

12

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 326 OF 1995
Cuttack, this the 20th day of May, 1999

Shri Raghunath padhi Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

Somnath Som
20.5.99

13

B

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 326 OF 1995
Cuttack, this the 20th day of May, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shri Raghunath Padhi, aged 56 years, son of late Shyama Sundar Padhi, at present serving as Headmaster, South Eastern Railway Mixed Primary School, Khurda RoadApplicant

Advocates for applicant - M/s A.K.Misra
S.K.Das
S.B.Jena
J.Sengupta.

Vrs.

1. Union of India, represented through its General Manager, Garden Reach, South Eastern Railway, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43.
3. Divisional Personnel Officer and Controlling Officer, South Eastern Railway, Khurda Road.
4. Divisional Railway Manager, South Eastern Railway, Khurda Road.
5. Prime Minister, Hindi Sahitya Sammelon (Prayag), Allahabad, Uttar PradeshRespondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J. Som.

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to allow him to continue as Headmaster of the Primary School and also for a further direction that the petitioner is entitled to continue in the post of Headmaster by virtue of his educational qualification and his passing the suitability test conducted by the respondents.

14

2. By way of interim relief, it was claimed that pending final adjudication of the Application, the respondents should be directed to allow the petitioner to continue as Headmaster of the S.E.Railway Mixed Primary School, Khurda Road. On the date of admission of the petition on 23.6.1995 it was ordered by way of interim relief that if any order of reversion is issued against the applicant, the same shall not operate for seven days. On 22.8.1995 it was directed that the applicant shall not be reverted from his present post of Primary School Headmaster, Mixed Primary School, Khurda Road, until further orders. This interim order continued till 21.8.1998 when on a petition filed by the respondents in MA No. 447 of 1998, the interim order was vacated and the matter was fixed for peremptory hearing on 7.9.1998. Ultimately, the matter was heard on 13.4.1999.

3. The case of the applicant is that he joined as Assistant Teacher under the Railways in the year 1968 after passing Matriculation. In April 1982 he appeared as a private candidate in Interimmediate Examination and passed in Second Division from Ranchi University. In letter dated 13.11.1987 (Annexure-1) the applicant sought for permission from the Railway authorities to appear at Utama Examination of Hindi Viswavidyalaya, Hindi Sahitya Sammelon (Prayag), Allahabad in December 1987 as a private candidate. Again on 16.1.1989 in the letter at Annexure-2 he applied to the Railway authorities for according permission to him to appear for B.Ed. Examination in 1989 as a private candidate from Hindi Viswavidyalaya, Allahabad. The copy of the marksheet obtained by the applicant in the Siksha Visharad from Hindi Sahitya Sammelan, Allahabad is at Annexure-3. At Annexure-4 is a letter from Hindi Sahitya Sammelan, Allahabad (Hindi Viswavidyalaya) in which in the last paragraph it has been mentioned that Government of Orissa in

J. S. M.

15

their letter dated 23.2.1981 have recognised the Siksha Visharad Examination of Hindi Sahitya Sammelan, Allahabad, as equivalent to B.Ed. Degree. The petitioner's case is that through these two examinations, he acquired the qualifications of B.A. and B.Ed. The applicant has further stated that prior to introduction of revised pay scale from 1.1.1986 there was no bar on the part of an Assistant Teacher of Primary School to become Headmaster of the Primary School. Only after introduction of the revised pay scale from 1.1.1986 it was made incumbent that for holding the post of Headmaster the candidate must possess B.Ed. qualification. Later on in order dated 23.11.1989 (Annexure-5) the Teachers working under Railway administration were classified as Primary Teacher, Trained Graduate Teacher and Post-Graduate Teacher, and Headmasters of Primary Schools were made equivalent to Trained Graduate Teachers. On 2.2.1990 the applicant was called upon to appear at a suitability test for the post of Headmaster in the pay scale of Rs.1400-2600/-. Accordingly, he appeared and was successful. He was intimated on 31.10.1990 about his passing the test and promotion order was issued to him on 31.10.1990 (Annexure-7) promoting him as Officiating Headmaster of Mixed Primary School, Khurda Road. In letter dated 12.5.1995 at Annexure-8, the applicant was intimated that his qualification of Siksha Visharad from Hindi Sahitya Sammelan, Allahabad, is not equivalent to University Degree/Diploma in Education/Teaching in terms of the Railway Board's different circulars. It was also intimated that the applicant knowing fully well that he was not qualified for the post of Headmaster, opted for the post and gave a declaration that he has passed B.A. and B.Ed. Basing on this, he was called to the suitability test. Therefore, the

15

S. J. Sam.

applicant was asked to submit his explanation as to why he should not be reverted to his substantive post of Primary School Teacher as he was not qualified for the post of Headmaster of Primary School. In his letter dated 9.6.1995 at Annexure-9 the applicant wanted to have copies of these circulars and also submitted an explanation and before any order of reversion could be issued, he has approached the Tribunal and obtained a stay as referred to earlier. In the context of the above facts, the petitioner has come up in this petition with the prayers referred to earlier.

