

(2022) 05 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition (S) No. 736 Of 2010

Arun Kumar Raut And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Citation : (2022) 05 JH CK 0001

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Vishal Kumar Rai, Priyanka Bobby

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Vishal Kumar Rai, learned counsel appearing on behalf of the petitioners.
2. Heard Ms. Priyanka Bobby, learned counsel appearing on behalf of the respondents.
3. This writ petition has been filed for the following reliefs:

"That this is an application praying for issuance of a writ in the nature of writ of certiorari for quashing the order issued by the Civil Surgeon-cum- Chief Medical Officer, Dumka vide Memo No. 2770 dated 14/10/93 and 13/10/93 respectively whereby the re-appointment of the petitioners pursuant to various judgments passed by this Hon'ble Court and Hon'ble Patna High Court has been cancelled in a most illegal and arbitrary manner and in violation of the Principle of natural justice and further for issuance of a writ in the nature of writ of Mandamus commanding the Respondents to reinstate the service of the petitioners with back wages and pay him the arrears of salary and grant them other consequential relief for which the petitioners are entitled in accordance with law."

4. Learned counsel for the petitioners submits that there are altogether seven petitioners in the present case and along with others, they were appointed as daily wage workers as back as in the year 1989. 31 persons amongst them including the petitioners were regularized vide Memo dated 30.03.1989 as contained in Annexure- 1 and 1/A. The petitioners were issued show-cause notice on 10.09.1993 and were terminated from services on 13/14.10.1993.

5. The order of termination was challenged before Hon'ble Patna High Court by 20 persons out of 31 and amongst the 20 persons, the present petitioner nos. 1, 5 and 6 were also party in the writ petition which was numbered as C.W.J.C. No. 13043 of 1993. He submits that this fact is apparent from the counter affidavit wherein it has been mentioned that the said three persons were also party in the matter before the Hon'ble Supreme Court. The learned counsel further submits that eventually the matter travelled upto Hon'ble Apex Court and vide order dated 20.11.1997 passed in Civil Appeal No. 8336 of 1997(Arun Kumar Rout and others), direction was issued to the State to fill up vacancy, inter alia, giving 50% weightage to the persons who were petitioners in S.L.P.

6. In compliance of the order passed by the Hon'ble Supreme Court, order dated 12.05.1998 was passed by the respondents as contained in Annexure- 4, which included the three persons i.e. petitioner no. 1 , 5 and 6. Altogether 12 persons were absorbed by the respondents vide Annexure- 5 dated 08.06.1999.

7. The learned counsel for the petitioners further submits that Sunita Kumari and Others filed another writ petition being C.W.J.C. No. 10554 of 1998. During the course of arguments and upon query by this court, the learned counsel for the petitioners submitted that none of the present petitioners were party in the said writ petition being C.W.J.C. No. 10554 of 1998. However, the said writ petition being C.W.J.C. No. 10554 of 1998 was disposed of on 08.02.2000 with a finding that the petitioners of the said case were similar to the ones who were before Hon'ble Apex Court and consequently, a direction as contained in Annexure -6 was issued to the respondents of the said writ petition to give the same preference to the petitioners of C.W.J.C. No. 10554 of 1998. The learned counsel submits that in compliance of order dated 08.02.2000 passed in the case of Sunita Kumari and Others (Supra), in which the petitioners were not party, the State of Jharkhand took a decision that remaining 11 persons will be appointed in similar manner as that of Arun Kumar Rout and others.

8. The learned counsel further submits that thereafter another order dated 22.08.2003 was passed by this Court in L.P.A. No. 343 of 1995 (P) and L.P.A. No. 56 of 1997(P). These two L.P.As. were arising from the common order dated 14.03.1995 passed in C.W.J.C. Nos. 12368 and 12203 of 1993 wherein following directions were issued :-

"But before parting with this order, I would like to observe that since the petitioners have worked continuously for a long period and they might have become over-age, therefore, to meet the ends of justice, it would be proper for

the authorities to consider their cases at the time of regular appointment along with others and in case, they are found over-age, necessary relaxation can be granted in terms of the Government instruction, issued from time to time.”

