

(1999) 11 PAT CK 0118

Patna High Court

Case No: C.W.J.C. No. 9062 of 1998

Dhrub Lochan Pradhan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 2, 1999

Acts Referred:

- Constitution of India, 1950 - Article 141, 142

Citation: (2000) 1 PLJR 996

Hon'ble Judges: S.N. Jha, J

Bench: Single Bench

Advocate: R.K. Rajan, for the Appellant; Gajendra Nath Ojha for the State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.N. Jha, J.

The petitioner seeks direction to the respondents to recognize him as Headmaster of High School, Kuchai, District West Singhbhum. The relevant facts are as follows: The school in question was granted permission to establish by the then Bihar Secondary Education Board on 3.2.76. The petitioner claims to have been appointed as Headmaster of the school on 1.1.72 itself. On 17.10.79 the school was granted permanent recognition by the Board. Eater the school was taken over under the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 (later replaced by Act) with effect from 2.10.80. Three writ petitions one after the other, were filed by the petitioner being CWJC Nos. 3236/85, 11/88 and 3072/93(R). Copies of the orders passed in the first two cases have not been brought on record but from the order passed in the third case dated 5.10.93, it appears that the petitioner was asked to make representation before the Director, Secondary Education. On 31.10.93 the Director, Secondary Education passed an

order to the effect that the petitioner shall be treated as Assistant Teacher. From Annexure-1, it appears that the petitioner was transferred from High School, Kuchai to High School, Jawalkanta, District East Singhbhum.

2. Notwithstanding that three attempts to get a favourable order from this Court failed in the aforesaid writ petitions, the petitioner has filed the present writ petition on the strength of a recent order of the Supreme Court in the case of [A.K. Pradhan Vs. State of Bihar and Others](#), . It appears that a similar contention was raised before this Court in the case of [Ram Balak Prasad Singh Vs. The State of Bihar and Others](#), . It has been held that the order in the case of A.K. Pradhan (supra) does not lay down any principle of law and therefore, has no binding effect.

3. Before I advert to the case of A.K. Pradhan, it would be appropriate to mention that the petitioner claims his rights in terms of Circular Nos. 510 and 511 dated 20.11.81. The said circulars, which have been held by a Division Bench of this Court to be law on the subject, lay down the criteria and the procedure for recognition of teachers as Headmasters in the taken over schools. It inter alia, provides that person who possesses certain years of teaching experience of recognised school, alone can be recognised as Headmaster. Dealing with the question as to the cut-off date with reference to which such teaching experience is to be reckoned, a Division Bench of this Court in the case of Phulena Prasad Yadav vs. State of Bihar, 1991(2) PLJR 449 has observed:

It is true that unlike circular no. 511, there is no specific mention as to on which date this ten years teaching experience is to be calculated. But having regard to the fact that the said circular the post of Headmaster by promotion from amongst the eligible assistant teacher of the school in question, treating the school as a suit in cases where the vacancy had occurred prior to 2.10.1980, it would be clear that the cut off date for the purpose of calculating the teaching experience has to be 2.10.1980 and no other date. A bare perusal of the first part of the said circular, which has been extracted above, would show that in respect of vacancies on the post of Headmaster of taken over High Schools two categories have been carved out. In the first category are such schools in which the post of Headmaster fell vacant before 2.10.1980 and in the second category are such schools where the posts fell vacant on or after 2.10.1980. In cases falling in the first category, the schools were to be treated as separate unit for the purpose of filling up the post of Headmaster, the idea being that the status quo ante prevailing prior to 2.10.1980 was to be maintained. The Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 came into force with effect from 2.10.1980 and, therefore, it was provided that if the vacancy had occurred prior to that date, such vacancy must be filled up by giving promotion to the assistant teacher possessing the prescribed qualifications for such appointment as before As I have indicated above, the underlying idea behind carving out two distinct classes and providing two different modes for making appointment on the vacant

post of Headmaster in the aforesaid two classes was to give an opportunity of consideration i.e. a chance of promotion to only such of the eligible assistant teachers of the school in question, who on account of their possessing the requisite prescribed qualifications, could be promoted as Headmaster, had the aforesaid ordinance not come into force. Therefore, the consideration, in my opinion, of the case of the person concerned for promotion has to be with reference to the state of affairs as existing on 2.10.1980 and, therefore, it is with reference to that very date that the teaching experience also has to be counted.

The claim of the petitioner is squarely covered by the law laid down by this Court in the above case.

4. Adverting to the case of A.K. Pradhan, it would appear that his case had been dismissed by the High Court relying on a Full Bench decision in Ram Ballabh Pd. Singh & Ors. vs. State of Bihar & ors. 1986 PLJR 373. The Supreme Court upheld the decision by speaking order vide 1998 PLJR 70 (SC). The point for consideration before the Full Bench in Ram Ballabh Prasad Singh's case was whether upon take over of the school, under the aforesaid Take Over Ordinance/Act, the services of unrecognised teachers stand automatically taken over by the State Government u/s 4(2) of the Ordinance/Act or not. While considering the case of A.K. Pradhan, the Supreme Court noticed certain observations made by it in the case of Ram Ballabh Prasad Singh's case and observed:

The fact, however, remains that the appellant has since completed more than seven years of service and is now eligible for being considered for regularisation.

Neither the relevant circulars of the State Government were brought to the notice of the Supreme Court nor the decision in Phulena Prasad Yadav's case was cited, following which a large number of cases have been dismissed by this court was cited. I have no doubt that the above order of the Supreme Court has to be construed as an order under Article 142 of the Constitution, and cannot be treated as binding precedent under Article 141, as already held by this Court in [Ram Balak Prasad Singh Vs. The State of Bihar and Others](#), . A.K. Pradhan's case therefore, can be of no help to the petitioner.

5. Three writ petitions having failed to obtain favourable order for the petitioner, and the Director, Secondary Education, also having decided the claim in 1993 itself, which was not challenged by the petitioner, the matter has attained finality and cannot be reopened. In the result, I do not find any merit in this writ petition which is accordingly dismissed.