
(1995) 05 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 108 of 1995 (R)

Maya Saha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

Citation : (1995) 2 BLJR 799 : (1995) 2 PLJR 547

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Misra, J.—In this writ application, the petitioners, who are 79 in number, have challenged the order, dated 21.10.1991 passed by the respondent-Special Secretary, Government of Bihar, Human Resources and Development Department, Patna, whereby he has held that the petitioners have not been validly appointed as assistant teachers and further that the petitioners, in fact, have not actually worked in the different schools pursuant to the letters of appointment issued to them. A copy of the said order has been made Annexure-6 to this writ application. The further prayer of the petitioners is for a direction to the respondents to grant the same and similar benefits as have been given to the similarly situate persons, namely, writ petitioners of C.W.J.C. No. 1 of 1992 (R), which was disposed of on 8th December, 1993, and the SLP filed against the said judgment by the respondent-State was dismissed by the Apex Court on 30th August, 1994 (Annexure-8). Before I consider the contentions of the respective parties, it is necessary to state some relevant facts first.

In pursuance of the advertisement, dated 11.9.1985 issued by the respondent District Superintendent of Education, Dhanbad, for filling up 514 vacant posts of assistant teachers in the different Primary and Middle Schools in the then District of Dhanbad, the petitioners and others applied and were interviewed by the Selection Committee and the District Establishment Committee prepared a panel of 514 teachers in different categories and the said panel was sent to the

respondent Regional Deputy Director of Education, North Chotanagpur Division Hazaribagh, for his approval, which was approved vide his letter, dated 8.8.1986, which also bore the signatures of the respondents District Superintendent of Education, District Education Officer Deputy Development Commissioner, Deputy Commissioner and the Regional Deputy Director of Education; a copy of which has been made Annexure-1 to the said writ application, namely, C.W.J.C. No. 1 of 1992. The names of the petitioners were mentioned in the said approved panel. In spite of the panel of 514 trained teachers having been prepared and approved by the competent authority, the said posts were not filled up. On 1.12.1986, a meeting was held under the Chairmanship of the Deputy Development Commissioner, Dhanbad, wherein the respondents including three Members of the Bihar Legislative Assembly passed a resolution to the effect that the last several years, a large number of posts of the Primary and Middle School Teachers were lying vacant, students were suffering and also causing, hindrance to the prospects of appointment to the educated persons and, as such, those posts should be filled up immediately. A copy of the said resolution was made Annexure-2 to the aforesaid writ application filed by the similarly situated teachers, namely, petitioners in C.W.J.C. No. 1 of 1992. The District Establishment Committee was competent to fill up the posts of assistant teachers and the appointment letters were to be issued under the signature of the District Superintendent of Education, who was the Secretary of the Establishment Committee. It was, however, provided through a notification, dated 7.6.1984 that before issuing the appointment letters, the respondents Deputy Development Commissioner would counter-sign the said appointment letters. The said notification, dated was also made Annexure-3 to the aforesaid writ application filed by a batch of similarly situate persons. However, the aforesaid notification was subsequently amended by another notification, dated 1.11.1985, whereby the provision for taking counter-signature of the Deputy Development Commissioner was withdrawn in certain cases. The respondent-Director, Primary Education-cum-Additional Secretary, Human Resources Development Department, Government of Bihar, Patna, respondent No. 3, directed all the District Education Officers in the State to fix a date for issue of appointment letters to the teachers, who have been empaneled in the approved list. Accordingly, the candidates of Chotanagpur Division including the petitioners, who belonged to the then district of Dhanbad, by a general notice, were directed to appear on 28.5.1988 at 9 A.M. in the premises of the Zila School. The said general notice, dated 28.5.1988 has been made Anriexure-2 to this writ application. Altogether 175 persons including the present petitioners were appointed by an Office Order No. 101-C, dated 28.5.1988, and were posted in the different area/office of the respective District Education Officer as the schools were closed at the relevant point of time for summer vacation. A copy of the said appointment letter has been made Annexure-3 to this writ application. Subsequently, by order, dated 2.9.1988, the petitioners and others were posted in the different primary schools, and, accordingly, they joined their duties in the different primary schools in the pay-scale of matric trained teachers i.e. Rs.

