
(2009) 10 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 10227 of 2003

Ashok Kumar Thakur

APPELLANT

Vs

The Director, State Council of Education Research and
Training, The Director, State Institute of Education
Technology and The State of Bihar

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Citation : (2009) 10 PAT CK 0030

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The petitioner was an employee of the State Council of Education Research and Training (in short SCERT). It appears that the petitioner was appointed temporarily with effect from 01.04.1989 in the SCERT. His services were then regularized in the year 1991. It appears that he was regularized but soon after as the numbers of posts were reduced in the said organization, with effect from 27.08.1992, all posts being abolished, petitioner's services were terminated. He was then posted as Attendant in the Hostel run by the said organization, subject to adjustment in other department/organization of the government, as per the policy decision of the government. It appears that several other persons were similarly retrenched, all but the petitioner were adjusted, pursuant to the government policy. Petitioner was left out and not only that even though work was being taken for some time petitioner was not being paid his due remuneration. As such, petitioner approached this Court in C.W.J.C. No. 2542 of 2003. In the said writ application respondents filed their counter affidavit and supplementary counter affidavit. The letter has been annexed as Annexure-4 to the writ application. In the supplementary counter affidavit filed by the respondents they have admitted the claim of the petitioner for regularization. They have admitted that all other similarly situated persons had already been regularized and the matter of petitioner was under consideration and recommendations had been made. Upon these admissions, the writ application was disposed of by judgment and order dated 05.05.2003, noticing

the facts and directing for payment of salary to the petitioner from 1998, when work was stopped being taken from him on the ground of post being abolished up to date. Obviously, no order was passed in respect of absorption of petitioner, inasmuch that right was conceded and accepted in the counter affidavit of the respondent themselves.

2. It is not in dispute that petitioner was ultimately paid due wages up to April 2003 but again thereafter neither was anything paid nor petitioner regularized. Petitioner immediately moved this Court again by the present writ application.

3. A counter affidavit was filed on behalf of the Director, SCERT in this case in 2003 itself, wherein it was stated that as per the decision of the government for adjustment, petitioner's case had already been sent to the government for adjustment and had been pending there. When this matter was taken up on earlier occasion this Court was informed that as the file has already been sent to the Secondary Education Department, Government of Bihar and the same not having been returned, the Director, SCERT could do little in the matter. This Court called upon the State to look into the matter and this Court was informed that petitioner's file had gone a miss. The result was that though 7 similarly situated persons, who were rendered jobless, consequent to abolition of post, ultimately in the year 1998 were adjusted immediately and petitioner was left out to adjust along with others, was admitted. There was no reason explaining why petitioner could not be then adjusted. Now, this Court was told that the file of petitioner had gone missing. These facts clearly show that non-adjustment of petitioner consequent to abolition of the post was for reasons which were other than bona fide. It is when this Court pressed upon the respondents that ultimately now a counter affidavit has been filed by the Director, Secondary Education whereby an adjustment order adjusting the petitioner in the same very organization on the Class-IV post has been passed. This order is dated 03.09.2009 and has been annexed as Annexure-A to the counter affidavit of the Director, Secondary Education, Government of Bihar. In this two things have been stated. Firstly, petitioner has been entitled to get payment on joining the said post and secondly for the period 17.05.2003 to the date of joining, he would not get any remuneration but that period would be counted for his pensionary benefits.

4. Mr. Rama Kant Sharma, learned Senior counsel appearing in support of the petition takes strong objection to the said conditions. He first submits that the facts aforesaid would show that he was thrown out from SCERT and was not adjusted on the plea that vacant posts were not available then for sometime work was taken from him on ad hoc basis, even that payment was not paid to him. He came to this Court and thereafter up to 2003 payments were made to him without petitioner being adjusted any where though other similarly situated persons were adjusted. Then, when this present writ application was filed a plea was taken that his file suddenly vanishes and as such no adjustment can be done. Now, at last on pressure being built up by this Court files are traced out

and appointment in the same very organization is made where he worked. This clearly establishes mala fide in fact if not in law as against the respondents. Apparently, these facts also show that the reason for not adjusting petitioner was anything, not bona fide. It was clearly as if petitioner was being punished for something which he ought not to have done or which he have done this Court will not speculate into that aspect of the matter. It is further submitted that it is the respondents who have deliberately and by their negligence kept petitioner out of work. It is elementary that because of default of a person another cannot be made to suffer. Here, there was admitted default on part of the respondents in finding placement for the petitioner. He was discriminated. The discrimination was hostile and now to deprive him of his wages for all these years would be adding insult to injury. It is then submitted that petitioner even earlier was paid in similar fashion by orders of this Court in the earlier writ petition, then why deny payment to the petitioner now. When in 2003 respondents became aware that they were duty bound to adjust the petitioner, they could take no steps till the matter was taken up by this Court and pressure was put on them to discover the file and pass appropriate orders, as claim of petitioner had been admitted in the first writ application itself.

5. In the counter affidavit filed therein, thus, petitioner cannot be made to deprive of his right to receive remuneration because the respondents failed to perform their duty as enshrined by law. In this connection, I may refer to what Chief Justice Chagla in the case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City,

But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income Tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default.

6. In such circumstances, having considered the matter, It is directed that the petitioner would be paid due remuneration for the period after 17.05.2003 up to date of joining and thereafter in accordance with law. In view of the categorical stand taken in the counter affidavit filed today, it is hoped that no difficulty would be created in joining, regularly performing his duty, regularly receiving his remuneration and arrears, as pointed out above, the same shall be paid to the petitioner within two months from today.

7. With the aforesaid observations and directions, the writ application is allowed.