
(2008) 03 JH CK 0072
In the Jharkhand High Court

Dineshwar Prasad Sah @ Shah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2008) 2 JCR 467

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The appellant who is one of the several petitioners in the writ petition W.P.(S) No. 161 of 2005, has failed the instant appeal against the order dated 1.9.2007 passed by the learned single Judge dismissing the writ petition.

2. Challenge in the writ petition was made against the order contained in Memo No. 763 dated 30.6.2005 passed by District Education Establishment Committee issued under the seal and signature of the District Superintendent of Education, Pakur, whereby petitioner/appellant and his co-petitioners were removed from service.

3. Facts of the case stated briefly are that the petitioner and a few other persons had obtained appointment as Assistant Teachers on temporary basis in the year 1981-82. Two years later i.e. in the year 1984 their service were terminated on the ground that their appointments were illegal. Petitioner and all similarly situated persons filed writ applications before the Patna High Court and moved up to the Supreme Court. The writ application filed by the petitioner and a group of other persons similarly situated was registered a CWJC No. 405 of 1985 in which at the stage of admission itself, the Patna High Court by its order dated 21.2.1985, had stayed the operation of the order of termination. While the aforesaid writ application was pending in the Patna High Court, similar writ applications which were filed by several other teachers against the same order of termination, were disposed of, whereafter the aggrieved persons moved the

Supreme Court and pursuant to the orders of the Supreme Court, the authorities concerned reconsidered the cases of all the applicants and a fresh panel was prepared in the year 1994 in accordance with the rule. The final panel was prepared after calling for objections through notice in the daily newspaper and after considering the objections received, the final panel was published on 25.7.1994. The names of the petitioner and his co-petitioners in the writ application were not included in the panel. Yet, they continued in service and even received their monthly salary though as temporary appointees. Anomaly when detected later, they were served with show-cause notices and finally, they were served with the order of termination of their services vide memo No. 763 dated 30.6.2005 passed by the District Education Establishment Committee, issued under the seal and signature of the District Superintendent of Education, Pakur. Initially, the prayer made by the petitioner in the writ application before the learned single Judge was for confirmation of their temporary appointment. Later, a further prayer was added by amendment in the writ petition, for quashing the order of their termination dated 30.6.2005.

4. The main grievance of the petitioner in the writ application was;

1. that the impugned order of termination so passed without issuing any show-cause notice was illegal and in violation of the principle of natural justice.

2. that the impugned order of termination was illegal on account of the fact that it was passed in violation and in contempt of the order of stay granted by the Patna High Court in CWJC No. 405 of 1985 dated 21.2.1985 and also when the writ petition W.P.(S) No. 161 of 2005 was subjudice.

3. that the reason which was stated for termination of services of the petitioners, namely that name of the petitioner and similarly situated other applicants did not find place either in the selection list or in the waiting list, nor was there any order in their favour, is factually incorrect as because, even after application of the final pane, the petitioner and similarly situated other candidates continued to remain in service and draw their monthly salary regularly.

4. that the application of rule relating to age bar against the petitioner was illegal since the petitioner being a handicapped person, was entitled to relaxation of age till the age of 45 years as per the original advertisement issued for the appointment of teachers.

5. The learned single Judge after meticulously considering the submissions made by the petitioners as also by the respondents, and placing reliance on the single Judge judgment of the Patna High Court in the case of Girdhari Lal Sah and Ors. reported in 2003 (3) JCR 465, which was affirmed in LPA No. 477 of 2003 by the Patna High Court and further affirmed by the Supreme Court in SLP No. 1493-1494 of 2005, recorded his observation as follows:

8. There is nothing to show that petitioners were appointed after following the legal procedure. They were not selected and induced in the final panel which was

prepared far back in 1994 after considering the objections. Their claim for relaxing the age bar was also rejected in 1996. Petitioners continued illegally, apparently in collusion with the erring officers of the department. They cannot be heard to say that as they have continued for a long period, their case is different from similarly situated persons, who were not reappointed or were removed from service due to non-inclusion of their names in the final panel. Mr. Singh submitted that, as the petitioners were allowed to continue, they did not challenge the final panel prepared in 1994 and the rejection of their claim in 1996 on the ground of over age. Such submission is wholly fallacious and unacceptable. Petitioners had no right to continue, and only because of such illegal continuance, they did not acquire any right. Further, in the facts and circumstance, noticed above, it also cannot be accepted that before removing them, a departmental proceeding should have been started. In view of Full Bench judgment (1971) 1 BLJR 441 and the Division Bench judgment - 1994 (1) PLJR 68 , the rules of natural justice were not required to be followed in such cases. However, show cause notices were issued to the petitioners but they could not show any basis for their continuance in service. When similarly situated persons have not been reappointed or have been removed, petitioners cannot be allowed to continue.

The learned single Judge made further observations, which reads as under:

9. It has been said in the counter-affidavit that petitioners continued illegally in league and collusion with the erring officers of the department and there has been suppression of facts, but it is not said as to what action has been taken. The respondents should identify and take action against the wrong doers in accordance with law.

6. In the present appeal, Sri Ajit Kumar, Advocate for the appellant would reiterate the same grounds as earlier raised by the appellant in the writ application before the learned single Judge, empahsizing in particular the following grounds:

- a. that the learned single Judge did not consider the question as to whether petitioner was initially appointed or not and,
- b. whether any stay order was passed by the Patna High Court in relation to the petitioner against his termination from service and till what date did the petitioner continue in service and,
- c. why was the name of the petitioner not included in the final panel prepared by the respondents in the year 1994 and that,
- d. no departmental proceeding was initiated, nor was there any charge framed against the petitioner before termination of his service by the impugned order of termination and further,
- e. that even after preparation of the final panel and notwithstanding the omission of his name in the final panel, the petitioner was allowed to continue in service

and draw his monthly salary regularly which continued till the date of his retirement.

f. that the learned single Judge has erred to confine himself only to the judgment of Girdhari Lal Sah (*supra*) whose case did not cover the case of the appellant.

