
(2002) 08 JH CK 0004
In the Jharkhand High Court
Case No : LPA No. 93 of 1995 (R)

Bihar State Electricity Board and Others	APPELLANT
Vs	
(Smt.) Shakuntala Devi and Others	RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 08 JH CK 0004

Hon'ble Judges : Vinod Kumar Gupta, C.J; Tapen Sen, J

Bench : Division Bench

Advocate : Indrani Sen Choudhary and Ashok Kumar Jha, for the Appellant;
R.C. Khatri and D.K. Bharti, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—On 6.3.1995, Smt. Shakuntala Devi (hereinafter referred to for the sake of brevity as the respondent No. 1) filed a writ

petition bearing CWJC No. 553 of 1995 (R) wherein she made a prayer inter alia for quashing letter No. 4780 dated 19.8.1991 issued by the

Secretary-cum-Deputy Director of Personnel, Patratu Thermal Power Station, Patratu (PTPS) in the capacity of the ex-officio Secretary of the

PTPS, Hesla Middle School, Jamta Nagar Patratu run by the BSEB at Patratu and also the notice dated 20.8.1991 issued by the Head Master-

in- Charge of the said school whereby and whereunder a general order was passed by which the services of all teachers working in all schools

including the school of the respondent No. 1 were terminated and they were prevented from discharging their duties.

2. The case of the respondent No. 1 before the writ Court was that she was working in Arvind Middle School, PTPS with effect from 3.5.1990 as

an Honorary Teacher and in support thereof, she relied upon Annexures 1 and 1 /1.

3. The respondent No. 1 stated before the writ Court at paragraph 5 of the writ Application, that, some of the teachers of the schools in question

had filed 1991 CWJC 1049 of (R) seeking regularisation of their services and parity in pay scales and this respondent No. 1, however, was

waiting for the result of that writ application. On 8.5.1991, the aforementioned writ petition CWJC No. 1049 of 1991 (R) was placed before a

Division Bench and upon prayer made by the counsel for the respondents therein, the matter was ordered to be placed after the vacation and till

further orders status quo as existing on that date was ordered to be maintained.

4. Subsequently, by order dated 16.8.1991 the aforementioned writ petition was dismissed for default as a result whereof, pursuant to an

application for restoration, the case was restored to its original file. After restoration, when the case was taken up, it was pointed out that the

Board/respondents of that writ Petition, taking advantage of the dismissal of the case, terminated the services of the teachers by order dated

19.8.1991 and 20.8.1991. Consequently, they filed writ petition being CWJC 1861 of 1991 (R) praying for quashing of the aforementioned two

orders. In the meantime, a contempt application bearing MJC No. 195 of 1991 (R) was also filed for initiating contempt proceeding against the

respondent/Opposite Parties for not allowing the petitioners to work pursuant to the orders of statute quo passed in CWJC No. 1049 of 1991

(R).

5. On 26.4.1994, the aforementioned two writ applications CWJC No. 1049 of 1991 (R) and CWJC No. 1869 of 1991 (R), were finally

disposed off. While disposing of the writ application, the Division Bench observed that from the records of CWJC No. 1869 of 1991 (R) it

appears that on 4.10.1991, a Conciliation Officer was appointed and he was directed to submit a report to this Court as to whether the petitioners

or any one of them was in fact appointed in any of the Schools run and managed by the Board and; if so, on what terms and conditions and; for

how long and what was the payment made to them.

6. Pursuant to the aforementioned order, the Conciliation Officer submitted his report and the Division Bench on perusal of the report of the

Conciliation Officer, observed and came to a finding that the petitioners of those writ applications had worked under the Board and that they had

been paid on honorarium basis. Since CWJC No. 1049 of 1991 (R) had been dismissed as not pressed and the petitioners had been terminated

thereafter giving rise to CWJC No. 1861 of 1991 (R), the Division Bench also came to the conclusion that the order of dismissal was bad in law

and could not be sustained. Taking all these facts into consideration, CWJC No. 1869 of 1991 (R) was allowed and the Notice/Order dated

18.01.1991 appended as Annexure 2 to CWJC No. 1869 of 1991(R) was quashed.

