

(2016) 07 PAT CK 0112

PATNA HIGH COURT

Case No: Letters Patent Appeal No.136 of 2015 (Arising out of Civil Writ Jurisdiction Case No. 14248 of 2013)

Mr. Subhash Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: July 18, 2016

Acts Referred:

- Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 - Section 18
- Bihar Taken Over Secondary Schools Service Conditions Rules, 1983 - Rule 4

Citation: (2017) 1 BBCJ 157 : (2016) 4 PLJR 608

Hon'ble Judges: Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench: Division Bench

Advocate: Mr. Upendra Pratap Singh, AC to SC 25, for the Respondents; Mr. Purushottam Kumar Jha, Advocate, for the Appellant

Final Decision: Allowed

Judgement

Mr. Ahsanuddin Amanullah, J.(Oral) - Heard learned counsel for the parties.

2. The challenge in the present intra-court appeal under Clause X of the Letters Patent of Patna High Court is to the order dated 30.07.2013 passed by the learned Single Bench by which C.W.J.C. No. 14248 of 2013 filed by the petitioner has been disposed off with a direction to approve the service of the petitioner with effect from 25.10.2010 and holding him entitled to all benefits including payment of salary from the said date.

3. The appellant was appointed on the post of teacher in economics in Sri Guru Govind Singh Girls High School, Patna City (hereinafter referred to as the "School") pursuant to advertisement and selection by a duly constituted Selection Committee and issued appointment letter dated 14.11.2003. Pursuant to the same, he also joined on 18.11.2003 and started discharging his duties. Thereafter, the Secretary of

the School sent letter dated 16.03.2004 to the District Education Officer, Patna, seeking approval of the service of the appellant, who in turn wrote to the Secretary, Bihar Staff Selection Commission, Patna under letter no. 930 dated 20.06.2006. Since there was controversy with regard to the B.Ed. degree possessed by the appellant, to prevent any complication in future, after taking due permission from the Managing Committee of the School, obtained B.Ed. degree in the year 2010 from an affiliated unit of Magadh University duly recognised by the N.C.T.E. The Joint Director, Secondary Education, Government of Bihar, Patna, by letter dated 15.01.2013, directed the appellant to appear before the Director, Secondary Education, Government of Bihar, Patna, to explain why approval be not refused. Pursuant to the same, the Director, Secondary Education, Government of Bihar, Patna passed an order contained in Memo No. 390 dated 30.03.2013 rejecting the request for approval of the appointment of the appellant on the post of teacher in the School on the ground that he did not possess B.Ed. degree and was also overage at the time of his initial appointment. The appellant being aggrieved by the order dated 30.03.2013 moved before this Court in C.W.J.C. No. 14248 of 2013 which was disposed off by the learned Single Bench by order dated 30.07.2013 directing for approval of the service of the appellant w.e.f. 25.10.2010, which is impugned in the present Letters Patent Appeal.

4. Learned counsel for the appellant submits that the Director, Secondary Education, while passing the order dated 30.03.2013, has gone on the presumption that the appellant did not possess the requisite qualification of B.Ed. degree as per the requirement of the provisions, more specifically, Section 18 of the Bihar Non-Government Secondary Schools (Taking Over of Control and Management) Act, 1981 (hereinafter referred to as the "Act") and the Bihar Taken-Over Secondary Schools (Service Condition) Rules, 1983 (hereinafter referred to as the "Rules") framed under the Act, which prescribed the qualification for appointment as a teacher, without taking note of the fact that under resolution contained in Memo No. 116 dated 5th March, 1991 by the Human Resources Development Department, for the purpose of recruitment of teachers, the mandatory condition of being trained was done away with. It is submitted that though the Rules originally prescribed possessing B.Ed. degree from any recognised University, State Government recognised Board or that granted by the State Government's Education Department or qualification which has been declared to be equivalent by the State Government, but by resolution contained in Memo No. 116 dated 5th March, 1991, a conscious decision was taken to do away with the mandatory requirement of being trained for the purpose of appointment as teacher. It is submitted that a Division Bench of this Court in the case of State of Bihar and Others v. The Chairman, Vidyalaya Sewa Board and Others (L.P.A. No. 439 of 2001) and analogous cases, by order dated 16.12.2004, while dealing with the resolution dated 5th March, 1991, after noticing the order of the Hon'ble Supreme Court in the case of **Ram Vinay Kumar v. State of Bihar reported as 1997(2) PLJR (SC) 108** [though

wrongly printed as 1997 (1) PLJR (SC) 108 in volume No. 2 of PLJR of the year 1997], has held as under:

"16. Dr. S.N. Jha, learned senior counsel appearing for the students in Biology subject in L.P.A. No. 447 of 2001, arising out of C.W.J.C. No. 9259/2000, submitted that the only trained teachers should be appointed in terms of the Rule and untrained teachers cannot be appointed. The other submission advanced by Dr. Jha is that once the rule required that the training is must for appointment of teachers, the same cannot be done away by any executive instruction.

