

(2015) 02 PAT CK 0037

In the Patna High Court

Case No : Letters Patent Appeal No. 1034 of 2014 in Civil Writ Jurisdiction Case No. 7767 of 2013

Hasin Akhtar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2015) 02 PAT CK 0037

Hon'ble Judges : S.P. Singh, J.;I.A. Ansari, J.

Bench : Division Bench

Advocate : A.N. Tripathi, Senior Advocate and Rama Kant Singh, for the Appellant; Kundan Bhadur Singh, S.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

I.A. Ansari, J.—This appeal has been preferred against the order, dated 18.06.2014, passed, in C.W.J.C. No. No. 7767 of 2013, by a learned single Judge of this Court, whereby the writ petitioners-appellants' prayer in the writ petition, made under Article 226 of the Constitution of India, for regularization of their contractual appointments against sanctioned vacant posts of Trade Instructors in their respective trades and different Industrial Training Institutes of the State of Bihar has been declined.

2. We have heard Mr. A.N. Tripathi, learned Senior Counsel, appearing for the writ petitioners-appellants, and Mr. Kundan Bahadur Singh, learned Standing Counsel No. 22, appearing for the respondent State of Bihar. We have also heard Mr. Chakrapani, learned Counsel, as Amicus Curiae.

3. While considering the present appeal, it needs to be noted that the writ petition was filed, on 11.04.2013, seeking regularization of their contractual services against the sanctioned vacant posts of Trade Instructors, in their respective trades in different Industrial Training Institutes (ITI) across the State

of Bihar and, only thereafter, to take steps for fresh appointments through the Staff Selection Commission and also direction for quashing the Advertisement No. 02/2013 issued by the Staff Selection Commission in so far it purports to initiate process of selection for all the 600 vacant posts of Trade Instructors including the posts presently held by the writ petitioners-appellants.

4. However, during the pendency of the writ petition, Bihar Industrial Training Instructor Cadre Rules, 2013 (hereinafter referred to as "the 2013 Rules") was notified on 19.07.2013 and gazetted on 25.07.2013, the 2013 Rules, having been framed under the proviso to Articles 309 of the Constitution of India.

5. Rule 3 of 2013 Rules mentions cadre and category of Bihar Industrial Training Instructor.

6. Sub-rule (2) of Rule 3 of the 2013 Rules states, "The persons appointed and working in different category of cadre, shall be deemed to be automatically included in this cadre".

7. When the writ petition was taken up for consideration before the learned single Judge, it was submitted, on behalf of the writ petitioners-appellants, that in terms of the legal fiction, which Sub-rule (2) of Rule 3 of the 2013 Rules, has created, not merely those persons, who had been working in different cadres on coming into force of 2013 Rules, but also those, who may have been working, in a given cadre, on being appointed on contractual basis, would be deemed to be automatically included in the cadre in which a contractual appointee may have been serving on the date aforementioned. This aspect of the submissions, made on behalf of the writ petitioners-appellants, has not been addressed by the learned single Judge, while making the order which has been appealed against.

8. Considering, however, the fact that after coming into force of 2013 Rules, no amendment had been made in the writ petition and no foundation was laid, in the said writ petition, for seeking to obtain the benefit of the legal fiction, which Rule 3(2) of 2013 Rules has created, it was not inappropriate, on the part of the learned single Judge, to decline to deal with the submission that Rule 3(2) conferred a right on the writ petitioners-appellants to be treated as members of the cadre as defined by 2013 Rules.

9. Confronted with the situation, as indicated above, it has been submitted by Mr. A.N. Tripathi, learned Senior Counsel, appearing on behalf of writ petitioners-appellants, that the writ petitioners-appellants seek to withdraw this appeal with liberty to approach afresh Court with application, under Article 226 of the Constitution of India, in order to seek appropriate remedy on the basis of 2013 Rules.

10. To the submission so made, no specific resistance has been offered on behalf of the respondents.

11. Considering, therefore, the matter in its entirety and in the interest of justice, while disposing of this appeal as withdrawn with liberty to approach this

Court with appropriate application, as has been sought for on behalf of the writ petitioners-appellants, we make it clear that we have not considered, nor has the learned single Judge considered, the legal effect of Rule 3(2) of 2013 Rules and, in consequence thereof, the writ petitioners-appellants shall remain at liberty to file writ petition afresh as has been sought for on behalf of writ petitioners-appellants.

12. The appeal shall accordingly stand disposed of with the above observations and directions.

13. No order as to costs.