7. At paragraph 12 of the judgment, the Division Bench observed that so far as CWJC No. 1049 of 1991 (R) was concerned, it appeared from

the report of the Conciliation Officer submitted in CWJC No. 1869 of 1991(R) that the petitioners had in fact worked as Teachers on Honorarium

Basis and that some posts of Teachers were still lying vacant in the Schools of the Board. Taking all these facts into consideration, the Division

bench held that the petitioners of those schools were entitled to get equal pay for equal work, i.e., the amount which was being paid to other

regular teachers of the School under the Board. Accordingly, CWJC No. 1049 of 1991(R) was also allowed in part and the Board was directed

to pay regular pay scale to the petitioners taking into consideration the fact that those petitioners had been working continuously and also taking

into consideration that the orders of termination dated 20.8.1991, Annexure 2 appended to CWJC 1869 of 1991 (R), had been quashed in that

writ Application. The payment, however, in the same scale as that of other Teachers was ordered to be made effective from the date of the

judgment of the Division Bench, i.e. 26.4.1994. So far as regularisation/absorption of those petitioners were concerned, the Division Bench did not

grant any relief, but directed the Board to advertise the vacant posts in different Schools and to make appointment on those posts in accordance

with law. MJC No. 195 of 1991 (R) was, however, dismissed.

8. After the aforementioned judgment of the Division Bench had been delivered, Smt. Shakuntala Devi filed CWJC No. 553 of 1995 (R) wherein

she also made a prayer for quashing the orders dated 19.8.1991 and 20.8.1991. Her grievance was that pursuant to the issuance of those orders,

she had also suffered as she had been prevented from working in the School in

question, although from Annexures 1 and 1/1 appended to the writ

Application, it was apparent that she had been also appointed on Honorarium Basis in the Arvind Middle School with effect from 3.5.1990. She

stated before the writ Court that she was watching the result of CWJC No. 1049 of 1991(R) and that she was also entitled to the usufruct of the

judgment passed in the aforesaid writ Application which had been filed by other teachers. It was further stated before the writ Court by Smt.

Shakuntala Devi that the aforementioned judgment dated 26.4.1994 was challenged before the Supreme Court and by order dated 3.1.1995 the

same was dismissed in limine. It was further stated that so far as writ petitioners of the aforementioned two writ Applications are concerned, the

judgment dated 26.4.1994 passed therein was implemented by order dated 29.2.1995. According to her, therefore, the quashing of the orders

dated 19.8.1991 and 20.8.1991 is a mere formality, because the matter had already been settled by the Division Bench as well as by the Supreme

Court, therefore, she is entitled to similar relief.

9. After the aforementioned writ Application was filed by Smt. Shakuntala Devi, the same was taken up on 5.4.1995 and taking into consideration

the judgment of the Division Bench delivered on 26.4.1994, learned Single Judge quashed the order dated 19.8.1991 and 20.8.1991 and

observed that all observations made in the aforementioned judgment shall govern the case of Smt. Shakuntala Devi, i.e. writ petitioner in CWJC

No. 553 of 1995(R).

10. Being aggrieved by the aforementioned order dated 5.4.1995 passed in CWJC No. 553 of 1995, the Board has filed the instant Letters

Patent Appeal.

11. At paragraph 8 of the Letters Patent Appeal the Board has stated that the respondent No. 1 had filed the writ Petition after about four years

from the date of passing of the impugned orders, i.e., 19.8.1991 and 20.8.1991 and as such the writ Petition itself was not maintainable. They

have further stated that before the writ Court, they had filed a counter affidavit wherein they had specifically stated at paragraph 15 that the

respondent No. 1 had never been appointed by the Board or by the PTPS at any point of time as against any sanctioned post of Teacher for the

Arvind Middle School, PTPS, Hazaribagh. They had also stated that the

respondent No. 1 had never been paid a single pie either by the Board or by the PTPS at any point of time either in the shape of salary, or wages or honorarium. They had also stated that the Board had no knowledge of the alleged working of the respondent No. 1 in the Arvind Middle School and therefore, she cannot be allowed to equate her case with the petitioners of CWJC No. 1049 of 1991 (R), which, according to them stood on a totally different footing. At paragraph 17 of the Counter affidavit, the Board also stated that according to the report of the Conciliation Officer, the petitioners of CWJC No. 1049 of 1991 (R) had been found to be working since 1986, 1987 and 1988 on honorarium basis, but from the own showing of respondent No. 1, she was alleged to have worked from 3.5.1990 to 19.8.1991 only as stated at paragraph 19 of the Counter affidavit. Consequently, the Board had contended before the writ Court that although they were not admitting the allegation that the respondent No. 1 had been appointed on 3.5.1990, yet even if she was so appointed, she could not be allowed to take advantage of the judgment dated 26.4.1994. According to them, she had not filed any letter of appointment and the Head Master of the school had no power to make any appointments. The Board had further contended before the writ Court that the impugned orders dated 19.8.1991 and 20.8.1991 were general orders and that the petitioner was neither appointed nor terminated pursuant to the said orders and that she had built up a case on the basis of incorrect grounds.

