

(2011) 12 PAT CK 0101

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 12407 of 2008

Ram Krishna Prasad

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision: Dec. 23, 2011

Citation: (2012) 3 PLJR 755

Hon'ble Judges: Jayanandan Singh, J

Bench: Single Bench

Judgement

Jayanandan Singh, J.

The impugned order of the Director contained in Memo No.643 dated 4.8.2008 (Annexure-8) is a typical example of how even high functionaries of the Government also completely fail to appreciate letter and spirit of the orders of this Court and mechanically comply only operative part of the order to either ward off any possible contempt proceeding or to deliberately harass a citizen of the country and an employee of the Department only because he dared to move this Court for his statutory rights and legitimate claims. From the impugned order, it is apparent that, either the Director had not read the entire order of this Court passed in the earlier writ application of the petitioner, as contained in Annexure-5, or if he read it, he could not understand the discussions and observations of this Court in the order or, if he understood it, he deliberately ignored it and mechanically disposed of the representation of the petitioner without actually complying with the directions of this Court indicating the manner in which the case of the petitioner was to be examined afresh. If the attempt of the Director was to deliberately ignore the directions of this Court in this regard and to deliberately harass the petitioner and punish him for moving this Court for his legitimate claims, the same can clearly be termed as malafide.

2. While disposing of the earlier writ application of the petitioner by order as contained in Annexure-5, this Court had noticed the facts in detail and had noticed the submissions on behalf of the petitioner that as joining of the petitioner in the

new School at Sohsarai on 23.5.1974 was well within 15 days and in fact only one day after he resigned from Raidih school, where he had initially joined on 11.4.1970, he was covered by Government Circular no. 519 dated 2.7.1983 and hence was entitled for continuity of service, which was granted to him and was accordingly given due seniority in the final gradation list prepared at the State level from which he had been granted promotion to the post of headmaster by notification dated 24.12.2006. This Court noticed that on a complaint his promotion was sought to be cancelled, for which a notice was issued to him on altogether different grounds, but his promotion was actually cancelled on the ground that, in the light of Resolution contained in letter no.581 dated 15.1.1982, all schools had to be treated as independent unit and hence he was not entitled for continuity of service. This Court found that the ground of cancellation of his promotion was not put to the petitioner, giving him opportunity to meet the same, before it was made the basis for cancellation of his promotion. Hence, this Court quashed the order and allowed the writ application but with liberty to the respondents to examine the case of the petitioner afresh and pass fresh orders.

3. This Court could have directed the respondents to take notice of the two Government Circulars/ Resolutions relied upon by either of the parties, as referred to above, and pass orders in their light. But it is well known that, for long time the Education Department of the State has been functioning on the basis of executive instructions/circulars/orders issued by its functionaries from time to time. Instances are that with the change of functionaries, circulars and orders also changed. There are instances galore that writ applications in this Court were considered and decided on the basis of one executive instruction/circular/order or the other, produced on behalf of the petitioner, only because the respondents appearing in the case failed to produce, for whatever reason, subsequent executive instructions/circulars/orders overriding the earlier one. Many a times, it also happened that one executive instruction/circular/order was made the basis for passing order in the case of one incumbent whereas altogether a different executive instruction/circular/order was made the basis for passing altogether a different order in case of another incumbent identically situated. This having in mind, while granting liberty to the respondents to examine the case of the petitioner afresh, this Court therefore required them "to examine the issue by referring to overall legal position as may be applicable in different facts and circumstances of a particular case" and also observed that "in case the respondents decide to undertake such an exercise, they shall take a uniform decision to be applicable in specific set of cases with identical facts and circumstances and shall not confine their decision to individual cases only." For the benefit of the respondents, it may be useful to reproduce paragraph 21 of the said earlier order of this Court passed in the earlier case of the petitioner:

21. In the circumstances, respondents will be at liberty to examine the issue by referring to over all legal position as may be applicable in different facts and

circumstances of a particular case. If this exercise is taken, respondents shall give adequate opportunity to the petitioner and, if necessary, shall give a personal hearing to him and then come to a conclusion. It is made clear that in case the respondents decide to undertake such an exercise, they shall take a uniform decision to be applicable in specific set of cases with identical facts and circumstances and shall not confine their decision to individual cases only.

