

(2023) 12 PAT CK 0072

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11932 Of 2014

Arvind Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 12 PAT CK 0072

Hon'ble Judges : Partha Sarthy, J

Bench : Single Bench

Advocate : Jay Prakash Singh, Amit Kumar Anand, Sanjay Kumar, Nilotpal Sharma, Digvijay Singh, B. J. Jha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. The petitioner has filed the instant application praying for quashing the order of the Vice Chancellor, Patna University, Patna communicated to the petitioner by the Registrar, Patna University by his letter no. 1794 dated 19.12.2011. The petitioner further prays for a direction to the respondents to pay the arrears of salary to the petitioner in the scale of Store Keeper and for other reliefs.
3. The case of the petitioner in brief is that he joined service in the Vanijya Mahavidyalaya on 1.4.1985. As no steps for approval of his service was taken by the respondent-University, the petitioner filed CWJC no. 8922 of 1998 praying for regularisation of his service from the date of his appointment and for payment of arrears of salary. The writ application was disposed of by order dated 21.1.2000 giving liberty to the petitioner to file a representation before the Secretary, Higher Education. It was directed that on receipt of the details of deemed sanctioned post of Class III and Class IV, in terms of staffing pattern, the University will determine as to which incumbent is working against such

sanctioned or deemed to be sanctioned posts and communicate the decision to the individuals within three months.

4. By order dated 29.1.2004 issued under the signature of the Registrar, Patna University, the service of the petitioner was regularised in the scale of 975-1540/- on the post of Routine Clerk against the post of Store Keeper.

5. The petitioner, being aggrieved by the order dated 29.1.2004 absorbing his service on the post of Routine Clerk with effect from the date of the order, filed CWJC no. 6973 of 2006 for quashing part of the order dated 29.1.2004, for directing the respondents to grant continuity of service with effect from the date of their joining of service in Vanijya Mahavidhyalaya in the Patna University with all consequential benefits. By order dated 3.9.2010, the writ application was dismissed on the ground of the same being devoid of any merit.

6. An appeal being LPA no.832 of 2011 was preferred by the petitioner against the order dated 3.9.2010 dismissing CWJC no. 6973 of 2006. Though the petitioner-appellant was given liberty to file a representation before the respondent-University, however the order of the learned Single Judge was not interfered with. The learned Division Bench while disposing of LPA no. 832 of 2011 by its order dated 26.8.2011 observed that in case the pay scale prescribed in Annexure-7/1 therein is being granted to other similarly situated employees, the same should be made available to the appellant also.

7. It is pursuant to the liberty granted by the Division Bench by its order dated 26.8.2011 that a representation was filed by the petitioner which has been rejected by the order impugned enclosed with letter dated 19.12.2011 (Annexure-16) by the Vice Chancellor, Patna University.

8. Learned counsel for the petitioner submits that pursuant to the order passed in CWJC no. 8922 of 1998 wherein the petitioner herein was also one of the petitioners, a letter contained in memo no. 1030 dated 6.11.2003 was written by the Deputy Secretary, Government of Bihar to the Registrar, Patna University. It was stated therein that the Grade III posts mentioned, which included one post of Store Keeper having pay scale of 1200-1800/-, the non-teaching employees on the said post would continue and on their retirement or transfer or death, whichever is earlier, the post would lose its existence. It is thus submitted that the petitioner having been appointed against the sanctioned post of Store Keeper which as per the said letter was in the scale of 1200-1800/-, the respondents gave an incorrect scale of 975-1540/- to the petitioner at the time of absorption of his service vide order dated 29.1.2004 (Annexure-4). It was for this reason that the learned Division Bench had given liberty to the petitioner to file his representation and a direction to the respondents to consider the same. The order passed by the Vice Chancellor is incorrect, erroneous, unsustainable and fit to be set aside.

9. In response, learned counsel appearing for the respondent-University submitted that so far as the order of absorption of the petitioner dated

29.1.2004 is concerned, being aggrieved with the same the petitioner moved this Court by filing CWJC no. 6973 of 2006 which was dismissed by order dated 3.9.2010 and even in the appeal preferred against the said order being LPA no. 832 of 2011, in the order dated 26.8.2011, the learned Division Bench did not interfere with the order of the learned Single Judge dated 3.9.2010 dismissing the writ petition filed by the petitioner. So far as the order impugned passed by the Vice Chancellor on the representation of the petitioner is concerned, the same is a well reasoned order and no material has been brought on record by the petitioner to contradict the facts stated therein. Learned counsel for the respondents finally submitted that vide notification dated 4.3.2014 both the Routine Clerk and the Store Keeper have now been brought under the category of Lower Division Clerk in the same pay scale and with the same grade pay. It is submitted that there is no merit in the writ application and the same be dismissed.

