

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 7413 of 2012

Kavita Kumari Petitioner

Versus

1. The State of Jharkhand through its Chief Secretary,
Project Bhawan, P.O. & P.S.-Dhurwa, District- Ranchi
2. Deputy Commissioner, Lohardaga, PO, PS & District-
Lohardaga
3. Deputy Development Commissioner-cum-Vice Chairman,
Mass Education Programme, Lohardaga, PO, PS &
District-Lohardaga Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Rajesh Kumar, Advocate
 For the Respondents : Ms. Shrestha Mehta, AC to SC-II

22/ 30.09.2021 Heard through V.C.

2. The instant writ application has been preferred by the petitioner praying therein for quashing of the order dated 14.03.2012, whereby the representation filed by the petitioner pursuant to the order passed by this Court with respect to her claim for appointment as Para Teacher has been rejected.
3. Mr. Rajesh Kumar, learned counsel for the petitioner draws attention of this Court towards Annexure-4 and submits that the petitioner had earlier moved before this Court by filing a writ application being W.P.(S) No.1408 of 2008 which was disposed of by directing the respondent No.2 to treat the writ application as representation and decide the claim in accordance with law.

He further submits that the writ Court has

specifically directed the respondent No.2 to keep in mind the fact that Annexure-A/1 annexed to the counter affidavit filed in that writ application wherein it was shown that petitioner was not residing in particular village; is factually incorrect and as such the respondent No.2 shall look into this aspect of the matter also. Learned counsel further submits that her representation has been rejected without considering the said claim.

Learned counsel contended that though in view of the Right to Education Act all Teachers are required to pass the Teachers Eligibility Test and have a Teachers Training but the same will not be applicable in this case, in view of the fact that the dispute of this petitioner is prior to coming of the Act.

Learned counsel during course of argument has also tried to make out a case of discrimination however, the same has been replied in the supplementary counter affidavit. He reiterated that the fact that she was not residing in that village where school was situated, is incorrect; rather it is village politics that says that the petitioner is not resident of that village.

Learned counsel lastly submits that his case should be allowed since the post of Para Teacher is still vacant; thus,

the respondent may be directed to hold a fresh appointment for the Para Teacher.

4. Ms. Shrestha Mehta, learned counsel for the respondent State draws attention of this Court towards the 3rd supplementary counter affidavit and submits that on the one hand; the petitioner was never selected as para teacher by the village committee and on the other hand the impugned order has taken care of the claim of the petitioner and since she was not fulfilling the requisite qualification for selection for para teacher, she was not selected.

She further contended that after coming into force of Right to Education Act the respondents were directed by the Jharkhand Education Project Council (JEPC) to ban the selection of para teachers.

5. Having heard learned counsel for the parties and after going through the relevant documents annexed with the respective affidavits it appears that the petitioner had earlier filed a writ application which was disposed of by directing the Deputy Commissioner, Lohardaga to decide the claim of the petitioner.

Para 3 of the order dated 20.12.2011 passed in W.P.(S) No.1408 of 2008 is quoted herein below:

"3. In view of these submissions, I hereby direct respondent No.2 (Deputy Commissioner, Lohardaga) to treat this writ petition as a representation and decide the claim of the petitioner, by passing a detailed speaking order, in accordance with law, rules, regulations, polices and Government enforceable orders, applicable to the petitioner, as expeditiously as possible and practicable, preferably within a period of twelve weeks from the date of receipt of a copy of the order of this Court, after giving an adequate opportunity of being heard to the petitioner or to her representative. Respondent no.2 shall also keep in mind the fact that Annexure-A/1 annexed with the memo of the counter affidavit reveals that the petitioner was not residing in a particular village. This endorsement is the basis of the whole dispute. Learned counsel for the petitioner submitted that the endorsement is factually incorrect and there is no basis of this endorsement. Learned counsel for the respondent-State is unable to point out any basis, worth the name, that in what circumstances this endorsement is made in last column against the name of the petitioner at Annexure-A/1 annexed with the counter affidavit filed by the State, therefore, respondent no.2 shall ask for the basis of the endorsement made against the name of the petitioner at Annexure-A/1 of the counter affidavit and if there is no basis then the claim of the petitioner will be considered in accordance with law. The petitioner is also claiming herself to be a Post Graduate and resident of the very same village. The petitioner will be given adequate opportunity of being heard and to give evidences in support of her contention and after hearing the necessary party i.e respondent no.6 the decision will be taken by respondent no.2."

6. It further transpires that pursuant to the aforesaid order a detailed reasoned order has been passed after giving proper opportunity to the petitioner by the Deputy Commissioner, Lohardaga who came to conclusion that the petitioner is not entitled for appointment. It also appears from the averments made in the supplementary counter affidavit dated 27.09.2021 that the petitioner was never selected as Para Teacher by the Village Committee which is the basis of appointment as para teacher.

It further transpires from record that the claim of the petitioner that she belongs to the same Tola/ Village where the school is situated has been disputed in the impugned order by giving reference of the opinion of the village committee. The said factual observation has been given in para 5 (ka) of the impugned order which transpires that though the in-law's house of the petitioner is in Bhandra; but since her children are residing at Ranchi for education, she usually goes to Ranchi with them.

7. Since the Deputy Commissioner, Lohardaga after giving full opportunity to the petitioner passed the impugned order and further the fact whether the petitioner is residing in the same Tola / village where the school is situated is a factual

aspect for which there is clear finding in the impugned order and the Writ Court cannot go into that factual finding.

8. Thus, no relief can be granted to this petitioner. It goes without saying; after coming into force of Right to Education Act, all Teachers are required to pass Teachers Eligibility Test Examination and further must have Teachers training; however, the petitioner does not comply those conditions.

9. Consequently, the instant writ application stands dismissed.

(Deepak Roshan, J.)