17. We are unable to agree with the aforesaid submissions. The requirement of training has not been done away by the executive instruction/circular, rather it has supplemented the rule that even untrained teachers can also apply. Thus, it is not a case of sub-planting, but a case of supplementing the rules. This apart, in a similar matter where untrained persons were also first appointed as teachers in Primary Schools, the matter came to this Court and this Court did not interfere with the matter. The said judgment was upheld by the Apex Court in the case of **Ram Vinay Kumar v. State of Bihar, reported in 1997 (1) P.L.J.R. 108.**"

5. The said decision has been upheld by the Hon"ble Supreme Court by order dated 28.08.2012 in Special Leave to Appeal (Civil) No (s). 6369-6376/2005.

6. It is, thus, submitted that the learned Single Bench has erroneously relied on a Division Bench judgment of this Court in the case of **Om Prakash Choubey v. Director reported as 1985 PLJR 1110** which clearly does not come in the way of the appellant, since it has been rendered much prior to the Government resolution dated 5th March, 1991, validity of which has been upheld till the level of the Hon"ble Supreme Court. Learned counsel submits that the service of the appellant ought to be recognised from the date when he had joined the post on 18.11.2003, having been duly appointed by the Managing Committee of the School. As far as the objection of the Director that the appellant was overage on the date of initial appointment, the same is also contrary to the factual position as the appellant belongs to Backward Category and, thus, was within the prescribed age limit for such appointment, which has been rightly held by the learned Single Bench. It is submitted that the learned Single Bench has erred in granting approval of his service only w.e.f. 25.10.2010 on the basis of him having acquired the B.Ed. qualification on that date instead of 18.11.2003.

7. Learned counsel for the State submits that the order of the Director dated 30.03.2013 is in accordance with law since the same has taken into consideration the statutory provision of Section 18(3) (b) read with rule 4 (c) of the Rules. However, he is not in a position to controvert the fact that the validity of the resolution of the State Government dated 5th March, 1991, doing away with the mandatory requirement of being trained for appointment as a teacher has been done away with, which has been upheld by the Division Bench and affirmed by the Hon"ble

Supreme Court.

8. Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellant. For the purpose of better appreciation, the relevant provisions of Section 18 of the Act and Rule 4 of the Rules are quoted herein below:

Section 18 (3) (b) of the Act

"18. Recognition of the Minority Secondary Schools:-

xxxxxx

(3) Minority Secondary Schools recognised under above subsections (1) and (2) shall be managed and controlled under the following provisions:-

xxxxxx

(b) The managing committee of the minority secondary school shall appoint teachers, within sanctioned limit of posts by the State Government, as per qualifications prescribed by the State Government for the taken-over Secondary Schools, with the approval of School Service Board constituted under Section 10 of this Act:

Provided that under this sub-section, at the time of according approval to the appointment of a teacher, the Board shall examine only whether the proposed appointment has been done according to the prescribed qualification and as per the procedure laid down for it in the rule made for this purpose, and it shall not enter into any other matter or it shall not have any right to examine the justification for the proposal.

xxxxxx

Rule 4 (c) of the Rules

"4. Qualification:-

xxxxxx

(c) Assistant Teacher in Selection Grade-

(1) General teacher-a bachelor degree in Arts, Science and Commerce from a Statutory University.

(2) Bachelor of Education (B.ED.), Dip. In Ed/Dip. In teach from any statutory University or from any Board recognised by the State Government or from Education Department of the State Government or C.T or any teacher's training qualification declared equivalent by the State Government.

Note:- In case of unavailability of scheduled tribe, scheduled caste and female candidates with the requisite training qualification, untrained candidates may be

appointed on the recommendation of the School Service Board.

