

(1998) 07 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 300 of 1988

Md. Quasim Ali and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Citation : (1998) 3 BLJR 2045 : (1998) 3 PLJR 215

Hon'ble Judges : D.S. Dhaliwal, J;Aftab Alam, J

Bench : Division Bench

Judgement

Aftab Alam and. S. Dhaliwal, JJ.—This writ petition was filed in the year 1988 on behalf of 55 persons who were aggrieved by the cancellation of their appointments as teachers in the Government Primary Schools in the district of Dumka. During the past ten years while this writ petition remained pending in this Court a majority of the petitioners were absorbed in service on the basis of directions given by this Court in C.W.J.C. No. 227/88 and the Supreme Court in SLP (Civil) No. 11699/90 and analogous cases. Such of the petitioners who were absorbed in service during the pendency of this writ petition obviously do not wish to press this case any further. A few of the petitioners, however, failed to be absorbed on certain grounds and this writ petition now subsists only in so far as they are concerned.

2. Mr. Bibhuti Pandey, learned Sr. Counsel appearing on behalf of the petitioners submitted that petitioners 5, 6, 18, 23, 26, 28, 39, 41, 53 and 55 were not absorbed in service on the ground that they were over age; petitioner 24 was refused absorption on the ground that he was under age and petitioners 9 and 17 failed to be absorbed for the alleged reason that they did not make any application against advertisement issued in pursuance of the order passed by the Supreme Court. Mr. Pandey stated that this writ petition now subsists only in respect of the aforesaid petitioners and pressed this case only on their behalf.

3. It may be stated at the outset that none of the concerned petitioners, was communicated the reason(s) for his non-absorption in service and what is stated

by Mr. Pandey on their behalf has been gathered from affidavits and rejoinders filed on behalf of the respondent authorities in a number of contempt cases arising from connected matters. Reliance in this regard is placed on a supplementary affidavit filed on behalf of the authorities in M.J.C. No. 1531/93. The aforesaid Supplementary affidavit along with its Annexures has been brought on record of this case as Annexure-29 to the amendment petition filed on behalf of the petitioners. From a list appended to Annexure 29 it appears that the claim of the petitioners 53, 5, 6, 41, 28, 23, 18, 39 and 26 was rejected on the ground that they had crossed the age limit.

4. It may be noted here that a number of similarly situated candidates whose claim for absorption was rejected on the ground of being over age came to this Court in C.W.J.C. No. 7232/95 which was dismissed by a Bench of this Court by judgment and order, dated January 27, 1997. Mr. Pandey fairly produced a photostat copy of that judgment before us. In that judgment it was held that the direction of this Court and the Supreme Court concerning relaxation of age was not in respect of candidates who were already over age on the date of the initial appointment the validity of which the State did not accept. The direction concerning relaxation of age was made only in respect of such candidates who being within the age limit at the time of their initial appointment became over age at the time of final absorption on the basis of the Court's direction. It was on that finding that C.W.J.C. No. 7232/95 was dismissed by this Court.

5. Mr. Pandey further admitted that petitioners 5, 18, 23, 28, 41 and 53 were over age at the time of their initial appointment and their cases were, therefore, wholly covered by the decision of this Court in CW.J.C. No. 7232/95. No relief can, therefore, be, granted to petitioners 5, 18, 23, 28. 41. 53 and this writ petition in so far as they are concerned stands dismissed.

6. Mr. Pandey, however, tried to make a distinction in so far as petitioners 6, 26, 39 and 55 are concerned. He submitted that though they were admittedly over age at the time of their appointment they had not crossed the age limit at the time of making the application and it must, therefore, be deemed that they were within the age limit at the time of the initial appointment and were, therefore, entitled to relaxation of age in terms of the direction given by this Court and the Supreme Court. I am afraid no such distinction can be made in case of these petitioners either. The judgment and order passed in C. W.J.C. No. 7232/95 is very definite and clear on this point. In paragraph 10 of that judgment it was observed as follows:

From the aforesaid finding of this Court, duly affirmed by the Supreme Court, it is clear that the persons who become over-age in between their date of initial appointment and subsequent date of removal, only in their cases, age relaxation is to be given. This Court and/or the Supreme Court never gave any direction to relax the age of a person who was over age at the time of his initial appointment made in between the year 1982-83. On the other hand, directed to appoint such persons who were eligible. meaning thereby, who were within age at the time of

their initial appointment.

7. Mr. Pandey contended that the expression "at the time of initial appointment" used in this judgment must be construed to mean at the time of making application for the initial appointment. We are unable to read the judgment of this Court in the manner suggested by Mr. Pandey and we, therefore, find and hold that no relief can be given to petitioners 6,26,39 and 55 either.

8. As regards petitioner 24 about whom Mr. Pandey submitted that he was refused absorption on the ground of being under age, he relied upon a Single Judge decision of this Court in C.W.J.C. No. 3832 of 1995, Sushil Kumar Mishra and Ors. v. State of Bihar and Anr. We direct that it will be open to petitioner 24 to file a representation before the Director, Primary Education enclosing a copy of the judgment relied upon by Mr. Pandey. In case such a representation is filed within a month from today the Director, Primary Education will consider his case in the light of the decision of this Court and pass a final order, in accordance with law, within two months from the date of filing of the representation.

9. In respect of petitioners 9 and 17 it is stated that they were refused absorption on the ground that they had made no application against advertisement issued pursuant to the order passed by the Supreme Court. No material is brought to our notice to substantiate this statement. The State has not communicated to them any reason(s) for their non-absorption. No counter-affidavit has been filed on behalf of the State in this case. The reason(s) for non-absorption of petitioners 9 and 17 is, therefore, not clear to this Court. In that circumstance it is directed that it will be open to petitioners 9 and 17 also to file representations before the Director, Primary Education. In case they file representations within one month from today their cases too will be considered by the Director, Primary Education who will pass final orders, in accordance with law, within two months from the date of the filing of the representations. Needless to say that the orders passed on their representation will be communicated to the petitioners concerned.

10. This disposes of this writ petition.