

SUPREME COURT OF INDIA

State of Bihar

Vs.

Krishna Paswan

C.A.No.5519 of 2002

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

15.10.2008

JUDGMENT

Lokeshwar Singh Panta, J.

1. This appeal arises out of judgment and order dated 27.06.2001 of the High Court of Judicature at Patna in Letters Patent Appeal No. 1590/99 whereby and whereunder the High Court dismissed the appeal and upheld the judgment of the learned Single Judge passed in CWJC No. 10448 of 1997 dated 09.02.1999.

2. Facts, in brief are as under:-

“In the year 1987, the respondents herein along with others were appointed as Assistant Teachers by the District Superintendent of Education, Gaya vide order contained in Memo No. 8158-8408 dated 25.6.1987. The relevant terms and conditions contained in the said appointment letter were that the Matric Trained Teachers would get higher pay scale of Rs.580-860/- whereas the Matric Untrained Teachers would get lower scale of pay of Rs. 535-765/-. The respondents after appointment joined their respective posts and were not paid salary. They, therefore, filed CWJC No. 2099 of 1992 before the High Court of Judicature at Patna. The stand of the State of Bihar in their counter affidavit before the High Court was that the respondents had failed to submit their requisite educational qualification certificates which were pre-requisite for valid appointment, as such they cannot be deemed to be in service. The High Court disposed of the writ petition by directing the respondents to file relevant educational certificates and the State was also directed to decide their claim. In pursuance of the order of the High Court, the respondents-appointees produced the relevant testimonials but the State Government insisted upon them to produce the certificates pertaining to their training.”

3. The affected appointees again approached the High Court by way of second writ petition (being CWJC No. 12322 of 1993) which came to be rejected by order dated 13.01.1995.

4. Being aggrieved, the respondents-untrained teachers filed Letters Patent Appeal No. 102/1995 which was decided by the Division Bench on January 27, 1997. The operative directions contained in the said order read as under:-

"Admittedly, the appellants are not trained teachers. In this background, according to this court, there is no question of production of training certificate by the appellants. It is not in dispute that even untrained persons could have been appointed as Assistant Teachers in the untrained scale of pay. Further, it is not the case of the respondents that they have terminated the services of the appellants. In this background, according to this court, the respondents cannot deny the salary in favour of the appellants on the ground that the appellants had produced the training certificate, if appointments of the appellants have been made in the untrained scale of pay of Assistant Teachers. Accordingly, the respondents are directed to look into the appointment letters of the appellants dated 25.6.1987. If the appellants have been appointed as untrained Assistant Teachers, without asking the appellants to produce the training certificates, the respondents will pay untrained scale of pay in favour of the appellants for the period they have actually performed their duty. The decision is to be taken and admitted dues are to be paid in favour of the appellants, within a period of four months from the date of receipt/production of a copy of this order." The above decision attained finality."

5. In compliance of the judgment of the Division Bench in LPA No. 102/1995, the District Superintendent of Education, Gaya, held a meeting of District Establishment Committee on 08.06.1997 and in the said meeting it was decided that the services of the respondents shall be terminated from the date of appointment as they had no training. As a result of the decision of the District Establishment Committee, the District Superintendent of Education by Memo No. 2099 dated 25.06.1997 terminated the services of the respondents.

6. Feeling aggrieved, the respondents-untrained teachers filed one more CWJC No. 10448 of 1997 before the High Court of Judicature at Patna. The learned Single Judge disposed of the said writ petition on 09.02.1999 at the admission stage itself with a direction to the State to pass an appropriate order about the claim of the respondents-untrained teachers for payment of their salary in the untrained scale of pay in the light of the findings recorded by the Division Bench in LPA No. 102/1995 and will pass such order within a period of three months from the date of service of the copy of the said order.

