
(2019) 09 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2494 Of 2014

Bina Devi And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0003

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Afaq Ahmed, Prabhat Kumar Sinha

Final Decision : Disposed Off

Judgement

Sanjay Kumar Dwivedi, J

1. During pendency of this writ petition the original petitioner has died and thereafter, the legal heirs/successors of the original petitioner have been substituted in this writ petition who are pursuing this writ petition.

2. Heard Mr. Afaq Ahmed, the learned counsel appearing for the petitioners and Mr. Prabhat Kumar Sinha, the learned S.C.-IV appearing on behalf of the respondent-State of Jharkhand.

3. The petitioners have preferred this writ petition for modifying the order dated 26.05.2011 whereby a rider has been put to the effect that the service of the petitioner shall be counted from the date of joining in the said Training College.

4. Mr. Afaq Ahmed, the learned counsel appearing for the petitioner submits that by the impugned order taking into account the various judgments passed by this Court, the impugned order has been issued whereby the petitioners was allowed to join the Training College, however, a rider was put that the service of this petitioners will be counted with effect from the date of his joining. He referred to the batch of cases contained in Annexure-2 to the writ petition and submits that the case of the petitioners is fully covered in view of the Division

Bench order of this Court. The case of the petitioner is that, the petitioner has earlier moved in this Court in C.W.J.C. No.2166 of 1996(R) which was disposed of vide order dated 14.09.1995 in terms of Annexure-3 which is a judgment of the Division Bench which was disposed of vide order dated 28.07.1995 with a direction to the respondent-appropriate authority to consider the case of the petitioner and pass appropriate order for his appointment against the existing vacancy and if there is no vacancy then against the future vacancy. Thereafter, the representation of the petitioner was disposed of whereby the claim of the petitioner was rejected. Being aggrieved he filed C.W.J.C. No.2076 of 1996(R) which was dismissed and against that, the petitioner has preferred L.P.A. No.572 of 1997(R) which was heard alongwith L.P.A. Nos.577 of 1997(R), 588 of 1997(R), 492 of 1997(R) and 89 of 1999(R), the order of which is contained in Annexure-4, which was disposed of with the following directions:

"20. All these appeals are allowed. The judgment and orders of the learned single Judges impugned in these appeals are set aside.

The orders passed by the Director, Primary Education, Bihar, Patna, dated 27.3.1996 and 16.4.1996 in so far as they relate to the appellant are quashed. The Director is directed to consider the claims of the appellants of LPA Nos.572, 577 and 588 of 1997(R) afresh by speaking order in terms of the directions issued by this Court in its judgment dated 28th July, 1995 in Surendra Kumar Singh & Ors.-v.-State of Bihar & Others, CWJC No.1321/89(R) and its analogous cases within a period of two months from the date of production of a copy of this Judgement."

The order of the Director, Primary Education, Bihar, Patna dt.8.8.1994 rejecting the claim of the appellant in LPA No.492 of 1997(R) is also quashed. The Director is directed to decide the claim of this appellant afresh by speaking order in terms of the directions issued by this Court in Shabana Tabassum and another v. The State of Bihar and Others, CWJC No.3338 of 1993(R) decided on 13.4.1998, within the same period of two months from the date of production of a copy of this judgment.

The order dated 14/15-7-1998 passed by the District Education Establishment Committee rejecting the claim of the three appellants in LPA No.89 of 1999(R) is quashed. Now the Director, Primary Education, Bihar, Patna is directed to consider the cases of these appellants by speaking order in accordance with the directions contained in this Court's judgment dated 13.1.1998 in Anjali Acharya and others vs. The State of Bihar & Others CWJC No.1486 of 1997(R) and its other analogous cases within the same period of two months from the date of production of a copy of this judgment. No cost."

5. The direction of the Division Bench was not complied and the petitioner filed a contempt petition. In the meantime, the impugned order has been passed that is why, the contempt has been dropped. He further submits that the case of the petitioners are fully covered by the earlier judgments of this Court. He further

submits that the persons who were junior to the petitioner in the panel they have been provided seniority benefit and counting of service with effect from 1989 whereas, an arbitrary rider has been put with regard to the petitioner by way of the impugned order. He submits that in view of the earlier orders of this Court by the Division Bench, the matter has already been set at rest.

6. On the other hand, Mr. Prabhat Kumar Sinha, the learned S.C.-IV appearing on behalf of the respondent-State of Jharkhand submits that the petitioner has retired on 31.01.2014 whereas the impugned order has been passed on 26.05.2011 and after the retirement the petitioner has approached this Court. He submits that in that view of the matter, the writ petition is fit to be dismissed.

7. Having heard the learned counsel for the parties, this Court finds that the grievance of the petitioner is that instead of appointing the petitioner out of the panel according to the position in the merit list, persons who were below to the petitioner in the panel so prepared were appointed. This Court has considered the similar types of cases in C.W.J.C. Nos.687 of 1987(R), 630 of 1987(R) and 1220 of 1998(R) whereby it was ordered that in cases where the persons below in the panel were appointed excluding the persons who were above in the panel should be also appointed. In similar case in which one Anima Sinha was the petitioner was dismissed by a Bench of this Court and the Hon'ble Supreme Court by its order in Civil Appeal No.2363 of 1988 allowed the prayer and set-aside the order of this Court and directed the respondents to take Anima Sinha in the manner as claimed by her.

8. For the reasons aforesaid, this Court directs the respondents to treat the case of the petitioner with effect from the date the persons below in rank in the panel was appointed. The petitioner be placed above the persons who were junior to him in the panel so prepared.

9. It is made clear that the petitioner will not get financial benefit for the same, but the same shall be counted for other benefits including pensionary benefit.

10. The impugned order dated 26.05.2011 is modified to the above extent, and accordingly, writ petition is disposed of.

11. It is expected that the authority concerned will pass an appropriate order in this regard as early as possible, but not later than 8 weeks from the date of receipt/production of a copy of this order.