugned order dated 29.7.2009 of the Deputy Secretary, as contained in Annexure-1, shows that the complaint of the said Bhot Chaturvedi was not found correct in this respect. On enquiry, it was found that Petitioner was indeed appointed in Lauriya School on 6.2.1978. However, the Deputy Secretary has held that, as per the Government letter No. 658 dated 12.8.1983, the services of the Petitioner could be counted only from 25.4.1978, the date of recognition of the School. The letter dated 1.3.1977, relied upon by the Petitioner, was held by him as not applicable in his case, as the same was of the period prior to takeover of the School. In view of this finding, the Deputy Secretary has found the consequential orders of grant of Selection Grade Scale and seniority to the Petitioner as wrong.

13. It appears that the Deputy Secretary did not read the letter No. 658 dated 12.8.1983 in its entirety. He referred only to the first paragraph of the letter, but overlooked the second paragraph of the letter which laid down that the seniority of such teachers had to be decided on the basis of their appointment by the Managing Committee in a particular pay scale. Thus, it is clear that the letter did not completely wipe out the previous services of the teachers for all purposes. It only laid down that the services of the teachers had to be recognized from the date of recognition (including partial or provisional) of the School or from the date of takeover of the School.

14. But the question is not as to which letter applied in the case of the Petitioner. Question is as to how the service condition of the Petitioner had to be determined after takeover of the School, The School was taken-over under the deeming fiction clause contained in parent Ordinance which is also sama in the Act as Sub-section (1) of Section 3. In view of the said provision, all schools which had been given permanent, provisional or partial recognition by the dissolved Board, were deemed to have been taken-over with effect from 2.10.1980. As a consequence of such takeover, all teaching and non-teaching employees of the school were deemed to have become Government servants by virtue of Sub-section (2) of Section 4 of the Act. Sub-section (2) of Section 4 laid down that the same service conditions of the employees were to continue till the State Government introduced changes in the same. Thus, what was required from the Deputy Secretary to enquire and determine was as to what was exactly the terms and conditions of the service of the Petitioner when he was appointed in the Lauriya School on 6.2.1978. He was also required to ascertain as to whether the appointment of the Petitioner in the School was in accordance with law and as per the decision of the Managing Committee, or not. He was also" required to hold a deeper consideration as to what was the effect of takeover of the School under the Act on the service condition of the teaching and non-teaching employees working therein including the Petitioner. He was also required to make a detailed consideration as to in what manner the Service Conditions Rules framed in 1983 under the 1981 Act affected and introduced changes in the service conditions of tire employees of the taken over schools. He* was also required to find out as to whether any further executive instructions in the form of letters, memos or resolutions had caused any further change in conditions of service of employees of such taken over schools, or not. The Deputy Secretary has failed to appreciate that it was not the case of the Petitioner only, but was a case of finding out the service condition of a teaching and non-teaching employee of taken-over schools upon being transferred in the services of the Government. The earlier decisions of Government in identical matters were also required to be located and considered in the process. An executive functionary of the Government, even if exercising his executive powers in individual cases, is not expected to take a knee-jerk approach in passing orders. Responsible officers of the Government are, at all point of time, while dealing with specific matters, required to consider all factual and legal aspects of the matter in detail and take a considered decision which, besides deciding the individual list, may form a precedent also for identical cases arising in future.

15. Unfortunately, no arguments were advanced by learned counsel for either of the parties in this case on the above aspects of the matter nor all the relevant provisions of the Act, Rules and executive decisions were referred to or placed on record for consideration by this Court. Had that been done this Court would have delved in the matter in detail and would have come to some conclusion in respect of claim of the Petitioner.

16. In the circumstances, this Court is of the opinion that the matter requires reconsideration in detail at the Government level in terms of the observations of this Court made above. Accordingly, the impugned order, as contained in Annexure-1, is quashed. As a consequence, all subsequent actions of the Respondents based on the impugned Annexure-1 shall also lose their force. The matter is remitted back to the Respondents for reconsideration after hearing the parties which must be done and final orders must be passed within three months from the date of receipt/production of a copy of this order. Since the matter is being remitted back this Court does not feel it necessary to notice other case laws cited by the learned Senior Counsel for the Petitioner, which may be placed before the Respondents at the time of reconsideration of the matter.

17. It appears that against some consequential orders, the Petitioner has filed separate writ applications before this Court numbered as CWJC Nos. 3464 of 2009 and 3784 of 2009. Therefore, let a copy of this order be made available to the learned counsel for the State appearing in this case, for taking steps, as may be appropriate, in the said two writ applications.