7. Aggrieved by the order of the learned Single Judge, the State preferred LPA No. 1590 of 1999 which was dismissed by the High Court vide order dated 27.06.2001 and the order reads as under:-

"The question involved in this appeal is as to whether the respondents were appointed as trained teachers or untrained teachers. We did ask the counsel for the State to produce a copy of the advertisement but he has not been able to produce the same. On the other hand, he stated that no advertisement was made for the said appointment.

From perusal of the office order whereby large number of teachers were appointed a copy of which has been annexed as Annexure-2 to the application, it is evident that direction was given to appoint trained teachers and in case of non-availability of trained teacher, untrained teachers may be appointed. In that view of the matter, the respondents-untrained teachers were appointed as untrained teachers. Thus, it cannot be said that they got appointment by practising fraud or making misrepresentation. In our view, there was no case of fraud or misrepresentation on the part of the respondents who were appointed in the year 1987 and continued on the said post, no case for termination of their services is made out and learned Single Judge rightly allowed the writ application filed by them challenging the termination order. In the result, the appeal is dismissed."

8. Now, the State of Bihar by special leave has filed this appeal before this Court challenging the correctness and validity of the impugned order of the High Court dated 27.06.2001.

9. We have heard the learned counsel for the parties. The learned counsel for the State contended that the High Court fell into an error in holding that the respondents have not committed any fraud and misrepresentation of facts as alleged against them. According to the learned counsel, after holding an inquiry into the appointments of the respondents, it was found that the respondents had appeared in the interview as Matric-Trained Teachers and obtained the appointment against the said posts, whereas they have not undergone any training and as such they made false representation and got appointments by misrepresentation.

10. Per contra, the learned counsel appearing for the respondents-untrained teachers contended that the respondents have applied against the posts of untrained teachers and were duly appointed as Matric Untrained Teachers, due to non-availability of trained teachers. He contended that the judgment and order of the learned Single Judge confirmed by the Division Bench of the High Court do not suffer from any infirmity or perversity warranting interference in this appeal.

11. It is not in dispute that at the time of appointment of the respondents, they had produced the relevant educational certificates. It is also not in dispute that they have not undergone the training of teachers and they applied for the posts of Assistant Teachers in the category of Matric Untrained Teachers having qualified Matric examination. It is also not in dispute that the State Government, in the absence of availability of trained teachers, appointed the untrained teachers.

12. In the factual situation narrated hereinabove, it was the specific case of the respondents before the High Court that they were appointed as Matric Untrained Teachers by the competent authority after following the prevalent and established procedures and they have secured the appointment as Matric Untrained Teachers and not as Matric Trained Teachers as alleged by the State Government. In counter affidavit filed by the respondents before this Court, they have categorically stated that they have never

applied for the posts of trained teachers nor supplied any documents of training nor they, at any point of time, have undergone training. They have never been paid salary of trained teachers. The record shows that on the date of interview conducted by the District Education Establishment Committee in its meeting held on 01.05.1987, the Matric Trained Teachers were appointed against the posts of Matric Trained Assistant Teachers and the respondents were appointed as Matric Untrained Assistant Teachers in two different pay scales meaning thereby that Matric Trained Assistant Teachers were given higher pay scale as compared to Matric Untrained Assistant Teachers like the respondents. The respondents have filed the requisite certificates regarding their educational qualifications having qualified matriculation examination and thereby they were qualified to be appointed as Assistant Untrained Teachers without undergoing training.

13. In this view of the matter, the order of termination of the services of the respondents has been rightly held to be bad in law by the High Court. Appellants have failed to prove that the respondents at any point of time got appointments as Matric Trained Teachers by practicing fraud or misrepresentation. Thus, the contentions of the learned counsel for the appellants do not merit acceptance.

14. In the result, this appeal deserves to be dismissed. We order accordingly. We direct the appellants to reinstate the respondents against the posts of Matric Untrained Assistant Teachers, but on the facts and circumstances, the respondents will not be entitled for salary of past period when they were out of job. Compliance within three months. Parties are left to bear their own costs.