
(2016) 04 PAT CK 0009

In the Patna High Court

Case No : Letters Patent Appeal No. 121 of 2015, Arising out of Civil Writ Jurisdiction Case No. 10461 of 2013

Gayatri Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2017) 1 PLJR 548

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Gyan Shankar, AC to GP-6, for the State; Mr. Shravan Kumar, Sr. Advocate and Mr. Dinesh Maharaj, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (C.A.V.) - The present intra-court appeal, under Clause 10 of the Letters Patent of the Patna High Court, is directed against the order dated 14.10.2014 passed by the learned single Bench in CWJC No.10461 of 2013.

2. The appellant herein was the writ petitioner and had moved the Court for quashing of order dated 21.02.2013 passed by the Director (Secondary Education), Government of Bihar, Patna on representation filed by the appellant, pursuant to order dated 05.04.2012 passed in CWJC No. 18946 of 2011.

3. The appellant claims to have been appointed as an Assistant Teacher by the then School Managing Committee in the subject of English on 05.01.1984 on the basis of being a graduate in Rameshwar Project Girls High School, Chandaur, Sour Bazar, Saharsa and her grievance is that as per the policy of the State Government and the orders of the Hon'ble Supreme Court, when cases for approval/recognition of services of the teachers of such project schools were considered, due to mala fide on the part of the then Secretary of the Managing Committee, as she was suffering from ailment and was on leave from

04.01.2006 to 02.07.2006, her name was not sent to the Three-Man Committee, which was to consider the cases of persons appointed in such Project Schools. It is further her claim that when she came to know about the development, pursuant to others being granted approval by the Director, she represented in the year 2008 and after hearing, her case was rejected by order dated 31.05.2010, compelling her to approach this Court in CWJC No. 18946 of 2011 and the writ petition came to be disposed off by order dated 05.04.2012 observing that the appellant may produce whatever she wants to produce with regard to the reason which prevented her from appearing before the Three-Man Committee and why her case was not recommended for regularization before the Director, Secondary Education in appeal. In the light of such direction, representation filed by the appellant has been disposed off by the order impugned in the writ petition.

4. Learned counsel for the appellant submits that though there was valid explanation for her name not being sent by the School in question to the Three-Man Committee for consideration, still her case has not been considered properly by the Director, despite there being documentary evidence in support of her claim. It is further submitted that there was also no laches on her part since she was on leave during the time when such names were sent and on being aware of such action of the school authorities in not forwarding her name, she had promptly moved before the authorities and the impugned order of the Director dated 21.02.2013 has not addressed the issues in accordance with law and the supporting documents produced by the appellant. It is submitted that it is a case of gross injustice when the appellant having regularly worked for 27 years in the school, her services have not been regularized whereas services of persons, who were not even eligible for appointment have been regularized.

5. Learned counsel for the State submits that the order dated 21.02.2013 of the Director, Secondary Education does not suffer from any infirmity as it is well discussed and reasons have been assigned for coming to the conclusion that the services of the appellant could not be regularized. It is submitted that the appellant has taken different stands on fact before the authority and this Court inasmuch as in her first representation in the year 2008, she has only stated with regard to her being on leave without pay for the period 02.01.2006 to 30.07.2006, but later on, she has improved her case in the writ petition where at paragraph no. 21, she has stated that she suffered from serious ailment since 04.01.2006 to 02.07.2006 and had to undergo operation and because of complications she had to remain on leave for a further period of one year. It is submitted that the fact that cases were being considered by the Three-Man Committee could not have been unknown to the appellant since the said Committee had published a notice in the newspaper asking the schools in question, including the school in which the appellant is said to have been working, for sending names of eligible teachers for considering regularization of their services and thus, the appellant cannot take the plea of having been unaware of such development and further that even after she is said to have joined the school, other persons had sent their names before the Three-Man

Committee even in September-October, 2006 whereas she had only mentioned in her application, after more than a year in 2008, that she was on leave without pay from 02.01.2006 to 30.07.2006 and thus, it cannot be reasonably believed that despite having returned in July/August 2006, when others had sent their representations to the Three-Man Committee till September and October, 2006, she cannot be expected to have been unaware of such development.

6. Having considered the rival contentions, this Court is unable to agree with the submissions of learned counsel for the appellant. Though this Court could have gone into the factual aspect of the matter and drawn inferences amounting to giving finding on facts, but refrains from doing so, so as not to prejudice the case of the appellant, if she moves before the Civil Court of competent jurisdiction for adjudication/declaration with regard to her being in continuous service for the purposes of regularization of her service. From the pleadings in the writ petition itself, it is clear that there are serious disputes with regard to factual aspects of whether the appellant was working in the school continuously and even with regard to entries made, both in the records of the school as well as the State authorities, which obviously cannot be looked into by the Court in its writ jurisdiction and would thus necessarily require adjudication on the basis of evidence to be led by the parties concerned for which the appropriate forum would be a Civil Court of competent jurisdiction. Such view has also been taken by the learned single Bench in its order dated 14.10.2014.

7. Thus, we do not find any error in the view taken by the learned single Bench and accordingly the present appeal stands dismissed.

Hemant Gupta, J. - I agree.