
(2004) 07 PAT CK 0022
In the Patna High Court
Case No : L.P.A. No. 1457 of 2001

Braj Kishore Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0022

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The Appellants numbering 20 are aggrieved by order dated 6th November, 2001 passed by a learned Single Judge of this Court in CWJC No. 3851 of 1999 by which their prayer to quash the order dated 19.7.1998 (Annexure-5 to the writ application) issued under the signature of the Additional Secretary, Higher Education, Govt. of Bihar, directing that the Appellants shall be entitled to salary only from the date of their regularisation of services as well as the letter dated 23.7.1998 issued by the Registrar of the Respondent-Jai Prakash University to the Jagdam College, Chapra, directing for refund, of the salary which were paid to the Appellants for certain period prior to 20th May, 1998 and further prayer to direct the Respondents to fix the salary of the Appellants in their respective scale from the date of their initial appointment and to pay the arrears of salary has been rejected.

2. The only question for determination in this case is as to whether the Appellants are entitled to payments of arrears of salary as well as fixation of salary from the date of initial appointment on Class III and Class IV posts in Jagdam College, Chapra or not.

3. According to the Respondent State, the Appellants are entitled to salary and other benefits from the date of order of regularisation passed by the State Government in pursuance of a direction of a Full Bench of this Court in the case of the Appellant disposed of on 19th February, 1997, reported in Braj Kishore Singh and Others Vs. State of Bihar and Others,

4. The necessary facts to decide the said question are as follows;

Jagdam College, Chapra (for short, the College) was affiliated to the Bihar University, now named as Babasaheb Bhimrao Ambedkar University. On 7th February, 1976, it became a constituent unit of the said University with effect from 1st April, 1975. Later on Jai Prakash University was carved out of the aforesaid University and the college is now a constituent unit of the said University. 20 sanctioned posts of Class III and 43 sanctioned posts of Class IV were in existence prior to 17th January, 1973. 9 Class III posts and 13 Class IV posts were created on January, 17, 1973. On November, 29, 1977, the Bihar University, as it then was, constituted a Selection Committee comprising of the Principal and three senior most Professors for appointment against vacant Class II and IV posts. After due advertisement, the appointments of the Appellants and others were made in March, 1979 and since then the Appellants are working on Pass III and Class IV posts. At the time of appointment in 1979, 9 Class III and 13 Class IV posts were vacant against which all the 20 Appellants were appointed on the said posts. The University approved the appointments on March, 2, 1981 and forwarded the same to the State Government for its approval. The Appellants were being paid their salaries. However, the State Government on 8th June, 1983 refused to approve the appointments of the Appellants on the ground that the appointments were made beyond the staffing pattern as fixed by the State Government in terms of the statutory provision. The Appellants represented the matter before the State Government but of no avail. Thereafter, the Appellant filed CWJC No. 497 of 1984 challenging the order dated 8th June, 1983 by which the State Government has refused to approve their appointments and the said writ application was dismissed on 6.4.1984. The Appellants preferred LPA No. 36 of 1994. The Division Bench hearing the Letters Patent Appeal having noticed conflicting decisions referred the matter to the Full Bench. The matter was heard by the Full Bench and the Full Bench allowed the appeal by order dated 19.2.1997. It quashed the order of the State Government dated 8th June, 1983 and held that the Appellants are entitled to have their services regularised against the posts within the staffing pattern as applicable to the College.

5. Before the Full Bench, the stand of the State Government was that neither the posts were created with the approval of the State Government nor the appointments were made with prior approval of the State Government and as such the appointments of the Appellants were violative of Section 35 of the Bihar Universities Act and the State Government rightly refused to give approval to their appointments.

6. The Full Bench took the view that once the staffing pattern recommended by the Bihar Inter University Board has been approved by the State Government, the same will amount to creation of posts and if the appointments are made against the posts as per the staffing pattern, I.e. within the sanctioned strength, they cannot be said to be violative of Section 35 of the Act on the ground that

the posts having not been sanctioned by the State Government provided the candidates possessed the requisite qualification and selection was not in breach of Articles 14 and 16 of the Constitution of India. The Full Bench further took the view that in normal course, the State Government would have been directed to consider the validity of the appointment of the Appellants for granting or refusing post facto approval but having regard to the fact that they have continued for about 17 years, directed that the Appellants are entitled to have their services regularised against the posts within the staffing pattern as applicable to the college. In this connection, it is useful to refer paragraph 32 of the judgment.