10. Having heard learned counsel for the parties, this Court finds that there is no dispute with respect to the fact that it was by order contained in memo dated 29.1.2004 (Annexure-4) issued under the signature of the Registrar, Patna University that the service of the petitioner was absorbed in Grade-III in the pay scale of 975-1540/-. It is also not in dispute that the service of the petitioner was absorbed as Routine Clerk though against the post of Store Keeper.

11. So far as the contention of the petitioner that his service having been absorbed by order dated 29.1.2004 as Routine Clerk against the post of Store Keeper, in view of the letter dated 6.11.2003 (Annexure-3) of the Deputy Secretary, Government of Bihar to the Registrar, Patna University is concerned, he should have been granted the pay scale of 1200-1800/-; the petitioner moved this Court in CWJC no. 6973 of 2006, the prayer portion of which is being reproduced herein below for ready reference:-

"1. That this is an application for issuance of a writ in the nature of certiorari to quash that part of memo no. A/C-214 dated 29.1.2004, issued under the signature of the Registrar of the Patna university, whereby and whereunder petitioners' services absorbed have the been on the post of Routine Clerk with effect from the date of the order without granting them continuity of service and further for issuance of a consequential writ in the nature of mandamus directing and commanding respondent-authorities to the grant continuity of service with effect from the dates of their joining of the service at the Patna University in Vanijya Mahavidyalaya, Patna University, with all consequential benefits and provide them suitable posts per as the qualifications held by them and/or for issuance of an appropriate writ(s), order(s), direction(s), for which the petitioners may be found legally entitled to in the facts and circumstances stated hereinafter."

12. From the prayer made in CWJC no. 6973 of 2006, as quoted herein above it transpires that the petitioner prayed for quashing part of the order dated 29.1.2004 (Annexure-4). The learned Single Judge rejected the writ application

of the petitioner as being devoid of any merit in the following terms:

"8. Even otherwise, the subsequent judgment of the Apex Court in the case of Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors. reported in 2006 (4) SCC 1 has made it clear that regularization cannot be a mode of appointment and that too with retrospective effect.

9. That being so, the petitioners should thank their stars that their services were regularized else they too like many others could have been shown the door for their appointment being not made strictly by following the mandate of Article 14 & 16 of the Constitution of India.

10. Accordingly, this application, being devoid of any merit, is dismissed."

13. Another aspect which transpires from reading of the order of the learned Single Judge dated 3.9.2010 rejecting the petitioner's writ application is that what the petitioner was affected by was regularisation of his service with effect from the date of the order ie 29.1.2004 and not from the day of his initial appointment. Whatever the relief sought for by the petitioner, the writ application was dismissed on merits and the said order of the learned Single Judge was not interfered with in appeal in the order dated 26.8.2011 passed in LPA no.832 of 2011.

14. So far as the the liberty granted to the petitioner by the Division Bench to file a representation before the University is concerned, that was on the limited point that on being regularised, his pay scale was not in accordance with what had been sanctioned by the State Government for the post in question. The learned Division Bench had observed that the University shall consider the representation and in case the pay scale prescribed (in Annexure-7/1 therein) is being granted to other similarly situated employees, the same should be made available to the petitioner also.

15. On perusal of the order impugned dated 19.12.2011 of the Vice Chancellor, Patna University it transpires that the contention of the petitioner was to the effect that as employees of Tilka Manjhi Bhagalpur University has been extended the benefit of the pay scale, he should also be given benefit of the same. The learned Vice Chancellor held that the benefit extended to the employees of Tilka Manjhi Bhagalpur University cannot be extended to the employees of the Patna University and as the petitioner was unable to show that any other similarly situated employee of Patna University has been extended the benefits as claimed by the petitioner, his claim could not be considered. In this view of the matter, the claim made by the petitioner in his representation was rejected.

16. Learned counsel for the petitioner has not been able to meet the reasoning given by the Vice Chancellor of the Patna University in the order impugned nor has he been able to show that any similarly situated employee of the Patna University, as the petitioner, has been extended the benefits being claimed by him.

17. Thus in the facts and circumstances of the case, the Court finds no illegality in the order impugned passed by the Vice Chancellor, Patna University and no merit in the instant application.

18. The writ application is dismissed.