It is submitted that the said LPAs were disposed of in terms of the observations and directions given by the learned Single Judge at para 13 as well as the judgement passed by the apex court in the case of Arun Kumar Rout and Others i.e. in the case of Civil Appeal No. 8336 of 1997 (supra).

9. The learned counsel further submits that one Abhimanyu Kumar Singh preferred writ petition being C.W.J.C. 2624 of 2000 which was disposed of vide order dated 11.03.2004 with a direction to treat the said petitioner on the same footing as that of Arun Kumar Rout and others (supra). The said order is contained in Annexure-8 to the present petition.

10. The learned counsel further submits that a letter was issued by the Deputy Secretary, Department of Health and Family Welfare, Government of Jharkhand to the Civil Surgeon, Dumka for complying\ the order of the Hon’ble High Court (Annexure- 10 and 10/A) and thereafter, vide letter dated 31.10.2002, the petitioners were asked to submit their certificates.

11. The learned counsel for the petitioners submits that as stated in para 25 of the writ petition, the respondent no. 6 vide letter dated 31.10.2002 (Annexure-11), asked to submit certificates regarding educational qualification and accordingly, the petitioners submitted the entire documents. After receiving the applications, the respondent no. 6 constituted a three men committee to consider the case of 11 persons for their reappointment in pursuance of order passed by Hon’ble Patna High Court and communicated the recommendation of the committee to the Health Department through letter no. 1883 dated 01.12.2003 (Annexure-11/A). He further submits that as mentioned in para 26 of the writ petition, total seven persons i.e. the petitioners in W.P.(S) No. 5513 of 2004 were reappointed and posted to their respective places as indicated in column 4 of the said notification dated 19.05.2004 (Annexure-12) out of total 11 persons.

12. During the course of argument, the learned counsel for the petitioners while clarifying the position, submitted that none of the present petitioners were party in W.P.(S) No. 5513 of 2004 which was disposed of by this Court vide order dated 18.08.2009 (Annexure-17).

13. The learned counsel submits that interim order dated 21.04.2010 was passed by this Court in the present case wherein it was observed that the case of the petitioners are covered by Annexure- 17 i.e. order passed in W.P.(S) No. 5513 of 2004. It was further observed as follows:-

“ ...in the meantime, leaving it open to the respondents, if they have reservation regarding propriety of the appointment of the petitioners, to pass fresh reasoned order after due opportunity of hearing, the operation of the impugned

termination order, i.e. Annexure- 16 to the writ petition, shall remain stayed and the petitioners shall be allowed to continue in the employment.”

14. The learned counsel submits that the order of termination issued in the year 1993 was stayed and consequently, the petitioners were allowed to continue. He also submits that the petitioner no. 5 has attained the age of superannuation as mentioned in the rejoinder. However, it is not in dispute that the petitioners, if continued in service, they have continued by virtue of the interim order passed by this Court, which would certainly merge with the final order.

15. The learned counsel for the petitioners has referred to paragraph 6 of the rejoinder to submit that vide order dated 18.08.2009 (Annexure-17) passed in W.P.(S) No. 5513 of 2004, the respondents were directed to reinstate the persons similarly situated with full back wages and consequently, on account of non-compliance of the order, contempt case (Civil) No. 687 of 2009 was filed and vide order dated 31.10.2004, the direction of the Hon'ble High Court was complied with by reinstating all seven petitioners of that case giving them full back wages since 2004. The learned counsel submits that the case of the present petitioners is similarly situated as that of petitioners of W.P.(S) No. 5513 of 2004 and accordingly, the petitioners are also entitled to the same relief.