(emphasis supplied)

4. It may also be made clear that this Court had directed the respondents to take uniform decision to be applicable in specific set of cases with identical facts and circumstances due to the reason that the petitioner had cited specific examples in which such continuity of services had been granted to other individuals.

5. Unfortunately, from the impugned Annexure-8, it is apparent that the respondent Director, deliberately or otherwise, has clearly failed to comply with the directions of this Court in respect of the manner only in which he had been granted liberty to examine the matter of the petitioner afresh. In the impugned order (Annexure-8), in the observation part of the order starting at page-2, there is not a single reference to any Government circular/order or executive instruction of the relevant time applicable in the matter, particularly of the two circulars relied upon by either of the parties noticed above and there is no observation with regard to cumulative legal effect and in what manner they were nullified or superseded by 1980 Act. In the discussion, there is no reference to any other case or any such instance and reference of the petitioner of specific examples of grant of such continuity of service has been rejected by the Director in one line saying that the District Education Officer was not the competent authority and the said examples were not fit to be considered as actions taken deviating from the Rules could not be used as an example. The Director has completely failed to appreciate that the State level seniority list was approved by him and communicated to all the Regional deputy Directors of Education through Memo No.3062 dated 27.9.2006, vide Annexure-13, in which petitioner and others were granted seniority on the basis of continuity of service and in the light of the position in the gradation list they were subsequently promoted as headmasters. Clearly, continuity of service granted to the petitioner had been given seal of approval by the Director himself. If at all any fault was being found with the same, entire gradation list so approved by the Director had to be revised and cases of all such teachers, granted continuity of services had to be identified, segregated and re-examined after complying with the Principles of Natural Justice in the light of legal position emanating from said two circulars/resolutions/orders noticed above and subsequent ones, if any, till promulgation of Act of 1980 and subsequent changes in law, if any. Instead, what the Director has done is that he has simply considered the case of the petitioner and, without referring to any earlier circulars/resolutions/orders, simply on the premise that, before nationalization, non-Government Schools were independent units, has held

that petitioner was not entitled for continuity of service when he left one school and joined another School and the continuity of service was only available for the purposes of pensionary benefits. He did not even care to notice and consider the individual Government circulars and particularly failed to appreciate that the said letter no.519 dated 2.7.1983 was issued for the purposes of preparation of seniority list of the teachers, including headmasters, which was clearly mentioned as subject matter of the letter and the same had been issued later to the said Government resolution no.581 dated 15.1.1982.

6. In the counter affidavit filed by the respondents, impugned order of the Director is being supported with the facts of the case mentioned therein. There is nothing in the counter affidavit to show as to under what circumstances, the Director did not find it at all appropriate even to notice the said two Government Circulars/resolutions/orders and their legal effect which this Court had required him to look into when it granted him "liberty to examine the issue by referring to overall legal position". There is also nothing in the counter affidavit to show as to why the Director did not identify the identical cases from the finally approved State level gradation list of teachers for promotion to headmaster and confined his examination only to case of the petitioner when this Court had directed the respondents that "they shall take uniform decision to be applicable in specific set of cases with identical facts and circumstances and shall not confine their decision to individual cases only". Clearly, the Director misdirected himself while availing the liberty granted to him which was to be exercised in specific manner indicated by this Court and not otherwise.

7. The order impugned, as contained in Annexure-8, is therefore, quashed and the writ application is allowed. The Director is directed to issue orders restoring the services of the petitioner on the post of headmaster of the concerned School with all consequential benefits within a period of two months from the date of receipt/production of a copy of this order. Thereafter, if he at all considers it necessary to re-examine the matter, he shall first of all prepare a list of all relevant Government instructions/circulars/resolutions issued from time to time since 1970 onwards, shall consider their cumulative legal effect, shall consider their validity and operation in context of Acts and Rules framed by the Government subsequently, shall get the individual teachers identified from the approved state level gradation list whose seniority and gradation and consequent promotion may get affected adversely, shall issue notice to them and thereafter only shall take a collective decision in the matter to be uniformly applicable in all identical cases. Any deviation from the above direction by the Director in taking steps in the matter shall be treated as disobedience of the orders of this Court.