In the above premises, the judgment of the learned Single Judge rejecting the claim of the Appellants on the ground that they were appointed without prior approval of the State Government as contemplated u/s 35 of the Act cannot be sustained. In the ordinary course, in view of my conclusion that it is open to the State Government to consider the validity of appointments already made for the purpose of granting or refusing post facto approval, I would have considered asking the State Government to look into the claim of the Appellants afresh. However, having regard to the fact that the Appellants have continued in service for more than 17 years, I do not think it would be appropriate exercise, of discretion to re-open the matter after such a long lapse of time. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, a Constitution Bench of the Apex Court has held that where initial appointment is not made according to the rules but the appointee continues in service uninterruptedly for long period till regularisation of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The Appellants are accordingly entitled to have their services regularised against the posts within the staffing pattern as applicable to the College.

7. When the State Government did not take any action in pursuance to the aforesaid judgment rendered by the Full Bench, the Appellants filed contempt application being MJC No. 1970 of 1997 and then the State Government passed order on 20.5.1998 regularising the services of the Appellants. A copy of the said order has been annexed as Annexure-1 to the writ application. On 23.5.1998, the Director, Secondary Education, Govt. of Bihar, allotted the funds to different Universities. With regard to the and allotted in favour of the Respondent-University, there was clear cut direction in paragraph 15 to pay to the Appellants their arrears of salary treating the same as a first charge of the said amount. A copy of the said letter has been annexed as Annexure-2 to the writ application. On 9.7.1998, the Registrar of the Respondent University issued a cheque of Rs. 63,84,129 10 Paise only directing the acting Principal of the College to pay the salary etc from the date of approved appointment date. A copy of the same has been annexed as Annexure-3 to the writ application. However, the direction was issued in the said letter that the payments will be made after deducting the earlier ad hoc payments made. In the meantime, it appears that Additional Secretary in the department of Higher Education, Government of Bihar sent a fax

message, asking the Vice Chancellor not to make payments to the Appellants without prior approval of the State Government and thereafter the Vice Chancellor issued an order withholding the payments. Later on in the contempt application, the Vice Chancellor stated that the direction given for withholding the payment of salary has been withdrawn. The State Government on 19.7.1998, Annexure-5 to the writ application, reviewed the matter with regard to regularisation of the Appellants on the basis of the order passed by this Court and took the decision that the Appellants are entitled to payment of their salary in their respective scale of pay from 20.5.1998, i.e. the date of regularisation of their service. They will get benefits of past service before regularisation for the purpose of seniority as laid down by the Apex Court in the case of Direct Recruit Class II Engineering Officers Association (*supra*). The direction given in the letter dated 20.5.1998 for payment of salary to one of the Appellants for the period 21.3.1979 to September, 1983 was cancelled. The said letter was produced before this Court in the contempt proceedings and it was disposed of as not pressed by order dated 20.7.1998. However, liberty was given to the Appellants to challenge the order dated 19th July, 1998. Thereafter, the Appellants filed an application being MJC No. 2939 of 1998 for modification/recall of the order passed in the contempt application which was dismissed on 24.12.1998 as not maintainable.

8. The Appellants again filed another contempt application being MJC No. 219 of 1999 alleging that the Appellants should be paid arrears of salary in view of the earlier undertaking given by the State Government. The learned Single Judge did not accept the aforesaid stand of the Appellants and held that the services of the Appellants have been regularised by order dated 20th May, 1998 in terms of the judgment passed by the Full Bench and thus, the proceeding for contempt is not called for. If the Appellants were not paid salary for the period they actually performed duty because of dispute relating to their appointments against one or other post, they may move before competent authority/Court of law for such relief relating to arrears of salary and, accordingly, disposed of the MJC application with the aforesaid observation. Thereafter, the Appellants filed the writ application for the reliefs as prayed for.

