
(2012) 05 PAT CK 0099
In the Patna High Court
Case No : CWJC No. 2256 of 2012

Ganpati Prasad Sahu

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Citation : (2012) 4 PLJR 401

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Ajoy Kumar Chakraborty, for the Appellant; V.M.K. Sinha and Anil Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

J.N. Singh, J.—Prayer of the petitioner in this writ application is limited. He prays for a direction to the respondents to pay him salary of the period during which he was out of service on account of his termination with effect from 6.9.2003 and till 20.9.2007 when he was reinstated in service and regularized. Facts in short are that the petitioner was appointed as Pharmacist by order dated 12.5.1987, vide Annexure-2, and posted at District Referral Hospital, Shahpur, Bhojpur. By Annexure-3 dated 25.7.1998 his services were confirmed. However, by Annexure-4 dated 6.9.2003, his services were terminated on the ground that his appointment was illegal. This order was challenged in this Court in C.W.J.C. No. 10037 of 2003. The said writ application was ultimately heard by a Division Bench alongwith L.P.A. No. 946 of 2003 and other similar cases and disposed of by order dated 26.6.2006 directing the respondents to constitute a High Level Committee for consideration of cases of all the writ petitioners in the light of Constitution Bench judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Cases of the petitioner and others were thereafter considered and were only found irregular and not illegal as per the parameters laid down by the said Constitution Bench. Hence, by order of the Director, Health Services contained in Memo No. 1117(4) dated 20.9.2007,

vide Annexure-5, he was reinstated and posted in the same Referral Hospital. However, with this order, a condition was imposed that the incumbents would not be entitled for the salary of the intervening period on the Principle of "No Work No Pay", but the same would be counted for the purposes of pensionary benefits. Petitioner is aggrieved by this condition.

2. Learned counsel for the petitioner submits that the petitioner was put out of service by the respondents without any rhyme or reason and without any act on his part. He was all the time ready to work but had been prevented by the respondents due to which he had to come to this Court. Finally, in view of the law laid down by the Constitution Bench, his case was found irregular and not illegal. In the circumstances, in terms of the Constitution Bench judgment, his services were restored and regularized. As such, petitioner was entitled for salary of the intervening period. He also refers to one judgment of a Division Bench which dismissed the appeal of the State, as contained in Annexure-6, in the similar circumstances. Annexure-7 is the order of the Director, whereby writ petitioner of that case was allowed salary of retrenched period. He also places reliance on another judgment of the Apex Court in the case of *Burn Standard Company Ltd. vs. Tarun Kumar Chakraborty*, (2002) 10 SCC 585. In the said judgment, the Apex Court, on facts, held that the period of absence of the respondent would be divided into two parts and for second part, in which there was no reason for him not to be allowed to join, he was entitled for full salary. Another judgment relied upon by learned counsel for the petitioner is also of the Apex Court in the case of *Hardwari Lal Vs. State of U.P. and Others*, . In this case, the Apex Court found that there was no proper enquiry pursuant to which appellant had been dismissed which order was set aside by the Tribunal and affirmed by the High Court. Hence, considering the long lapse of time, Apex Court allowed 50% salary to the appellant.

3. A counter affidavit has been filed by the respondents in this case in which they have taken a stand that the petitioner had not worked during the period and thus he was not entitled for salary on the Principle of "No Work No Pay" and particularly when his appointment was found irregular.

4. Having heard learned counsel for the parties and having perused the materials available on record and judgments of this Court and the Apex Court relied upon by learned counsel for the petitioner, this Court finds that the petitioner was terminated from service on 6.9.2003 on the ground of some illegalities in his appointment. Till then Constitution Bench judgment had not come. Therefore, his appointment had been examined by the respondents in the light of law prevailing at that very time flowing from earlier judgments. However, while the writ application was pending in this Court, Constitution Bench of the Apex Court gave its pronouncement in the said case of *Uma Devi (supra)* in which it laid down the parameters for consideration of cases of employees for their regularization or termination of service. In the circumstances, this Court directed the respondents to constitute a Committee and for fresh consideration of cases of writ petitioners

in terms of the parameters laid down by the Constitution Bench. In the light of those parameters case of the petitioner and others were considered and respondents found his appointment as only irregular and not illegal. Therefore, they decided to reinstate him in service and regularize him. However, irregularities were admittedly found in the appointment which had to be condoned in view of the Constitution Bench judgment due to which he was reinstated and regularized. In the circumstances, to balance the equity, this Court is of the view that it will suffice if the petitioner is held entitled for only 50% of his basic salary of the period. Writ application is accordingly allowed with a direction to the respondents to calculate 50% of basic salary of the petitioner of the intervening period in accordance with law and pay the same to him, positively within three months from the date of receipt/production of a copy of this order.