Arguments of the Respondents

16. The learned counsel appearing on behalf of the respondents, on the other hand, while opposing the prayer has referred to the counter-affidavit and submits that as per the counter-affidavit, the petitioners were illegally appointed and against the rules framed by the State Government vide letter no. 16440 and 16441 dated 03.12.1980 of the Personnel and Administrative Reforms Department and after due consideration, the termination letters were issued. She has referred to paragraph 14 of the counter-affidavit, wherein portion of the judgement dated 20.11.1997 passed by the Hon'ble Supreme Court in the case of Arun Kumar Rout Vs. State of Bihar (Supra) has been quoted. She also submits that the said judgment was confined to the petitioners before the Hon'ble Supreme Court and it was also clearly mentioned in the aforesaid judgement that the directions contained therein are given on consideration of the special facts of the case and it was directed that the order being confined to special facts, is not to be treated as precedent. She submits that petitioner nos. 1, 5 and 6 were not appointed because they were out of the first 50 % of inter se merit position and petition nos. 2, 3, 4 and 7 were not applicant in the case before Hon'ble Supreme Court so they were not entitled to get the benefit on the basis of the order passed by Hon'ble Supreme Court.

17. The learned counsel for the respondents has also submitted that the power of appointment of class –III personnel was withdrawn from the Civil Surgeon – Cum-Chief Medical Officer and the power of appointment was vested with the Divisional Commissioner and a statement to that effect has been made in paragraph no. 19 of the counter-affidavit. She refers to paragraph 25 of the

counter-affidavit to submit that the respondent no. 6 issued separate show-cause to all 31 persons vide different letter numbers which included letter nos. 2329, 2331, 2334, 2340, 2350 and 2354 all dated 10.09.1993 in respect of the petitioners and the replies were also received. After considering all aspects of the matter, the respondent no. 6 i.e. Civil Surgeon-Cum-Chief Medical Officer, Dumka cancelled the appointment of all the 31 persons including the petitioners.

18. The learned counsel for the respondents has further referred to paragraphs 26 and 27 of the counter-affidavit to submit that in compliance of the order passed in W.P.(S) No. 5513 of 2004, Civil Surgeon- cum-Chief Medical Officer, Dumka vide letter no. 589 dated 08.03.2010 sought direction from the Department of Health and Family Welfare, which was under consideration. The learned counsel further submits that during the pendency of contempt petition, certain appointments were made, but later on it was found that the same was contrary to the order passed by the Hon'ble Supreme Court in Civil Appeal No. 8336 of 1997 Arun Kumar Rout and others (supra), therefore the appointment of such persons was cancelled.

19. At this, the learned counsel for the petitioners submits that the word 'petitioners' has been used in paragraph 27 of the counter-affidavit, but the same does not relate to the present petitioners. For this, he refers to the rejoinder to the counter-affidavit, paragraph 16, and submits that the benefit of reinstatement as well as back wages were given to seven persons who were petitioners in W.P.(S) No. 5513 of 2004, but there is no denial to cancellation of their appointment as mentioned in paragraph no. 27 of the counter-affidavit.

20. The learned counsel for the respondents has submitted that there is no merit in this writ petition which is fit to be dismissed.

Findings of this Court

21. Upon perusal of the records of this case, it is not in dispute that the petitioners who are 7 in numbers were initially appointed on daily wages in the year 1989 and they started working in Primary Healthcare Center, Ramgarh, Dumka.

22. It is further not in dispute that on 30.03.1989, the appointments of the petitioners were regularized on the recommendation of the establishment committee and the petitioners were amongst 31 persons whose services were regularized. The order of regularization has been annexed as Annexure- 1 and 1/ A.

23. Thereafter, on 10.09.1993, show-cause notices were issued to all the 31 employees including the petitioners asking to show-cause as to why their services be not terminated because at the time of absorption in regular establishment by the establishment committee, no advertisement was published, names from employment exchange were not called for, roster point was not followed and accordingly, their absorption from daily wages to permanent

establishment was alleged to be illegal.

24. It is not in dispute that ultimately the petitioners were terminated vide termination orders dated 13/14.10.1993 with effect from the date of issuance of letter of appointment. These termination orders are under challenge in this writ petition.