12. The aforesaid specific stand of the appellants taken through their counter affidavit, certainly discloses that they seriously disputed the contention of the respondent No. 1 to the effect that she had ever been an employee of the Board. In fact, their assertions were so specific and so categorical that this Court in a writ Jurisdiction could not have given a finding that the judgment delivered on 26.4.1994 would govern the case of this respondent No. 1 also. It is true that the orders dated 19.8.1991 and 20.8.1991 being general orders stood quashed by reason of the judgment dated 26.4.1994, but the fact remains that that judgment was delivered on the basis of a specific finding arrived at as per report of the Conciliation Officer that those petitioners had been working since 1986, 1987 and 1988. So far as the respondent No. 1 is concerned, her own case has been

built up entirely on the basis of Annexures 1 and 1/1 appended to the writ Application (Annexure 2) herein, which is nothing but a letter of the

Head Master of Arvind Middle School, addressed to the secretary of the same School enclosing therein a list of teachers engaged on

honorarium/contingency basis and the name of the petitioner finds place at Sl. No. 6 showing her engagement with effect from 3.5.1990. The

aforementioned letter does not amount to a letter of appointment. Moreover, the contention of the Board before the writ Court was also that

appointments on Muster Roll and Contingent Basis had been banned by the Board as early as on 24.9.1975 and for filling up regular vacancies

and for purposes of recruitment, the same was to be done through Employment Exchange. The learned Single Judge while passing the impugned

order dated 5.4.1995, does not appear to have taken note of any of the contentions of the appellant-Board. The learned Single Judge allowed the

writ application only on the basis of the judgment dated 26.4.1994 without taking into consideration the rival contentions of the parties and without

dealing with the stand of the Board categorically stated in their counter affidavit.

13. That apart in the absence of a proper letter of appointment, the respondent No. 1 could not be said to have an existing right to seek parity with

other writ petitioners in another case, specially, more so when those writ petitioners were found by the Conciliation Officer to be working since

1986, 1987 and 1988 while the petitioner's own case is that she commenced work in 1990.

14. The respondent No. 1 had categorically admitted before the writ Court at paragraph 5 that she was waiting for the result of CWJC No. 1409

of 1991 (R). In other words, she was quite vigilant about the progress of the aforesaid cases. It cannot therefore be said that she was not aware of

the order that was passed on 4.10.1991 in CWJC No. 1869 of 1991 (R) appointing a Conciliation Officer and directing him to make necessary

inquiry. She did not even choose to intervene in those two writ Applications. Instead, it was only after the judgment dated 26.4.1994 was

implemented in February 1995, that the respondent No. 1 chose to file the writ Petition, i.e., CWJC No. 553 of 1995(R).

15. Taking into consideration all the aforementioned facts and circumstances, it cannot, therefore, be said that the case of the respondent No. 1

stood covered by the judgment dated 26.4.1994, and therefore, that portion of the judgment of the learned Single judge passed on 5.4.1995

observing that ""all observations made in the aforesaid decision shall govern this case,"" cannot be sustained and that part of the said order/ judgment

is, therefore, set aside. So far as the orders dated 19.8.1991 and 20.8.1991 are concerned, this Court does not interfere with them because they

have already been quashed in the aforementioned judgment dated 26.4.1995.

16. Resultantly, this appeal is allowed and it is held that the judgment dated 26.4.1995 being not applicable upon the respondent No. 1, none of

the observations made in the said judgment can be made applicable in this case. It is further held that since the orders dated 19.8.1991 and

20.8.1991 have already been quashed, the same is not being interfered with in any manner and in view of the dismissal of the SLP those two

orders remain quashed by reason of judgment dated 26.4.1995.

17. In the result the instant Letters Patent Appeal is allowed but there shall be no orders as to costs.