4. The respondents in their counter have submitted that from Annexure-3 to the OA, it is clear that he did not pass the Examination for which he sought for and obtained permission in his letter at Annexure-1. The respondents have also pointed out that according to the Railway Board's letter dated 17.12.1993 (Annexure-A), which is in reply to Chief Personnel Officer's letter dated 1.6.1992 at Annexure-B, Siksha Visharad is not equivalent to B.Ed. or B.T. and accordingly, they have held that the applicant did not have the necessary qualification for being appointed as Headmaster. The respondents have also pointed out that in accordance with the letter dated 8.3.1990 Headmaster of Primary School must have the same qualification as is necessary for Trained Graduate Teacher. The respondents have further stated that the applicant made a declaration that he has the necessary qualification for the post of Headmaster and basing on that, he was called to the suitability test in which he was declared succesful. On the basis of such wrong declaration, he was called to the test and ultimately was promoted to the post of Officiating Headmaster. When the mistake came to notice, they sought to correct the mistake. But before that, the applicant approached the Tribunal and obtained the stay order to stall any action by the respondents. It is further stated that

S. Sam

17

recognition by Government of Orissais not of any relevance. Recognition by the Railway Board is what is material for the present purpose. On the above grounds, the respondents have opposed the prayer of the applicant.

5. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel appearing for the respondents and have also perused the records.

6. It has been submitted by the learned counsel for the petitioner that the applicant was called for a suitability test for the post of Headmaster of Primary School and after he became successful, in the order dated 31.10.1990 at Annexure-7 he was promoted as Officiating Headmaster. In this order of promotion, it has been specifically written that before effecting the above promotion, the qualification, i.e., Graduate with B.Ed. or B.T. should be verified. It has been submitted by the learned counsel for the petitioner that as the applicant was allowed to work for almost five years as Headmaster after such verification, the respondents are estopped from questioning his qualification and reverting him to the post of Primary School Teacher from the post of Headmaster of Primary School. It has been submitted by the learned Senior Panel Counsel that there cannot be any estoppel against the statute. In support of his contention, the learned Senior Panel Counsel for the respondents has relied on the case of Dr. Ashok Kumar Maheshwari v. State of U.P. and another, AIR 1998 SC 966. In that case, the appellants wanted to be promoted to the post of Lecturer in the Department of Pharmacy in Medical College where they were working as Demonstrators. Apparently, assurance was given by the State Government to the Demonstrators that they would be promoted to the post of Lecturer. But on the matter coming before the Hon'ble Supreme Court, it was noted that post of Lecturer is

S. S. M.

not in the avenue of promotion for Demonstrators under any statute or executive instruction. It was also noted that posts of Lecturer are to be filled up by direct recruitment and therefore, no question of promissory estoppel on the basis of the assurance given by the State Government would arise. In the instant case, it has been laid down that for the post of Headmaster of Primary School the qualification would be the same as Trained Graduate Teacher. This would mean that the Trained Graduate Teacher must have Degree of B.Ed/B.T. In case the applicant does not have the qualification of B.Ed./B.T. he cannot claim that by operation of promissory estoppel he can continue in the post of Headmaster of Primary School when this is an essential qualification. It is also to be noted that the applicant had represented that he has the necessary qualification of B.Ed. Whether his certificates were verified or not has not been mentioned by the applicant in his O.A. In view of this, we hold that doctrine of promissory estoppel is not attracted in this case.

7. The second point urged by the learned counsel for the petitioner is that the clarification issued by the Railway Board in their letter dated 17.12.1993 would be prospective in nature and therefore appointment of the applicant in order dated 31.10.1990 would not be affected by this clarification. In this letter dated 17.12.1993 at Annexure-A it has been mentioned that this issue has been examined in consultation with the Department of Education and Department of Personnel & Training and it has been clarified that Siksha Visharad Certificate awarded by Hindi Sahitya Sammelan, Allahabad, is not included in the qualifications equated to B.Ed/B.T. prescribed for Trained Graduate Teachers/Post Graduate Teachers. Since this is a clarification, it cannot be said that this clarification

J. Som.

19
would be only prospective in nature. If the qualification of Siksha Visharad had been earlier recognised as equivalent to B.Ed/B.T. and the recognition had been withdrawn subsequently, then such withdrawal would have been prospective in nature. But when this qualification of Siksha Visharad was not recognised as equivalent to B.Ed/B.T., it cannot be said that prior to 17.12.1993 this should be taken as recognised. This contention is also held to be without any merit and is rejected.

8. In consideration of the above, we hold that the applicant did not have B.Ed. qualification which is a necessary qualification for appointment as Headmaster of Primary School. Therefore, the second prayer of the application for a direction that he has the necessary qualification for continuing as Headmaster of Primary School is held to be without any merit and is rejected.

9. The first prayer of the applicant is for a direction to the respondents to allow him to continue as Headmaster of Primary School. In the instant case, no reversion order could be passed against the applicant and in any case the Tribunal in their order dated 22.8.1995 directed that he shall not be reverted from the post of Primary School Headmaster until further orders. By virtue of this stay order, the applicant continued in the post of Primary School Headmaster. This stay order was vacated in order dated 21.8.1998 referred to earlier. It has been submitted by the learned counsel for the petitioner that the applicant has already retired from service with effect from 31.8.1998. In case no reversion order has been passed against the applicant reverting him from the post of Headmaster of Mixed Primary School, Khurda Road and putting him back to his earlier post before 31.8.1998, then he would have continued as Headmaster of Primary School even after 21.8.1998. In view of this, it is not necessary to issue any direction regarding his ^{further} continuance in the post of

S. S. M.

Headmaster of Mixed Primary School, Khurda Road, which in any case he is not entitled to hold. This prayer is also therefore rejected.

10. Before parting with this case, one point has to be mentioned. The applicant was appointed as Officiating Headmaster of Mixed Primary School, Khurda Road, in order dated 31.10.1990 and by virtue of the interim order dated 22.8.1995 he continued in that post. As he has worked in the post of Headmaster, he would be entitled to the emoluments of the Headmaster in that scale. The respondents should not try to recover the pay of the Headmaster from him and his pensionary benefits should be worked out on the basis of actual pay drawn by him during the relevant period.

11. In the result, the O.A. is disposed of in terms of the above observation and direction. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN 20.5.99