25. It is not in dispute that arising out of identical orders of termination, different persons had filed writ petitions before Hon'ble Patna High Court including 20 similarly situated persons whose writ petition was numbered as CWJC No. 13043 of 1993 (Arun Kumar Rout and others Vs. State of Bihar and Others). The aforesaid writ petition filed by Arun Kumar Rout and others (Supra) was dismissed by Hon'ble Divisional Bench of Patna High Court and the writ petitions filed by others were also dismissed by Hon'ble Single Benches of Patna High Court. It further appears that the judgement passed by the Hon'ble Patna High Court dated 23.09.1994 in CWJC No. 13043 of 1993 was challenged by Arun Kumar Rout and 19 others in Civil Appeal No. 8336 of 1997 which was decided by Hon'ble Supreme Court on 20.11.1997 and the judgement is reported in (1998) 9 SCC 71.

26. It further appears from the records of this case and also from the arguments advanced by the learned counsel for the parties and specific statement made by the respondents in the counter-affidavit that the petitioner nos. 1, 5 and 6 were amongst the petitioners before the Hon'ble Supreme Court in Civil Appeal No. 8336 of 1997. A specific statement has been made in the counter-affidavit at paragraph 16 that petitioner nos. 2, 3, 4 and 7 were not the appellants in the aforesaid Civil Appeal. This fact remains uncontroverted even from the on line rejoinder filed by the petitioners during the period of COVID-19 restrictions.

27. This Court further finds that the foundational facts leading to filing of the case before the Hon'ble Supreme Court have been recorded in paragraph 2 of the judgement of the Hon'ble Supreme Court which is almost the same as narrated above. Considering the fact that petitioner nos. 1, 5 and 6 were amongst the petitioners before the Hon'ble Supreme Court, their case is required to be dealt with separately from that of the other petitioners of this case i.e. petitioner nos. 2, 3, 4 and 7 as admittedly the petitioner nos. 2, 3, 4 and 7 were not parties before the Hon'ble Supreme Court.

Case of petitioner nos. 1, 5 and 6

28. Since these petitioners had approached the Hon'ble Supreme Court, there is no dispute that their case would be guided by the directions and observations made by the Hon'ble Supreme Court. The Hon'ble Supreme Court observed that the appellants before the court had continued for more than five years and the Hon'ble Supreme Court looked with sympathy when the question of regularization came for consideration in the cases of temporary or ad-hoc appointments, even made improperly and when the incumbents have been allowed to continue for a long time. The Hon'ble Supreme Court observed that

the salary was paid to the appellants until their services were terminated and further, the salary was paid after a departmental inquiry indicated that even though there were irregularities in the appointment, but the appellants had the requisite qualification for the respective post for which they were appointed. It was clearly held by the Hon'ble Supreme Court that the appellants had not been appointed by following the due procedure and therefore, they cannot claim regularization as a matter of course, but considering the fact that they had satisfactorily served the department even without getting any salary for a long time and that they were not guilty of any fraud or sharp practice and did not lack the requisite qualification and were appointed against sanctioned post, the appellants deserved sympathetic consideration in getting appointment against such sanctioned post on humane consideration.

29. After having held as aforesaid, the Hon'ble Supreme Court made the following directions:

".....Considering the special facts of this appeal it appears to us that it will be just and proper and consistent with the ends of justice to direct that 50 per cent of the sanctioned posts which were held by these appellants should be filled from amongst the appellants on the basis of their inter se merit position by taking into account their academic qualifications by waiving the question of age-bar if any and usual procedures for such appointment. The remaining 50 per cent of the said sanctioned posts, will be filled up on regular basis by throwing it open to the members of the public and following the procedure prescribed for such appointment in the State of Bihar. The remaining appellants who will not be absorbed against 50 per cent of the said sanctioned posts will be entitled to compete for appointment in the balance 50 per cent posts along with other eligible candidates but they will not be treated unsuitable on account of age-bar. On the contrary, in the matter of assessment of merit they will be given a credit of 25 per cent marks for the experience they have gained for services rendered by them for the said long period of 5 years or more...."

