
(2005) 01 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 8517 of 2004

Lallan Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Citation : (2005) 1 PLJR 571

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Diwakar Prasad Sinha, for the Appellant; A.P. Jittu and Binod Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Prayer of the petitioners in this writ application is for issuance of a writ in the nature of mandamus commanding the respondents to pay to the petitioners the salary for the period 12.10.1987 to 21.2.1993. Short facts giving rise to the present application are that by order dated 6.10.1987, services of the petitioners, who claim to have been absorbed in Class IV post, were cancelled. Petitioners aggrieved by the same, preferred C.W.J.C. No. 3205 of 1990 (Sardar Ram Bhajan Singh and ors vs. The State of Bihar and ors.) before this Court. This Court, by order dated 3.2.1993 (Annexure-4), disposed of the writ application with the following direction.

"4. Accordingly, the writ application is disposed of with the following directions:

(i) The petitioners will be entitled to payment of salary for the period for which they have actually worked till the impugned order dated 28th September, 1987 (Annexure-1) was passed.

(ii) The petitioners must file a representation before the Respondent-Secretary, Health, Medical Educations Family Welfare Department, Government of Bihar, within three weeks from today setting out all the relevant facts therein together with supporting documents to show that they have been appointed in accordance

with law. If such a representation is filed the Respondent-Secretary or any other authority duly authorised by him should dispose of the said representation within two months from the date of its filing by a reasoned order under communication to the petitioners.

5. After enquiry, if it is found that the petitioners have been appointed after following the Recruitment Rules and the procedures laid down by the Government then their services will be restored."

2. In pursuance of the aforesaid direction, the services of the petitioners were regularised with effect from 22.2.1993. It is the grievance of the petitioners that they have not been paid salary for the period 12.10.1987, i.e. the date from which their regularization in service was cancelled till the date of regularisation i.e. 22.2.1993. It is the claim of the petitioners that the case is squarely covered by the decision of this Court dated 7.8.1998 passed in C.W.J.C. No. 11377 of 1997 (Md. Sahamat & ors vs. The State of Bihar & ors) (Annexure-8) and order dated 9.4.2004 passed in C.W.J.C. No. 13126 of 2003 (Gouri Shankar Ram & ors vs. The State of Bihar & ors).

3. Counter affidavit has been filed on behalf of respondent Nos. 1 and 2 in which it has been stated that the petitioners shall not be entitled for the salary of the period claimed by them and according to them, the decision of this Court dated 16.2.2000 passed in C.W.J.C. No. 7592 of 1998 (Noor Jahan Khatoon vs. The State of Bihar & ors) concludes the matter.

4. Mr. Diwakar Prasad Sinha, learned Counsel appearing on behalf of the petitioners submits that the petitioner's regularisation in service was cancelled by order dated 6.10.1987 which was given effect to from 12.9.1987 and was challenged by the petitioners in C.W.J.C. No. 3205 of 1990. He points out that this Court disposed of the writ application by order dated 3rd of February, 1993 directing the petitioners to file representation and the respondents, in turn, were directed to dispose of the representation within two months from the date of its filing. It was further observed that after inquiry, if it is found that the petitioners have been appointed after following the Recruitment Rules, their services will be restored. In the light of the aforesaid order, petitioners, services were regularised with effect from 22.2.1993. Accordingly, Mr. Sinha submits that the petitioners are entitled for the salary of the aforesaid period and in this connection, he has drawn my attention to para-7 of an order of this Court dated 7.8.1998 passed in C.W.J.C. No. 11377 of 1997 which reads as follows:

"7. In my view, since this Court while quashing the order of termination, had directed the authorities to hold inquiry about validity of legality of appointment, it was not necessary at that stage to issue such direction. But if the competent authority after holding inquiry found that the petitioner's appointment was valid and genuine, it would not be proper to withheld the payment for the period in question."

5. Yet another decision on which Mr. Sinha has placed reliance is the decision of

this Court dated 9.4.2004 passed in C.W.J.C. No. 13126 of 2003 and my attention has been drawn to the following passage from the said judgement.

"The petition is disposed of with the direction to the Civil Surgeon-cum-Chief Medical Officer, Rohtas at Sasaram to verify the genuineness of Annexure-10 and if he finds that proceedings dated 5.1.1995 were recorded by the Committee headed by the District Magistrate, Sasaram and if he finds the appointment to be proper then he would issue an order for payment of salary in accordance with the claim of each of the petitioner. The petitioners may appear with a copy of this order before the Civil Surgeon, who shall pass his final orders within a period of three months."

6. Junior Counsel to Standing Counsel No. II, however, contends that while directing the respondents to consider the case of the petitioners, the order cancelling the regularisation was not set aside and as such, petitioners shall not be entitled for salary for the intervening period. He relies on an unreported decision of this Court dated 16.2.2000 passed in C.W.J.C. No. 7592 of 1998 and my attention has been drawn to following passage from the said judgement:

"xxx However, as the petitioner had not moved immediately on issuance of the order of termination, she will not be entitled for salary of the intervening period though the period will be counted for other purpose, including the fixation of pay, etc."

7. Having appreciated the rival submission, I do not find any substance in the contention of Mr. Sinha and the decisions relied on are clearly distinguishable. Petitioner's order of regularisation in service was cancelled by order dated 6.10.1987. He challenged the same before this Court in C.W.J.C. No. 3205 of 1990. The order of cancellation of regularisation was not set aside by this Court but the petitioners were given liberty to file representation and the respondents, in turn, were directed to examine as to whether petitioners were appointed after following the Recruitment Rules and if so to regularise their services. In pursuance of the said order, the services of the petitioners were regularised with effect from 22.2.1993. It is not in dispute that the petitioners did not work after the cancellation of their appointment till they were regularised in service. In the case of Md. Sahamat & ors (supra), this Court set aside the order of termination and directed for reinstatement in service and in such circumstance, while directing for payment of the salary, this Court clearly observed that the petitioners of the said case shall be entitled for the payment of the salary if it is found that the petitioners of the said case have worked for the period in question. This would be evident from para-8 of the said judgment which reads as follows:

"8. I, therefore, allow this writ application with a direction to the authorities to make payment to the petitioners for the period in question provided on scrutiny of papers, it is found that the petitioners have worked for the period in question."

8. The decision of this Court in the case of Gouri Shankar Ram & ors (supra) has

been rendered on an assumption and concession by the respondents that the case was identical to that of the case of Md. Sahamat & ors (supra). As stated earlier, in the case of Md. Sahamat, the order of termination was set aside by this Court and direction for reinstatement was given and further payment of salary was directed in the case the employees had worked for the period in question. Even at the cost of repetition, I may State that it is not the claim of the petitioners that they had worked from 12.10.1987 to 21.2.1993, the period for which they are claiming payment of salary. As the petitioners have been regularised in service with effect from 22.2.1993, they shall not be entitled for payment of salary for the period earlier to that in which they have not worked. In the result, I do not find any merit in this application and it is dismissed accordingly. In the facts and circumstances of the case, there shall be no order as to cost.