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**(2013) 03 JH CK 0084**

**In the Jharkhand High Court**

**Case No :** L.P.A. No. 279 of 2012

Management of Jagannath Nagar College — APPELLANT

Vs

Ramesh Chandra Mishra @ Ramesh Kumar Mishra — RESPONDENT

**Date of Decision :** 05-03-2013

**Acts Referred:**

**Citation :** (2013) 4 AJR 223 : (2013) 2 JLJR 535

**Hon'ble Judges :** Prakash Chandra Tatiya, C.J;Jaya Roy, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. Heard learned counsel for the parties. These appeals have been preferred by Jagannath Nagar College, Dhurwa, against the common judgment dated 14th May, 2012, rendered in CWJC Nos. 1258/1999R and 457/2000R by which two writ petitions of the workmen have been allowed by the learned Single Judge with the relief of reinstatement with the benefit as awarded by the Labour Court.

2. The brief facts of these cases are that Jagannath Nagar College, Dhurwa, was affiliated to the Ranchi University and it became a constituent college of the Ranchi University with effect from 26th November, 1980. The writ petitioners-respondents, Ramesh Chandra Mishra and Sri Krishna Rai, were the employees of the said college and according to the petitioners, they were employees of the said college on the post of Store Keeper (Grade-III) and Laboratory Boy (Grade-IV) since 1982 and in the year 1987, in response to the advertisement published in the newspaper dated 18th March, 1987 issued by the Registrar, Ranchi University, the petitioners applied for regularization on the posts which were the posts of Store Keeper and Laboratory Boy in Grade III and Grade IV of the employment in the University and they were invited for interview etc. and ultimately the order of regularization was passed in favour of the writ petitioners. It is the case of the University that subsequently it came to the notice of the University that some wrong persons got regularization of their service and therefore, the University issued office order (Annexure-4) dated 2nd December,

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1990, providing that no work be taken from class-III and IV employees who were not paid wages on or before 30th November, 1988 through individual bank account or cheque drawn from the concerned bank of the college/department/ P.G. centre/University. It was also declared that the persons, who have no evidence of payment of their salary/wages through individual bank account/ cheque on or before 30th November, 1988 and whose service have even been regularized, will not be treated to be the employees of the University as their appointment have been made or regularized in violation of the provisions of the Bihar State Universities Act, 1976. The said order of the University was duly approved by the Chancellor, vide communication dated 23rd December, 1990 (Annexure-5) and details of the employees, who were on the roll and have been paid wages by cheque, were also called by the University. The college gave the list (Annexure-7) to the University, wherein the names of these petitioners were not there and therefore, their appointment was found to be in violation of section 35 of the Bihar State Universities Act, 1976. The petitioners, finding this situation, approached Patna High Court, Kanchi Bench, by Tiling CWJC No. 764/1991R and the said writ petition was disposed of, vide order dated 2.7.1991, with the observation that there is a dispute whether the petitioners were appointed by the competent authority and there is also dispute whether the petitioners had worked for the period for which they were claiming their salary and this fact can be established on the basis of evidence and therefore, the Division Bench of Patna High Court, Ranchi Bench, refused to give any relief to the petitioners. Finding this situation, the petitioners withdrew CWJC No. 764/1991R and thereafter industrial dispute was raised. The dispute referred to the Labour Court, Ranchi, is as under:-

Whether the termination of services of Shri Krishna Roy Laboratory Boy and Shri Ramesh Chandra Mishra Store Keeper Jagannath college Dhurwa, Ranchi is proper? If not whether they should be reinstated on work or/and should be given compensation?

2. Learned Labour Court held that the petitioners were illegally regularized as the posts in question were not sanctioned posts and therefore, the petitioners were not entitled to reinstatement. Learned Labour Court thereafter found that there is violation of section 25-F and therefore, held the petitioners to be entitled to their wages, notice pay and retrenchment compensation. The said relief was granted only to one of the workmen, Ramesh Chandra Mishra, and another workman, Sri Krishna Roy, was denied of the said relief on the ground that he himself did not appear in the Labour Court in the witness box. The petitioners aggrieved against a part of the award dated 20th July, 1998 preferred writ petitions being CWJC Nos. 1258/1999R and 457/2000R, which were decided by a common judgment dated 14th May, 2012, which is impugned before us.

3. Learned counsel for the appellant vehemently submitted that from the Annexures and particularly Annexure-7 at page 35-36, it is clearly proved that the writ petitioners were not on the roll of the college on or before 30th

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November, 1988 and they were not getting any salary. It is also submitted that the posts in question were not sanctioned posts and therefore, the petitioners could not have been reinstated and so has been held by the Labour Court; however, learned Single Judge, without having any material before him, has held that the petitioners are entitled to reinstatement and if the judgment of learned Single Judge is allowed to stand, it will result into reinstatement of these two petitioners on the respective posts without there being any sanctioned posts in terms of section 35 of the Bihar State Universities Act, 1976. Learned counsel for the appellant further vehemently submitted that since the petitioners were not, in fact, in employment, their services could not be reinstated by the Committee and by setting aside the order of Labour Court, learned Single Judge passed the order of reinstatement of the petitioners and thus, illegal order of regularization of service of the petitioners will come into force.

4. Learned counsel for the appellant further submitted that in view of the latest trend as held by Hon''ble Supreme Court in the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, and in the case of Incharge Officer and Another Vs. Shankar Shetty, that even if there is violation of section 25-1: reinstatement is not automatic, in the facts of the case admittedly the petitioners did not do the work and therefore, now order of reinstatement will not be justified and in lieu of reinstatement, the petitioners can be awarded compensation.