30. The Hon'ble Supreme Court further clearly held as under:

"....These directions are given on consideration of the special facts of this case and this order being confined to the special facts of this case is not to be treated as a precedent. The appeal is accordingly disposed of without any order as to costs. We reasonably expect that the authorities concerned will make the exercise as early as practicable for filling up the vacant sanctioned posts preferably within a period of six months from today."

31. Upon perusal of the aforesaid directions issued by the Hon'ble Supreme Court, it was clear that 50 % of post was to be filled up from amongst the appellants before the Hon'ble Supreme Court on the basis of their inter se merit position and the remaining 50 % was to be thrown open to public. It was also clearly mentioned in the aforesaid judgement of the Hon'ble Supreme Court that those appellants who could not get selected in the 50 % category, could also

participate in the selection process from the open category and certain relaxation with respect to age and credit with respect to their experience was also to be given. The aforesaid judgement also clearly mentioned that the order passed by the Hon'ble Supreme Court will not be treated as a precedent. This Court finds that the petitioner nos. 1, 5 and 6 being appellants before the Hon'ble Supreme Court were entitled to the relief as granted by the Hon'ble Supreme Court.

32. From the perusal of the counter-affidavit filed in the present case, it has been specifically stated in paragraph 15 of the counter- affidavit that as per the order passed by the Hon'ble Apex Court, the petitioner nos. 1, 5 and 6 were not appointed because they were out of the first 50 % of inter se merit position and in paragraph 17, it has been mentioned that the petitioner nos. 1, 5 and 6 were not eligible. It has also been mentioned that pursuant to the order passed by the Hon'ble Supreme Court, the advertisement was also published. The aforesaid statement of the counter-affidavit has been responded to in paragraph no. 12 of the online rejoinder filed by the petitioners, but the statement that petitioner nos. 1, 5 and 6 did not come within the 50 % category as per the judgement passed by the Hon'ble Supreme Court, is not in dispute. It is further not clear as to whether the petitioner nos. 1, 5 and 6 participated in the open contest category in terms of the advertisement published by the respondents pursuant to the order passed by the Hon'ble Supreme Court.

33. In view of the aforesaid facts and circumstances and the specific stand taken by the respondents in the counter-affidavit, this Court is of the considered view that the petitioner nos. 1, 5 and 6 having contested the case up till the Hon'ble Supreme Court in the aforesaid judgement i.e. Arun Kumar Rout and others Vs. State of Bihar (Supra), they were entitled to certain relaxation given by the Hon'ble Supreme Court, but it appears that ultimately they did not succeed in spite of the opportunity extended to them by the Hon'ble Supreme Court. In the aforesaid background, no relief as prayed for by the petitioner nos. 1, 5 and 6 in this writ petition i.e. challenge to the original order of termination dated 13/14.10.1993 can be granted by this Court.

34. The case of the petitioner nos. 1, 5 and 6 stands on a different footing as that of the petitioners in writ petition being WP(S) No. 5513 of 2004 (Annexure-17). The petitioners in WP(S) No. 5513 of 2004 (Annexure-17) had filed writ petition being CWJC No. 10554 of 1998 where directions were given in terms of the case of Arun Kumar Rout and others(supra). Consequently, appointments were given to 7 persons, writ petitioners of that case, but their appointments were cancelled vide order dated 11.09.2004 which was impugned in WP(S) No. 5513 of 2004 (Annexure-17). Ultimately the fresh order of termination dated 11.09.2004 with respect to those writ petitioners was set-aside in WP(S) No. 5513 of 2004 (Annexure-17). In the matter of present petitioner nos. 1, 5 and 6, neither there is any fresh order of appointment nor there is any fresh order of termination. Rather, the original order of termination dated 13/14.10.1993 is under challenge again in this writ proceedings.

