

(2000) 11 PAT CK 0008
In the Patna High Court
Case No : L.P.A. 1066 and 1100 of 2000

Devendra Nath Mandal (in 1066), Priya Rakshit (in 1100)	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 09-11-2000

Acts Referred:

Citation : (2000) 4 PLJR 817

Hon'ble Judges : S.K. Chattopadhyaya, J;N. Pandey, J

Bench : Division Bench

Advocate : S.N. Jha, Asim Jha in 1066, Mr. Kausha Kumar Jha in 1100, for the Appellant; A.K. Choudhary, Rajiv Nandan Prasad for State, for the Respondent

Final Decision : Dismissed

Judgement

1. Both these appeals were heard: together, therefore, with the consent of the parties, they are being disposed of by a common order. L.P.A. 1066 of 2000 has been preferred against the order date 5.7.2000 in C.W.J.C. No. 3239 of 1999 whereas L.P.A. 1100 of 2000 is again:" the order dated 17.7.2000 in C.W.J.C No. 3511 of 1999. C.W.J.C. No. 3239 of 1999 was disposed of by a reasoned order. As points and facts involved C.W.J.C. No. 3511 of 1999 were similar therefore, this case was also dismissed on the same terms. As would appear from the facts or record in these cases, on previous occasion also there were several litigations, In the present cases, appellants have prayed for the following reliefs-(a) to quash the order of termination dated 11.2.1985 whereby they were removed from service by the District Superintendent of Education; (b) to quash the order dated 25.9.1998 whereby and where under the Director, Primary Education had although allowed the claim for arrears of salary but held that the appellants would not be entitled to continue in service; (c) to quash the consequential order of the Headmaster dated 31.10.1998 whereby the appellants were stopped from working in the school in compliance to the order of the Director dated 25.9.1998, and (d) to include the names of the appellants in the panel which was prepared in terms of the observation/order of the Apex Court.

2. Admittedly, as would appear from the facts on record, the appellants were initially appointed as matriculate trained teachers by the District Superintendent of Education, Dumka in the year 1983 but their services were later terminated on 11.2.1985. The above order was challenged in C.W.J.C. No. 974 of 1985 wherein on 27.2.1985 an order to maintain status quo was passed. The case was ultimately disposed of with batch of cases with a direction to identify the cases whether the order of termination was passed because the teacher were untrained and after scrutinizing their eligibility include them in a panel after being satisfied that their claims were not fake and bogus and thereafter to take steps for their appointment against the vacancies as and when arises in future till such a panel is not exhausted.

3. A round of litigations had also travelled to the Apex Court and in contempt petition No. 175 of 1993 on 2.9.1994 it was directed if there is grievance with regard to non-inclusion of any of the names, the Director, Primary Education will look into it and rectify the mistake if any, within four weeks from the date of receipt of the representation which was directed to be made within four weeks from the date of the order but the representations made thereafter were not to be entertained.

4. Undisputedly, pursuant to the order of the Apex Court, representations were filed by the candidates who were terminated and accordingly, a panel was prepared. The appellants did not file any representation. According to them, after the order of the Supreme Court, as would appear from the advertisement published on 4.3.1991, only appointees of 1981-82 were required to make applications. Appellants being appointees of 1983, were not required to make any application. Therefore, finding of the learned Single Judge that the appellants did not make any application for inclusion of their names in the panel within the stipulated period has no substance. That apart, since they were already continuing in a service by virtue of the interim order of status quo dated 27.2.1985, their names should have been empanelled automatically along with other appointees who had filed applications pursuant to the aforesaid advertisement.

5. On the other hand, learned counsel for the respondents submitted that the order of this Court to maintain status quo passed on 27.2.1985 was already recalled while disposing of C.W.J.C. 38.18 of 1994 and analogous cases including C.W.J.C. No. 974 of 1985 i.e. the appellants' first writ application. That apart, admittedly, as would appear from the facts on record the order of termination of the appellants from service passed by the District Education Officer as back as 2.9.1985 remained as it is since no order for quashing was passed by this Court because this Court had already declined to quash the same.

6. There is no dispute that in terms of the order of the Supreme Court, a panel of Assistant teachers in the district of Sahebganj was prepared on 24.8.1994. It would further appear that on 2.9.1994, the Supreme Court granted further liberty to file representations to those candidates who had failed to make

applications and for this purpose, specific time limit was fixed.

7. It would also be appropriate to notice that the appellants had filed another writ application bearing C.W.J.C. No. 9169 of 1995 but prayer for quashing the order of termination dated 11.2.1985 was not pressed and the writ application was confined to the grievance as to nonpayment of salary alone. Therefore, in view of the order of termination of the appellants from service passed as back as on 11.2.1985, it was really difficult for the writ court to grant any relief. That, apart, when the order of the Apex Court dated 2.9.1994 was peremptory in nature, therefore, those who failed to file representations within the prescribed time, should not be allowed to subsequently raise any grievance since his/her name was not included in the panel.

8. We, therefore, in the facts and circumstances of the cases noticed above, find ourselves in full agreement with the views expressed by the learned Single Judge while dismissing the writ applications. But having regard that the appellants had rendered services for sufficiently long period, they can make application for appointment against the post of Assistant teachers claiming relaxation of age as well as benefit of past teaching experience. In the result, subject to the above observations, both the appeals are dismissed.