
(2003) 08 JH CK 0045
In the Jharkhand High Court
Case No : CWJC No. 4295 of 1996 (R)

Kameshwar Singh

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 445

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : M.M. Pal and I. Bhaduri, for the Appellant; P.P.N. Roy and Shahid Khan, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—On the basis of the judgment passed in Letter Patent Appeal No. 157 of 1991 (R) on 4.4.1995, and on the basis of conduct of the respondents, the petitioner in this writ petition, seeks a declaration that he is a regular employee from the date of the said judgment i.e. April 1995 and be paid salary, etc. accordingly.

2. The petitioner was charge-sheeted in the year 1985 and in a departmental proceeding he was found guilty and accordingly was dismissed on 4.6.1986. The appeal against the order of dismissal was rejected. The petitioner moved the Deputy Labour Commissioner, Patna and proceeding for conciliation was allegedly taken. It appears that the petitioner offered to forego his back wages and withdraw the proceeding before the Deputy Labour Commissioner if he is employed again. By order dated 14.9.1988 the petitioner was re-engaged on the same terms and conditions without any salary for the intervening period.

3. There was another disciplinary proceeding. The petitioner, inter alia, contended that his re-employment on 14.9.1988 being a fresh appointment, no action could be taken against him for any alleged incident prior to 14.9.1988.

However, he was dismissed on 15.2.1989. The appeal filed by the petitioner, against the said order having been dismissed on 19.8.1989, he filed a writ petition in this Court being CWJC No. 1844 of 1989 (R).

4. By a judgment dated 2.5.1991, passed in the said writ petition, this Court held that as the petitioner was re-employed in service, the question of initiation of any departmental proceeding for misconduct during a period prior thereto does not arise; that though he was appointed afresh, the order of his dismissal dated 4.6.1986 remains operative, as the same was not set aside by a competent authority; that the petitioner was merely appointed as a casual bus conductor; that the petitioner was found guilty of serious misconduct in two proceedings and therefore petitioner should not be directed to be re-instated in service with full back wages. It is important to note here that from reading of paragraphs 3 and 28 of the said judgment, it is clear that the Court held that the petitioner was merely appointed as a casual bus conductor. However this Court held him entitled to 3.33 years' of the wages last drawn by him.

5. Aggrieved by the said judgment granting 3.33 years' back wages last drawn by the petitioner instead of reinstatement, the petitioner filed an appeal being Letters Patent Appeal No. 157 of 1991 (R). By a judgment dated 4.4.1995 this Court modified the aforesaid judgment of learned Single Judge to the extent that the petitioner was directed to be re-instated with full back wages minus the amount already paid.

Regarding the questions formulated in paragraph 7, this Court held that there was no misconduct; and punishment awarded was not proportionate to the misconduct proved; and that the disciplinary proceeding caused double jeopardy to the petitioner.

From the said order passed in Letters Patent Appeal, it is clear that the findings of learned Single Judge that the petitioner was a casual employee was not disturbed, although the controversy was noticed. Thus the order of re-instatement could only relate to the position of a casual bus conductor, held by him at the time of his termination.

6. The petitioner filed a contempt petition being MJC No. 336 of 1995 (R) for alleged violation of the said judgment passed in Letters Patent Appeal. The petitioner contended that he submitted his joining report on 10.5.1995 pursuant to the aforesaid judgment of this Court but the same was not accepted. A show cause was filed stating that the petitioner has already been reinstated. Regarding payment of back wages, the respondents contended that the petitioner was a casual bus conductor till his services were terminated and therefore he is entitled to his wages for the period he worked, at the rate of a casual worker. In reply to the show cause, the petitioner contended that the learned Single Judge and the Division Bench have passed orders treating the petitioner as a regular employee. It was also contended by the petitioner that as per the order of Supreme Court dated 16.12.1987, passed in Civil Appeal No. 1509 of 1987, the Supreme Court

directed the respondents to prepare a reasonable scheme within the given time for regularization of the casual labourers and the name of the petitioner was at serial No. 119 in the said list.

The Division Bench found that the dispute whether the petitioner was a regular employee or a casual employee was beyond the scope of the contempt proceeding. But in order to see whether the petitioner was paid as per the order passed in L.P.A., 157 of 1991, this Court looked into the judgments passed by learned Single Judge and the Division Bench and found that the petitioner was held to be a casual bus conductor and that the observation/finding was never challenged by the petitioner before the Division Bench, and only because department enquiries were conducted against him that by itself will not entitle the petitioner to be declared as a regular employee. Ultimately, the contempt petition was dismissed on the ground that even if the respondents have misinterpreted the order while paying the wages as a casual employee, it cannot be said that any contempt has been committed.

7. When this case came up for hearing before learned Single Judge on 19.11.1999 he referred the matter to the Division Bench as the case required interpretation of the earlier judgments of two Division Benches.

8. There is nothing on record to show that the petitioner was appointed as a regular employee. But the petitioner contends that he was treated as a regular employee by the employer inasmuch departmental proceedings were initiated against him which is initiated only against a regular employee and this Court in L.P.A. No. 157 of 1991 (R) ordered for his re-instatement with full back wages which is ordered in case of a regular employee. We are not in a position to agree with the learned Counsel for the petitioner that for these reasons only, the petitioner should be treated as a regular employee.

The finding of learned Single Judge in CWJC No. 1844 of 1989 (R) to the effect that the petitioner was merely appointed as a casual bus conductor was not challenged by the petitioner before this Court in Letters Patent Appeal and therefore, the said finding became final. Moreover, the petitioner himself claims that his name appeared at serial No. 119 in the list prepared for regularization of casual employee, as per the order of Supreme Court, therefore the stand of the petitioner is contradictory inasmuch as on the one hand he claims that he was a regular employee and was also treated as such and on the other hand he claims regularization as a casual employee.

9. Regarding the petitioner's claim of regularization, learned counsel for the respondents submitted that the list, in which the petitioner's name appeared at serial No. 119 was not a final list but a list sent to one of the divisions of the respondent- corporation. He further submitted that the name of the petitioner which had earlier been noted at serial No. 119 had been corrected and in the list of casual conductor he is placed at serial No. 926, and that 377 casual employees were regularized by order dated 3.2.1989.

10. In reply, learned counsel for the petitioner, produced the list dated 3.2.1989 under which, 377 casual employees were regularized and pointed out that serial No. 119 is missing from the list. It was submitted that the respondents could not unilaterally relegate the petitioner from serial No. 119 to 926.

11. It appears that the said order/list of regularization was made on 3.2.1989 after the petitioner was removed from service on 4.6.1986, and for this reason his name was dropped from the said list/order, as on that date the petitioner was not in service. It further appears that after the order of reinstatement was passed by this Court, the petitioner's name was reallocated in the list of casual employees awaiting regularization.

In these circumstances, it is difficult to accept the plea of the petitioner that his name was unilaterally or wrongly dropped from the list of casual employees regularized on 3.2.1989. However, whether his name has been rightly placed at serial No. 926 or not, is not the subject-matter of this writ petition.

12. After considering the entire facts and circumstances, we are not in a position to grant any relief to the petitioner in this case. The writ petition is dismissed. No costs.

P.K. Balasubramanyan, C.J.

13. I agree.