
(2018) 08 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (S) No.3003 of 2015

Chandra Bhushan Pathak

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Citation : (2018) 08 JH CK 0064

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Aprajita Bhardwaj, Yogesh Modi

Final Decision : Allowed

Judgement

1. Supplementary counter-affidavit dated 08.08.2018 and copies of office orders dated 29.06.2012 and 12.07.2012 passed by District Education

Officer, Dhanbad are taken on record.

2. The petitioner is aggrieved of order dated 22.01.2015 by which the District Education Officer, Dhanbad has rejected his claim for reinstatement in service.

3. Record of the case reveals a chequered history of litigation. The petitioner claims that he was appointed in the Project Girls High School, Govindpur,

Dhanbad as Clerk on 13.09.1993 pursuant to an advertisement on a vacant post. However, initially he was not paid salary so he came to this Court in

CWJC No.1160 of 1995 (R). The writ petition was disposed of by an order dated 26.05.1995 with a direction to the respondent-authority to make

payment of admitted dues since 08.10.1993 to him. The petitioner has produced a copy of order dated 21.06.1995 by which he was paid salary from

08.10.1993. He has also produced a copy of order dated 24.12.1999 by which he

was absorbed in the office of Regional Education Officer, Chas, Bokaro on a vacant post. This order has a reference of order dated 19.03.1997 of the Director, Secondary Education, Bihar and an order contained in Memo No.3172, dated 08.12.1997 of Regional Deputy Director of Education, Hazaribagh. However, on the basis of an enquiry report submitted by the Deputy Commissioner, Dhanbad several persons including the petitioner were dismissed from service on 10.04.1997. This order was not communicated to the petitioner for quite a long time and when he came to this Court in W.P.(S) No.5876 of 2002 in that proceeding the respondents brought on record a copy of order dated 10.04.1997 and then he came to know stand of the State. The writ petition was dismissed by an order dated 03.07.2008, against which he preferred L.P.A. No.322 of 2008. The Letters Patent Appeal stood disposed of with liberty to him to prefer a separate writ petition challenging order of his dismissal from service. Finally, the petitioner's writ petition vide W.P.(S) No.685 of 2009 challenging his order of dismissal from service stood disposed of by an order dated 11.11.2014 with a direction to the respondent-authority to decide his claim for his reinstatement in service within 3 weeks. In purported compliance of order dated 11.11.2014 passed in W.P.(S) No.685 of 2009, the respondent-District Education Officer, Dhanbad has passed the impugned order dated 22.01.2015.

4. In the counter-affidavit the respondents have taken a stand that appointments of several Class-III and Class-IV employees which were made by one Miss Surajmani Khalkho, who before her retirement without advertisement, requisition from Employment Exchange and sanctioned posts had made appointments, were terminated by the State Government. An enquiry was conducted in the matter and enquiry report dated 10.04.1997 was submitted by the Deputy Commissioner, Dhanbad, on the basis of which these appointees were dismissed from service.

5. On plea of parity raised by the petitioner stand taken by the respondents is that order passed in CWJC No.1384 of 1996 (R) by which one Sanjay Kumar was reinstated in service and order passed in CWJC No.829 of 1998 (R) by which order of termination of Manshu Kumbhkar was quashed with a direction to reinstate him in service; Letters Patent Appeal against order dated 18.06.2003 passed in CWJC No.829 of 1998 (R)

was dismissed, were challenged before the Supreme Court and by an order dated 17.09.2007 passed in Civil Appeal No.4310 of 2007 State's appeal

was allowed. Foundation of the stand taken by the respondent-State is order of the Hon'ble Supreme Court wherein it has been observed:

8. Reliance by the High Court on the order passed in Sanjay Kumar's case (supra) was thoroughly misconceived. It is to be noted that LPA was

dismissed on the ground of delay. Even otherwise, merely because mistake had been committed in one case, there is no rational for perpetuating that

mistake, even when the same is illegally impermissible.

6. In view of the stand taken on behalf of the petitioner, on 23.07.2018 the following order was passed:

06/23.07.2018 This is 4th round of the litigation.

The learned counsel for the petitioner submits that if the respondents are permitted to take new stand in subsequent proceedings it would be an un-

ending process and thus not in public interest.

The petitioner has taken plea of parity on the ground that not only before the Civil Appeal No.4310 of 2007 titled "State of Jharkhand and Ors.

Vs. Manshu Kumbhkar" was decided the respondents have offered appointment to several similarly situated persons, thereafter also they have

offered appointment to Rajendra Prasad, may be pursuant to an order passed by the Writ Court [C.W.J.C No.2545 of 2000(R)].

It is contended that the respondents cannot plead that the petitioner is not entitled for reinstatement in service for the reason that he was also an

appointee of Surajmani Khalkho.

At the instance of the learned State counsel for verifying whether order passed in the case of Rajendra Prasad has been complied by the

respondents or not, post the matter on 13.08.2018.