580-860. A copy each of the said order has been made Annexure-4 to 4/C, to this writ application. Surprisingly enough, the respondent Deputy Development Commissioner cancelled the appointments of the petitioners and others by his order, dated 3.11.1988 on the ground that his countersignature was not obtained (Annexure-5). Some of the teachers including some of the petitioners filed a writ application being C.W.J.C. No. 2728 of 1988 (R) challenging the order of the Deputy Development Commissioner, dated 3.11.1988, as contained in Annexure-5 to this writ application, which was dismissed in limine at the admission stage. Thereafter, the petitioners of the aforesaid writ application filed two separate special leave petitions before the Apex Court bearing SLP (Civil) Nos. 9099 and 15576 of 1989. The Apex Court by order, dated 13.11.1990 set aside the order of cancellation of the appointments of the petitioners and others on the ground that the said order of cancellation was passed without complying with the rules of natural justice and directed the Secretary (Education), Government of Bihar or any person nominated by him to pass a reasoned order afresh, after hearing the petitioners, on the question as to whether they were validly appointed as assistant teachers. It was further directed that if the petitioners and others had joined their respective schools where they had been posted and had worked as such, then they were entitled to the salary for such period. Pursuant to the direction, aforesaid, the Special Secretary, who was nominated by the Secretary (Education) issued notice to the petitioners and others to appear before him along with the relevant papers for hearing on two points, firstly, whether their appointments made by the District Superintendent of Education were valid and, secondly, whether pursuant to their appointments, they had joined their respective schools on posting and if so, the period during which they had worked. Ultimately, the Special Secretary has held by his order, dated 3.10.1991, that the petitioners and others were not validly appointed as assistant teachers and also that they had not joined and worked in their respective school, as they had alleged. A copy of the said order has been made Annexure-6 to this writ application. The said order of the Special Secretary, dated 3.10.1991, as contained in Annexure-6, was challenged by 69 teachers, which was the subject-matter of consideration before this Court in the aforesaid writ application, as stated above. The said writ application, namely, C.W.J.C. No. 1 of 1992 (R) was disposed of by the order, dated 8.12.1993, whereby the said writ application was allowed and the order, dated 3.10.1991 (Annexure-6) was quashed and it was held that the writ petitioners were duly and validly appointed and they were entitled to be counted the period from 4.7.1988 onwards i.e. the date of their joining the post for the purposes of seniority, fixation of pay-scale and pensionary benefit etc. A copy of the aforesaid judgment has been made Annexure-7 to this writ application.

2. A counter-affidavit has been filed on behalf of the respondent No. 6, namely, the District Superintendent of Education, Dhanbad, wherefrom it appears that the facts stated hereinabove have not been denied by respondent-District Superintendent of Education in his counter-affidavit. What has been stated in the

counter-affidavit is that the order of termination of their services were passed in the year, 1988, which cannot be challenged in the year, 1995. It is further stated that pursuant to the decision of the State Government, all the existing vacancies upto 1990 were filled up. It is further stated that since the petitioners were not the petitioners in the aforesaid writ application, namely, C.W.J.C. No. 1 of 1992, and hence, they cannot claim any benefit on the basis of the judgment passed by this Court in the aforesaid writ application. It is further stated that all the existing vacancies/posts are to be filled up with the candidates belonging to the reserved categories according to the Government policies and since the petitioners belong to the general categories, they cannot be appointed against the existing vacancies of the district in question. It was also stated that the panel prepared in the year, 1987 was for the unified districts of Dhanbad and Bokaro, but the respondent-District Superintendent of Education has expressed his inability in his counter-affidavit to make any statement about the existing vacancies of the newly created district of Bokaro. It is also stated that there is no vacant post available in the district of Dhanbad and all the existing posts after the year, 1990, shall have to be filled up strictly in accordance with the reservation policy of the State Government and the procedure prescribed for such appointments. It is further submitted that the petitioners are not working after 3.11.1988 i.e. the date of cancellation of their appointments, and as such, they cannot be allowed to challenge the order passed by the respondent Special Secretary (Education). On the aforesaid averments, it is submitted that the petitioners are not entitled to any relief sought for in terms of the prayer made in the instant writ petition or, in any way, they are not also entitled to get the benefit out of the judgment and order passed by this Court in relation to 69 persons, who were petitioners therein.

3. Mr. Ganesh Prasad Singh, Learned senior counsel appearing on behalf of the petitioners, submitted that the very cancellation of the order of appoint of the petitioners is wholly illegal and arbitrary inasmuch as the petitioners and others were appointed by the competent authority after completing the formalities and were working in their respective schools by virtue of the order of their posting by the respondent authority. The principal and, in fact, the only ground for cancellation of the appointments was that the counter-signature of the Deputy Development Commissioner had not been obtained before issuing the letters of appointment to the petitioners and others. It was further submitted that the respondent-Director of Primary Education being Head of the Department was competent to issue appointment letters from the approved panel and the mere absence of the counter-signature of the respondent-Deputy Development Commissioner, cannot be held to have vitiated the selection/appointment procedure. According to the teamed counsel, the very process of selection from the date of advertisement till the date of issuance of the appointment letters has not been challenged by the appointing authority nor it could be challenged as all the respondents, who were the competent authorities, were involved from the very beginning in the selection process. Lastly, Mr. Singh relied upon the

judgment of this Court passed in the case of Radhika Kumari and 68 Ors. v. State of Bihar and Ors. in C.W.J.C. No. 1 of 1992 (R) disposed of on 8.12.1993, a copy of which has been made Annexure-7 to this writ application, and submitted that the similar prayer in relation to 69 candidates were allowed, which was challenged by the respondent-State before the Apex Court and the Apex Court ultimately dismissed the same by order, dated 30.8.1994. A copy of the aforesaid order, dated 30.8.1994 passed by the apex Court has been made Annexure-8 to this writ application and, accordingly, the petitioners are entitled to the same and similar relief as has been allowed to those writ petitioners.