35. Accordingly, the present writ petition filed by petitioner nos. 1, 5 and 6 is dismissed. Interim order is vacated.

Case of petitioner nos. 2, 3, 4 and 7

36. Admittedly, petitioner nos. 2, 3, 4 and 7 were not the appellants before the Hon'ble Supreme Court. It is further clear from the aforesaid judgement of the Hon'ble Supreme Court that it was clearly observed that the directions given by the Hon'ble Supreme Court were on consideration of special facts of the case and were confined to special facts, which was not to be treated as a precedent. However, in various orders passed by Hon'ble Patna High Court and this High court similar directions as that of Arun Kumar Rout and others (supra) were issued.

37. It is not in dispute that altogether 31 persons were terminated and out of them 20 were party before the Hon'ble Supreme Court in the case Arun Kumar Rout and others (supra).

38. The records of the case show that in the case of Sunita Kumari and others being C.W.J.C. 10554 of 1998 (Annexure-6) there were 7 persons out of total 31 persons terminated in the year 1993 and the judgement gives the entire background of the matter.

39. In the case of Sunita Kumari and others in C.W.J.C. 10554 of 1998 (Annexure-6), there were altogether 7 petitioners seeking direction for their re-appointment in the light of direction of the Hon'ble Supreme Court in the case of Arun Kumar Rout and others (supra). It was argued in the said case that total 31 candidates were appointed and later, their appointments were cancelled in the year 1993. The 31 aggrieved persons challenged the cancellation of appointment in two groups;

a. C.W.J.C. No. 13043 of 1993 was filed by 20 persons which was dismissed with certain observations and the order was challenged before the Hon'ble Supreme Court in the case of Arun Kumar Rout and others (supra) wherein considering the special facts, the aforesaid directions were issued.

b. The other lot was C.W.J.C. Nos.13146/93, 13139/93, 13143/93, 13157/93, 13158/93, 13156/93 and 13148/93 on behalf of remaining 11 persons. These cases were dismissed following the earlier order, but these matters did not go upto the Hon'ble Supreme Court.

40. In Sunita Kumari and others (Supra), filed by total 7 in number, the petitioners were amongst those 11 persons who did not go to the Hon'ble Supreme Court against the order passed by the High Court in their cases. It was argued in the case of Sunita Kumari and others (Supra) that the petitioners before the Hon'ble Supreme Court i.e. Arun Kumar Rout and others (supra) were at par with the petitioners in the case of Sunita Kumari and others (Supra) and the point for consideration was whether the petitioners of Sunita Kumari and others were entitled to the same relief as that of the order passed by the Hon'ble

Supreme Court. In the judgement of Sunita Kumari and others (Supra) it was found that pursuant to the directions issued by the Hon'ble Supreme Court, only three persons including Arun Kumar Rout were given the preference and the name of other similarly situated persons like the petitioners of Sunita Kumari and others (Supra) was not showing. Consequently, a direction was issued by the Hon'ble Patna High Court in the case of Sunita Kumari and others (Supra) to give the petitioners of the said case same preference as was given in the case of Arun Kumar Rout and others in pursuance of the order of Supreme Court as also to others who are similarly situated, if they applied in pursuance of advertisement and such stipulation was directed to be made in the advertisement while calling for applications from the candidates.

41. From the perusal of the records of this case, it is apparent that the present petitioners were not party in the case of Sunita Kumari and others (Supra) and further in the case of Sunita Kumari and others, a direction was issued not only for the petitioners of Sunita Kumari and others but also for other similarly situated persons. It appears from the records of this case that the petitioners of Sunita Kumari and others (Supra) were offered appointment, but their appointment was again cancelled vide order dated 11.09.2004 which was subject matter of challenge in W.P.(S) No. 5513 of 2004 filed by the same set of 7 persons as in C.W.J.C. No. 10554 of 1998 (Annexure- 6) and the aforesaid order dated 11.09.2004 was set-aside in the said judgement dated 18.08.2009 passed in W.P.(S) No. 5513 of 2004 (Annexure-17). This Court, while disposing off the writ petition being W.P.(S) No. 5513 of 2004 recorded that, admittedly before cancelling the appointment of the petitioners of the case neither any notice was served nor they were given any opportunity of being heard and consequently, the order of cancellation of appointment dated 11.09.2004 passed by Civil Surgeon-cum- Chief Medical Officer, Dumka was quashed and the petitioners of the said case were held entitled for reinstatement in service with full back wages from the date of termination of their services. It was also observed that if the respondents had any reservation regarding the propriety of appointment of the petitioners of the said case, they were at liberty to take proper action subject to the condition that proper notice and adequate opportunity of hearing should be given to such persons.