7. We have carefully gone through the pleadings of the appellant as also the order of the learned single Judge and we are convinced that there is no merit in any of the grounds advanced by the appellant.

8. When the appointment of the petitioner and other candidates similarly situated was terminated initially in the year 1984-85 on the ground that their appointments which were made in the year 1981-83 by the then District Superintendent of Education was illegal, the petitioner and other aggrieved teachers moved the Patna High Court vide individual writ applications. In all such writ applications including CWJC No. 405 of 1985 filed by the petitioner, interim order of stay/status quo was passed by the Patna High Court with direction to the respondent authorities to conduct a fresh inquiry into the legality of the appointments of the candidates made in the year 1981-83. After inquiry, several teachers were removed from service in the year 1984-85. The aggrieved teachers moved the Patna High Court vide CWJC No. 7000 of 1992 and analogous cases. Common order was passed by the Patna High Court directing the respondents to prepare a fresh panel in accordance with the Rules, which were in force on the date of the initial appointment. The matter was referred to the Supreme Court in SLP No. 10051 of 1990. The Supreme Court while affirming the order of the Patna High Court, had reiterated the High Court's direction to prepare the final panel after inviting objections from the candidates including the petitioner. The case of the petitioner along with others who had filed the present writ application [W.P. (S) No. 161 of 2005], was also considered while preparation of the final panel and the name of the petitioner and his co-petitioners in the writ application, were not included and therefore, the petitioner were not reappointed. The petitioner could not therefore have legally continued in service in absence of his reappointment. As noticed above, the initial appointment of the petitioner and other teachers along with him made in the year 1981-83, was declared as illegal and they could not therefore have claimed any right to continue in service on the basis of their illegal appointment. A fresh process of appointment was taken up pursuant to the orders of the Patna High Court followed by the direction of the Supreme Court after preparation of the final panel in the year 1994. The eligibility of the candidates according to the rules, which had then existed on the date of the initial appointment, were considered. Admittedly, name of the petitioner was not included in the final panel, nor was he considered eligible on the ground *inter alia* that he was over age. Even if the appellant's contention that he being handicapped, he had privilege of relaxation if the age bar up to the age of 45 years is considered, then also admittedly, the appellant was beyond 45 years of age at the time when the fresh panel was prepared. The appellant's claim for relaxing the age bar was

rightly rejected by the respondent authorities. As rightly observed by the learned single Judge, in absence of any appointment, the appellant could not legally continue in service and if he had continued to remain in service and has drawn his monthly salary, it was apparently in collusion with the erring officers of the department. The appellant cannot claim to acquire any right of his illegal continuance in service.

9. As regards the appellant's contention that termination of his service without conducting a departmental proceeding and even without framing any charge or informing him the grounds of proposed termination, it is by now well-settled that where the appointment itself was illegal and in the present case, continuance of the petitioner in service was illegal, rules of natural justice would not be called for application. It is seen in the present case that before termination of service, petitioner was served with show-cause notice, but he could not show any basis for his, continuance in service.

10. Learned Counsel for the appellant attempts to draw distinction between the case of Girdhari Lal Sah (supra) with that of the present appellant, on the ground that though service of Girdhari Lal Sah was terminated in the year 1982, but he did not approach any Court of law till 1992, whereas the appellant had entered into the legal battle from the very beginning ever since after termination of his service and continued to remain in service till retirement. The distinction as tried to be drawn is misconceived in relation to the main issue concerning the very appointment of Girdhari Lal Sah and other teachers including the present appellant, which was declared to be illegal. The ratio decided in the case of Girdhari Lal Sah (supra) is fully applicable to the case of the present appellant and has rightly been relied upon by the learned single Judge.

11. As regards the ground that in the light of the stay order dated 21.2.1985 passed by the Patna High Court in CWJC No. 405 of 1985 and during the pendency of the writ petition which was ultimately disposed of in the year 2007, the impugned order of termination should not have been passed, it may be observed that in the individual writ petitions filed by the aggrieved teachers against the order of initial order of their termination including the writ filed by the present appellant, stay orders were passed at the time of admission of each of the writ petitions in the month of January 1985. While some of the writ petitions were, finally disposed of, writ petition of the present appellant continued to remain pending. Nevertheless, the grievance of the petitioners in the several writ petitions was common and a common order was passed by the Patna High Court followed by the order of the Supreme Court. In terms of the order of the Supreme Court, as briefly stated above, all aggrieved persons were required to make the respective representations within a stipulated time and the appellant herein was no exception. The appellant being so required, is also supposed to have made his representation and in the circumstances stated above, his representation also must have been considered. Even if the appellant did not make any representation, yet it would be deemed to be end of the matter

and the case of the appellant also stands disposed of in terms of the different orders of the Supreme Court.

12. Even otherwise, the order of stay referred to by the appellant was in respect of the initial order of termination and in terms of the orders passed by the Patna High Court in the analogous writ applications, the order of termination was affirmed with a direction to the respondent authorities to consider the cases of the candidates afresh and to prepare a panel for reappointment. The appellant therefore cannot stand to argue that since the initial order of stay passed in CWJC No. 405 of 1985 having not been vacated, his services could not be terminated by the impugned order of termination which was passed after considering the fact that the appellant had illegally continued to remain in service despite the fact that he was not listed in the final panel, nor was he reappointed along with other candidates after preparation of the final panel.

13. In the result, we do not find any merit in this appeal. This appeal is accordingly dismissed.

M. Karpaga Vinayagam, C.J.

14. I agree.