5. Learned counsel for the respondent-writ petitioners vehemently submitted that the petitioners were in service since about 1982-83, they applied for the posts in question which were duly advertised by the University and that fact is not in dispute and therefore, the University cannot say that the posts in question were not sanctioned posts and otherwise also, the University did not produce any material evidence to show that the posts in question were not the sanctioned posts and according to the petitioners, these posts were sanctioned posts. It is also submitted that the petitioners could not discharge duties because of the illegal order passed by the appellant-University and therefore, the petitioners cannot be denied backwages; otherwise it will be giving benefit to the wrong-doer-University, who passed the illegal order. Learned counsel for the respondents also submitted that all evidence were with the University and College, who could have produced evidence to show how many sanctioned posts are there and how many workmen were working on the posts and they have failed to prove this fact and in addition to the above, the University took the decision and without holding any enquiry and without giving opportunity of hearing to the writ petitioners, the University has passed the impugned order in gross violation of the principle of natural justice and learned Single Judge rightly held that such procedure was had in law and though no letter of termination was issued but in the facts and circumstances of the case, the order of reinstatement passed by the learned Single Judge is fully legal and there is no infirmity in the finding of facts recorded by the learned Single Judge.

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6. Learned counsel for the respondents relied upon the subsequent judgment of Hon''ble Supreme Court rendered in the case of Devinder Singh Vs. Municipal Council, Sanaur, , wherein after considering a large number of its earlier decisions, Hon''ble Supreme Court set aside the judgment of the High Court by which the High Court set aside the order of award passed by the Labour Court for reinstatement of the workman and passed the order of reinstatement.

7. We considered the submissions of the learned counsel for the parties and perused the facts of the case as well as the reasons given by the learned Single Judge.

8. The petitioners were employees of the college in question and the petitioners did apply for the posts in question in response to the advertisement issued by the University itself. In the award passed by the Labour Court, there is no mention that on what material evidence, the Labour Court reached to the conclusion that the posts in question were not sanctioned posts in spite of the fact that for these very posts, the University itself issued advertisement and called the petitioners for interview. Not only this, but even from the very initiation of the proceeding for termination of service of some of the employees by the order of the University dated 2nd December, 1990, it is clear that the University decided to terminate the service of these employees who were not getting salary or wages on or before 30th November, 1988 and by this order it cannot be read to mean that the University decided to terminate the service of the employees because of the regularization given on unsanctioned posts. So the petitioners were given employment on unsanctioned posts, is a finding recorded by the Labour Court only on the basis of some assumption. In that fact situation, learned Single Judge is fully justified in holding that the petitioners were duly regularized and appointed and acquired valuable right to the posts and their services could not have been terminated arbitrarily and without following the due procedure prescribed by law. Therefore, we are of the view that the stoppage of taking work from the petitioners by the impugned decision was absolutely illegal. It is true that earlier view was that reinstatement is automatic in a case when order of termination of service is set aside but that view has been changed as has been held by the Hon''ble Supreme Court in the cases of Santosh Kumar Seal & Ors. and Shankar Shetty (supra) but at the same time, Hon''ble Supreme Court in a much recent judgment in the case of Devinder Singh (supra) again considered its earlier judgments (except the aforesaid two judgments) and thereafter held that when High Court did not find any jurisdictional infirmity in the award of the Labour Court, nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record, the High Court was wrong in setting aside the order of reinstatement passed by the Labour Court. If we follow the law laid down by Hon''ble Supreme Court, then it is crystal clear that the petitioners were employees of the college since 1982-83, the University itself invited applications from the candidates for the posts in question and in response thereof, the petitioners applied and appeared in interview and they were selected and their services were regularized. That regularization was

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cancelled and that has been found to be wrong and therefore, in these facts of the case, we are of the considered opinion that there is no reason to deny reinstatement of the petitioners in service and learned Single Judge, therefore, rightly held that the petitioners are entitled to reinstatement. So far as backwages is concerned, learned Single Judge upheld the part of the award by which the Labour Court awarded wages only for the period for which the petitioners worked along with notice pay and retrenchment compensation. The petitioners have not been awarded more than what has been awarded by the Labour Court in the impugned judgment passed by the learned Single Judge. However, award of retrenchment compensation cannot he when the order of reinstatement is passed. Therefore, it is made clear that the petitioners shall be entitled to backwages from the date of the award. We do not find force in the submission of the learned counsel for the appellant that since the part of the judgment has not been challenged by the petitioners by preferring any appeal and/or even by filing cross-objection in this appeal, the petitioners cannot get backwages even from the date of the award because of the reason that under letters patent, the original jurisdiction of the writ court continues and when there appears to be mistake apparent on the face of the record/judgment, which cannot be reconciled with and which makes the judgment self-contradictory, such errors can be corrected by the appellate court in letters patent jurisdiction when no detailed (act finding is needed and no debatable issues are involved. As we have reached to the conclusion that a person, who is reinstated, cannot get retrenchment compensation, in that situation upholding the impugned part of the judgment as it will perpetuate illegality in the judgment. Therefore, the order awarding retrenchment compensation by the Labour Court, which has not been set aside by the learned Single Judge, is set aside and it is held that the petitioners shall be entitled to backwages from the date of award in the light of the decision of Hon''ble Supreme Court delivered in the case of Devinder Singh.

Both L.P.As. are dismissed with above modification in the impugned judgment.

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