Before appointment of untrained candidates, an advertisement in duly prescribed manner shall be published in two widely circulated newspapers of the State. After this, if the trained candidates of the desired categories shall not be available, a certificate of non-availability of the trained scheduled castes and scheduled tribes and female candidates shall be obtained from the School Service Board and only then such candidates shall be appointed or such appointment shall be approved."

9. As per Section 18 (3) of the Act, it is within the power of the Managing Committee of the Minority Secondary School to appoint a teacher with the sole stipulation that he should have requisite qualification and that such appointment be approved by the School Service Board constituted for such purpose. Though Rule 4 provides for the person to have among others, B.Ed. degree from a recognised institution, but such stipulation has been waived/ended by the resolution of the State Government contained in Memo No. 116 dated 5th March, 1991. The rejection of the contention of the appellant by the learned Single Judge for the reason that a Division Bench of this Court in the case of Om Prakash Choubey (supra) has held that there was no scope of appointment of untrained teacher in Secondary School cannot be applied to the facts of the present case for the reason that the same was rendered much prior to the Government coming out with its resolution dated 5th March, 1991, which has been held by a Division Bench of this Court in the case of State of Bihar and Others v. The Chairman, Vidyalaya Sewa Board and Others (supra) to be a case of supplementing and not supplanting of the Rules, and, thus, necessarily, the case of the appellant shall have to be considered with reference to the resolution dated 5th March, 1991, which is quoted herein below:

"Human Resources Development Department

Resolution

Patna, dated 5th March, 1991

Subject:-Arrangement for training during service period.

The Government and Non-Government teachers training colleges are being run within the State of Bihar. These training colleges are of two type-The matriculate students get admission in one type of college and graduates are admitted in other type of college. Two years training is imparted in the first type of college and nine months training is imparted in the second type colleges. The candidates who have obtained training from these colleges, are appointed in the schools upto the level of Primary to Secondary schools and at the same time, they are appointed in teachers training colleges too. The matriculation trained candidates are appointed in Primary and Middle Schools, as per their class on the basis of their success in examination after preparing a panel of appointment. Hence, there is a race for admission in these training colleges. The admission in the Government Teacher Training Colleges

(Matric and Graduation) is taken as per merit list but corrupt practices are prevalent in the Non-Government Teachers Training Colleges due to which these have turned into a source of monetary gain.

2. Keeping in view the aforesaid circumstances, the State Government has promulgated an Act which contains provision that no any institution or person can establish any type of Teachers Training College without obtaining prior approval of the Government. At the same time, the State Government has laid conditions for recognition/affiliation of such intuitions, vide Notification No.

-1107 dated 25/11/87 of the Department; but it has not made any difference at all.

3. Hence, in the aforesaid context, the State Government has taken following decision to remove corruption in the Non-Government Teachers Training Colleges and improve the level of training there:-

(a) The compulsion of training in teacher"s appointment is abolished.

(b) After appointment, training shall be imparted in Government Training Colleges during service period.

(c) The procedure for appointment to the post of teacher, shall be based on merit.

(d) The concerned Education Controller shall make immediately necessary modification in the rules regarding appointment in the cadre and obtain approval of the Administration, which shall come into force within the whole State from the date of issuance of the resolution.

Order:- It is ordered to publish its resolution in the special issue of Bihar Gazette.

By the order of Governor, Bihar

Sd/- R.K. Srivastava

Commissioner and Secretary

Human Resources Development Department, Bihar

Memo No. 10/v 3-56/88 (part) E-116 Patna, dated 5th March, 1991 "

10. The appointment of the appellant by the Managing Committee, after following the due procedure, and him having been issued appointment letter dated 14.11.2003 was, thus, in accordance with law and cannot be said to be irregular, much-less illegal. Thus, the limited power of the State in the management of private minority institutions in the matter of appointment of teachers being to the extent of ensuring the minimum eligibility criteria of the person appointed, and in the present case, this Court coming to the conclusion that such appointment was in accordance with the prescribed Rules, the recognition of his service by the competent authority, i.e., the Director, Secondary Education, w.e.f. 18.11.2003, could not have been refused.

11. For the reasons aforesaid, the order of the learned Single Judge dated 30.07.2013 cannot be sustained and is, accordingly, set aside and C.W.J.C. No. 14248 of 2013 stands allowed. The appellant is held entitled for approval of his services with effect from the date on which he joined the school pursuant to his appointment by the Managing Committee of the School under letter dated 14.11.2003. He is also held entitled to all consequential benefits.