9. The learned Single Judge has rejected the claim of the Appellants on the ground that there was no direction by the Full Bench for payment of their salary prior to period of regularisation and as such the Appellants were not entitled to payment of salary for the period prior to their regularisation.

10. The learned Counsel appearing for the Appellants submitted that the Appellants were appointed in 1979. Their appointments were approved by the University, but the approval was denied by the State Government on the ground that the appointments were in excess of the staffing pattern. The Full Bench of this Court quashed the aforesaid order of the State Government and held that the appointments of the Appellants were within the staffing pattern and also found that the Appellants were continuously working since 1979 and ordered for

regularisation of their services and as such the Appellants were entitled to payment of their salary from the date of their initial appointment. He further submitted that the question as to whether the Appellants are entitled to arrears of salary and other benefits was not subject matter of decision of the Full Bench and the learned Single Judge was not right in rejecting the claim of the Appellants on the ground of absence of any such direction for payment of arrears of salary in the judgment.

11. The learned Counsel appearing for the Respondent State on the other hand submitted that the Full Bench of this Court in the case of the Appellants has only ordered for regularisation of their services and has not ordered for payment of arrears of salary and as such they are not entitled to the same. Their contempt application wherein prayer was made for payment of arrears of salary has already been rejected and as such they cannot now be allowed to raise the said point with regard to payment of arrears of "salary and others in the present writ application.

12. Admitted fact is that the Appellants were appointed in 1979. Their appointments were approved by the University. The only question in controversy was as to whether their appointments were legal or not. The State Government took the stand that as that was beyond the staffing pattern, the appointment was not permissible in law. The Full Bench of this Court as stated above has held that the Appellants were appointed against the post as per staffing pattern. However, it was open to the State Government to consider the validity of their appointment for the purpose of granting or refusing to grant post-facto approval in terms of Section 35 of the Act as interpreted by the Full Bench. The Full Bench further observed that it would have sent the matter to the State Government to consider the validity of their appointment but as stated above taking into consideration more than 17 years of their services, ordered for regularisation of their services against the post within the staffing pattern as applicable to the college. Though the Full Bench did not pass specific order as to from which date the regularisation is to take effect but as it appears from paragraph 32 of the judgment that the Full Bench took note of the judgment of the Apex Court in the case of Direct Recruit Class-II Engineering Officers Association and held that the period prior to regularisation shall be counted for the purpose of consequential benefits.

13. The question as to whether the Appellants were entitled to payment of arrears of salary or not for a period to their regularisation as ordered by the Full Bench was not subject matter in the earlier writ application. As stated above, the writ application was filed challenging the order refusing to grant approval to the appointment of the Appellants and as such the claim of the Appellants for arrears of salary etc., cannot be rejected on the ground that there was no such direction by the Full Bench judgment of this Court.

14. From perusal of the Full Bench judgment it appears that the Full Bench accepted the appointments of the Appellants from the initial date and thereafter

passed the order of regularisation instead of sending the matter for post facto approval of their services. In case the matter would have been sent to the Government and in case of approval of their services from the date of the appointment they would have been entitled to salary from the Very beginning. This Court instead of adopting the said procedure passed an order of regularisation. It is not disputed that the Appellants have rendered their services in the College. It is also not disputed that they were paid salary prior to passing of the order of the State Government in 1983 for some time. In such a situation, they cannot be denied the salary prior to 20th May, 1998 when the order of regularisation was made. It will be unjust and inequitable to hold that though the Appellants continued to work in the college and this Court having noticed their continuance in service and having ordered that the services rendered by them will be counted for the purpose of consequential benefits, they are not entitled to payment of arrears of their salary. Even the State Government has understood the order of this Court in the same manner but later on reviewed the same which is subject matter of challenge before this Court.

15. Accordingly, the impugned order dated 19th July, 1998, is quashed and it is held that the Appellants are entitled to payment of arrears of their salary for the period prior to regularisation and other consequential benefits by treating them as appointed in the year 1979.

16. In the result, the appeal is allowed and the impugned order passed by the learned Single Judge is set aside. It is made clear that this Court has issued the aforesaid direction taking into consideration the special facts of this case.

Navin Sinha, J.

17. I agree.