
(2011) 12 PAT CK 0137
In the Patna High Court
Case No : CWJC No. 16250 of 2007

Gauri Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2012) 4 PLJR 417

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. The sole petitioner in this writ application has sought a direction for computing his length of service from the date he was engaged in Adult Education Department, Government of Bihar, as a Non-Formal Education Supervisor.

2. Counsel for the petitioner has submitted that the petitioner came to be engaged as a Supervisor in Non-Formal Education on 1.3.1990 and had worked up-till 1.6.1995 before being removed from the service on the ground of closure of the scheme. He has submitted that subsequently the petitioner was adjusted/appointed by order dated 21.6.2005 on the post of teacher in Primary School and therefore, the petitioner would be entitled for counting his earlier services rendered on the post of Supervisor Non-Formal Education. In this regard, he has placed reliance on the Government order dated 26.2.2004, whereby and whereunder, seniority was given to the Supervisors working in P.A.C.S.

3. Counsel for the State on the other hand would point out that there was a clear break in service of the petitioner for a period of 10 years approximately, inasmuch as, the petitioner on his own showing was terminated on 6.1.1995 before being adjusted on the post of Primary Teacher on 21.6.2005. He has also pointed out that the terms and conditions of the petitioner's earlier employment

as Part-Time Supervisor was payment of Rs. 15/- per centre per month subject to maximum of Rs. 600/- and the same in fact cannot be treated to be a full-fledged Government appointment. He has also submitted that the issue relating to seniority of Manager of P.A.C.S. was entirely different, inasmuch as, in that case the Division Bench had passed order for taking examination for absorption of those very persons earlier working in P.A.C.S. for their regular appointment.

4. In the considered opinion of this Court, the seniority of a person on earlier portion of service can be clubbed with fresh appointment only when both the services are of the same nature and that too with continuity and without interruption. Here as noted above, the petitioner was earlier working as Part-Time Supervisor on remuneration of Rs. 15/- per centre. Such engagement for a couple of hours a day in a scheme limited for a certain period the petitioner in fact cannot be treated to be a Government employee so as to confer benefit of past service.

5. That apart the appointment letter of the petitioner dated 21.6.2005 would clearly go to show that adjustment of Supervisor in Non-Formal Education on the post of Assistant Teacher was made on the basis of competitive examination and in the matric untrained scale of pay of the post of teachers in Primary Schools. The appointment letter of the petitioner as contained in Annexure-3, would itself show that it was a fresh appointment on the post of teacher in Primary School and the conditions incorporated therein, do not give any inkling of giving any benefit of past service either in the matter of seniority or pay fixation. The petitioner therefore would be bound by the terms and conditions of his appointment letter.

6. The reliance on the resolution of the co-operative department as with regard to the working Manager in P.A.C.S. is also wholly misconceived, inasmuch as, in the order of Supreme Court dated 20.8.1998 it had formulated a Scheme, wherein, the available vacant post were sought to be apportioned, part of which was given to the P.A.C.S. Manager and the concept of successful P.A.C.S. Manager in the examination was absorption and not fresh appointment or adjustment. In service jurisprudence, the concept of absorption vis-a-vis adjustment and/or fresh appointment have always different meaning and consequence. Here in this case when the petitioner's service of five years as a part time supervisor before being interrupted by a gap of 10 years was never sought to be protected and they were only sought to be adjusted on the basis of an examination. Thus, no relief can be sought now for counting of the seniority of the earlier period. In fact to that extent, the inter parte judgment in the case of P.A.C.S. Manager and the exercise of power by the Apex Court under Article 142 of the Constitution of India would be the distinguishing feature, which cannot be made applicable to the facts of the case of the petitioner. Considering all these, this Court would not find any merit in the application and the same is, accordingly, dismissed.