4. Mr. V. Shivnath, learned Government Pleader No. 1, during the course of his argument, reiterated what has been stated in the counter-affidavit filed in this case on behalf of respondent No. 6, namely, the District Superintendent of Education and submitted that since all the posts were already filled up, the relief sought for by the petitioners in this writ application in terms of the prayer made by them cannot be allowed. It was further submitted that the petitioners having not challenged the order passed by the Special Secretary, as contained in Annexure-6, they cannot be allowed to agitate the matter at this stage. Mr. V. Shivnath, however, on the basis of the statements made in Paragraph 5 of the counter-affidavit submitted that the petitioners No. 9, Kiran Kumari, 12, Sharda Burnwal, 35. Usha Jha, 36 Nand Kishore and 73. Geeta Bala Mahto, were never appointed, which will be apparent from Memo. No. 101/C, dated 28.5.1988 (Annexure-3) and, accordingly, these petitioners cannot claim any right to appointment on the posts in question.

5. In reply to the said statement, it is stated in Paragraph 15 of the rejoinder to the counter-affidavit that the name of petitioners Nos. 9, Kiran Kumari, finds place at serial No. 40 in the appointment letter (Annexure-4/C), No. 12, Sharda Burnwal, finds place at serial No. 37 in the appointment letter (Annexure-4/A), that of No. 35, Usha Jha, finds place at serial No. 42 in the appointment letter (Annexure-4/C), No. 36, Nand Kishore, is mentioned at serial No. 18 in the letter of appointment (Annexure-13) and of No. 73, Geeta Bala Mahto, finds place at serial No. 6 in the letter of appointment (Annexure 4/A) who were also in the approved panel.

6. I have heard learned Counsel for the petitioners and learned Counsel for the respondents in detail and I am of the view that the similar prayer with respect to other 69 persons similarly situate, as the present petitioners, having been allowed by this Court, which has been approved by the Apex Court, these petitioners are equally entitled to have the similar relief sought for by them in this writ application. The contention of Mr. Shivnath, learned Government Pleader No. 1, appearing on behalf of the respondents that the petitioners having not challenged the order of cancellation of the order of their appointments earlier, they cannot be allowed to do so at this belated stage, when the posts have already been filled up and the existing posts are to be filled up in accordance with the reservation policy of the Government and the procedure prescribed for

the same and in support of his contention, Mr. Shivnath relied upon a decision in the case of the State of Bihar v. Madan Mohan Singh 1994 (3) Suppl. S.C.C. 308. The contention of Mr. Shivnath seems to be misconceived inasmuch as the petitioners of the aforesaid writ application were appointed in the year, 1994-95 against the vacancies of 1988, although there was no stay order passed by any of the courts to get the post vacant. I fail to understand as to why these petitioners who are also of the approved panel, cannot be appointed on such posts. The only ground for cancellation of their appointment was that the counter-signature of the Deputy Development Commissioner could not be obtained prior to their issuance, which has been negated by this Court in the aforesaid writ application filed by 69 similarly situated persons and the same has been confirmed by the Apex Court, the relief sought for by these petitioners in the instant writ application cannot be rejected merely on the ground that they have not challenged the same before the Court of law earlier. When a similar prayer was allowed to the persons similarly situated as that of the petitioners, it is not necessary for them to have approached the court individually and get the relief in terms of the prayer sought for. The order passed by the Court should invariably be accepted by the authorities concerned in order to give relief to the persons similarly situated. I am supported by the decision of the Apex Court in the case of Inder Pal Yadav v. Union of India and Ors, etc. reported in 1985 PUR 36 (S.C.) wherein it has been held in Paragraph 4 as follows:

4. The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not comment to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination following from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who failed to obtain interim relief those similarly situated would be pushed down in the implementations of the Scheme. There is another area where discrimination is likely to bear its ugly head. These workmen come from the lowest grade of Railway Service. They can ill-afford to rush to Court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched work-men failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with underlain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

In the background of the case in hand, the ratio Laid down in the State of Bihar

v. Madan Mohan Singh (supra) relied upon by Mr. V. Shivnath, learned G.P.I. does not apply in this case, inasmuch as, it is not open to the State respondents firstly to terminate the services of the employees illegally and then take recourse to law that they cannot be appointed as their posts have already been filled up.

7. In the result, this writ application is allowed and the impugned order, dated 3.11.1988, as contained in Annexure-5 to this writ application, is hereby quashed and I further declare that the petitioners were legally and validly appointed as assistant teachers by the competent authority and, as such, the mere absence of the counter-signature of the Deputy Development Commissioner on the respective letters of their appointment did not, in any way, nullify their appointments. The petitioners, however, will not be entitled to their salary for the post for the period beginning from the date they were terminated till the date of their fresh joining, but they shall be entitled to the salary from the date they now join their posts. All the respondents-authorities concerned are directed to implement this order forthwith. No costs.