7. In the supplementary counter-affidavit dated 08.08.2018 filed by the respondent no.3, the respondents admit that order dated 24.06.2010 passed in

Cr. M.P No.809 of 2004 has not been challenged by the respondent-State, however, the respondents are completely silent whether order passed in

CWJC No.2545 of 2000 (R) has been challenged by the respondent-State or not.

8. The learned counsel for the petitioner states that a search on the website of the High Court of Jharkhand does not reveal that this order has been

challenged by the respondent-State.

9. Ms. Aprajita Bhardwaj, the learned counsel for the petitioner has raised two fold contentions; (a) on the basis of order passed by the Supreme

Court in Civil Appeal No.4310 of 2007 petitioner's reinstatement in service cannot be denied and, (b) specific plea of parity raised by the petitioner on

the basis of appointment of Rajendra Prasad who has been appointed after the order passed by the Supreme Court must bind the respondent-State.

10. From the impugned order dated 22.01.2015 it appears that petitioner's claim has been rejected primarily on the ground that petitioner is similarly

situated with the employee-Manshu Kumbhkar whose appointment has been held illegal by the Supreme Court. In this context it is pertinent to

mention here that in his representation dated 04.12.2014 the petitioner has raised a specific plea of parity on the ground that one Rajendra Prasad

has been reinstated in service pursuant to order passed in CWJC No.2545 of 2000 (R), after the decision of the Supreme Court in Civil Appeal

No.4310 of 2007. Further stand of the petitioner is that the employee-Sanjay Kumar is still working in the department.

11. Apparently, these are some uncomfortable questions which the respondents have conveniently not chosen to answer inspite of specific order

passed by this Court on 23.07.2018. The impugned order dated 22.01.2015 also does not deal with the aforesaid specific stand of the petitioner. While

there is some substance in the stand taken by the respondent-State on the appointments which were held illegal by the Supreme Court, there is no

explanation why inspite of order passed by the Supreme Court in Civil Appeal No.4310 of 2007 the respondent-State has permitted Sanjay Kumar to

continue in service and chosen to reinstate Rajendra Prasad in service with back-wages; office orders dated 29.06.2012 and 12.07.2012 reflect that

Rajendra Prasad has been reinstated in service with 25% back-wages. True, an employee cannot derive benefit from an illegal benefit conferred

upon another employee, but before a similar benefit is denied to an employee it must be conclusively established that both are similarly situated.

Only on account of the fact that the petitioner also was initially appointed by Miss Surajmani Khalkho he cannot be held illegally appointed. In its order

dated 22.01.2015, except stating that the Supreme Court has held appointment of Manshu Kumbhkar illegal, the respondent-authority has not assigned

any other reason while claim of the petitioner has been rejected. In the present proceeding the respondents have not taken a stand that Rajendra

Prasad has been wrongly reinstated in service.Â This time even if it is found that the said Rajendra Prasad is not entitled for reinstatement in service,

as on today the petitioner's claim for a similar benefit cannot be declined. Courts do not pass orders on future probabilities. And, for how long the

respondent-State can be permitted to remain blissfully ignorant of the judgments passed in the cases in which it was a party.

12. On applicability of the judgment in Civil Appeal No.4310 of 2007 to the case of the petitioner, it needs to be indicated that initial stand of the

petitioner which is reflected in order dated 26.05.1995 passed in CWJC No.1160 of 1995 (R) has not been successfully challenged by the respondents.

A perusal ofÂ the aforesaid order would disclose that the petitioner has brought on record a copy of advertisement (Annexure-2) in the said writ

proceeding. Stand taken by the respondents in the present proceeding that no advertisement was issued, thus, on face of Annexure-2 filed in CWJC

No.1160 of 1995 (R) raises serious doubt whether the petitioner was appointed without any advertisement as has been done in case of other

employees who were parties before the Supreme Court in Civil Appeal No.4310 of 2007. Order dated 24.12.1999 and other orders which have been

referred to in the order dated 26.5.1995 passed in CWJC No.1160 of 1995 (R) indicate that subsequently the petitioner was absorbed in service and

he was paid salary, may be pursuant to a direction of the writ Court, but the fact remains that he was paid salary. On quashing of the criminal case

against Miss Surajmani Khalkho, stand of the petitioner is that once the criminal case against her for making illegal appointments is quashed,

petitioner's appointment cannot be held illegal. Mr. Yogesh Modi, the learned State counsel submits that the quash-petition was allowed primarily on

the ground that appointees of Miss Surajmani Khalkho did not draw salary. As noticed above, the petitioner was paid salary for which office order

dated 21.06.1995 was issued vide Annexure-2 to the writ petition. Absorption of the petitioner in service is also a distinguishing fact.

13. In the aforesaid facts, it must be held that the respondents have failed to establish that the petitioner's appointment was illegal. Law declared by

the Supreme Court has to be applied in the facts of the case.

14. For the reasons indicated hereinabove, finding serious infirmity in the impugned order dated 22.01.2015, it is quashed. The writ petition stands allowed.