42. So far as the present petitioner nos. 2, 3, 4 and 7 are concerned, there is no material on record to show as to whether they ever participated pursuant to the advertisement issued in terms of order dated 08.02.2000 passed in the case of Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6). Further, there is no material on record to indicate as to whether the petitioner nos. 2, 3, 4 and 7 were ever offered appointment which was offered to the 7 petitioners of Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6) or they ever participated pursuant to advertisement in terms of the order passed in Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6). Petitioners of Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6) were also the petitioners in W.P.(S) No. 5513

of 2004 (Annexure- 17) wherein the order dated 11.09.2004 terminating the fresh appointment given pursuant to order passed in Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6) was under challenge and was ultimately set-aside.

43. In none of the cases, either in the case of Arun Kumar Rout and others (supra) decided by the Hon'ble Supreme Court or in the case of Sunita Kumari and others (Supra) decided by the High Court, the original order of termination of the year 1993 was set-aside, rather the judgement passed by the Hon'ble Supreme Court clearly held that the appellants were not appointed by following the due procedure and therefore, they cannot claim regularization as a matter of course, but considering the fact that they had satisfactorily served the department even without getting any salary for a long time and that they were not guilty of any fraud or sharp practice and did not lack the requisite qualification and were appointed against sanctioned post, the appellants deserved sympathetic consideration in getting appointment against such sanctioned post on humane consideration and formulated a method for fresh recruitment giving certain weightage/relaxation to such terminated persons upon participation through advertisement.

44. Although the petitioner nos. 2, 3, 4 and 7 were extended similar benefit through the judgement passed in the case of Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (though they were not the petitioners of the said case) , enabling them to participate pursuant to the advertisement and giving them preference, but thereafter the petitioners were ultimately not offered any appointment and in the present proceedings, the petitioner nos. 2, 3, 4 and 7 have again challenged the initial order of termination of the year 1993.

45. Since these petitioners were never offered any appointment pursuant to direction and the method of recruitment as mentioned in the order passed in Sunita Kumari and others (Supra) in C.W.J.C. No. 10554 of 1998 (Annexure- 6) and accordingly, there is no such similar fresh order of termination which was subject matter of challenge in the case of W.P.(S) No. 5513 of 2004 (Annexure- 17). The case of petitioner nos. 2, 3, 4 and 7 is totally different from the case of 7 petitioners of W.P.(S) No. 5513 of 2004 who were also the petitioners in C.W.J.C. No. 10554 of 1998 (Annexure- 6) who were subjected to fresh order of appointment and its termination. It is important to note that the order of termination dated 14/10/93 and 13/10/93, which are under challenge in the present writ petition, are not the orders of termination of re-appointment of the petitioners but they are the earlier order of termination and the petitioners were never re-appointment.

46. In the aforesaid circumstance, no relief as prayed for by the petitioner nos. 2, 3, 4 and 7, again challenging the original order of termination of the year 1993, can be granted and petitioner nos. 2, 3, 4 and 7 cannot have any advantage of the order passed in W.P.(S) No. 5513 of 2004 wherein the order terminating the re-appointment was under challenge.

47. As a cumulative effect of the aforesaid findings, the present writ petition filed by petitioner nos. 2, 3, 4 and 7 is also dismissed.

48. Interim order is vacated.