

(2012) 08 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 13836 of 2012

Muralidhar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Citation : (2012) 4 PLJR 368

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Arvind Kumar Sharma, Dinu Kumar, Shiw Kr. Prabhakar, for the Appellant; Shashidhar Jha, for the Respondent

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the State. The petitioners are aggrieved by order dated 24.2.2012 passed by the Commissioner, Bhagalpur, in Case No. 13 of 2011-12. It rejects their claim to be considered for promotion to the graduate trained scale on the ground that Sahityalankar qualification from the Hindi Vidyapeeth, Deoghar was not equivalent to Graduation relying on a Government letter no. 1346 dated 27.8.2008.

2. Learned counsel for the petitioners submits that the issue stands concluded in their favour by Sanjay Kumar Vs. State of Bihar and Others, .

3. In Sanjay Kumar (supra) the petitioners claimed that Sahityalankar from Hindi Vidyapeeth at Deoghar was treated by the State Government as equivalent to graduation for higher studies and employment. It was held at paragraph-9 as follows:--

9.By interpretation we read into those provisions that equivalent graduate degree recognized by the State of Bihar shall also be part of the relevant rules together with provision relating to graduation degree from recognized University.

4. The petitioners were thus brought within the arena of consideration for appointment on a post, the minimum qualification for which was Graduation.

Learned counsel for the petitioners submits that by notification dated 11.1.1991 the qualification of Sahityalankar from the Hindi Vidyapeeth at Deoghar was recognized as equivalent to B.A. This notification has not been varied, modified or annulled till date.

5. The issue earlier fell for consideration in *Ganesh Prasad Srivastava Vs. Punjab National Bank and Others*, . It was held that the qualification was not equivalent to graduation. An earlier decision in C.W.J.C. No. 119 of 1988 was also noticed. The State Government notification dated 11.1.1991 did not fall for consideration. The controversy regarding equivalence came to be considered in context of promotions in the Bank vis-a-vis Central Government notifications only evident from paragraphs 14 and 15.

6. Apparently there appears to be inconsistency between the two Division Bench orders. The State Government decision dated 11.1.1991 does not appear to have been placed before either. The impugned order does not contain any discussion with regard to the contents of letter no. 1346 dated 27.8.2008 and what it may have had to say with regard to the Government decision dated 11.1.1991.

7. In *Reeta Srivastava and Others Vs. The State of Bihar and Others*, , the State relied upon the provisions of the Bihar Education Code to contend that the qualification was not equivalent to Graduation. Table-3 as quoted deals only with the qualification of Praveshika and Sahitya Bhushan from the Hindi Vidyapeeth at Deoghar. There is no reference to Sahityalankar. The notification dated 11.1.1991 finds mention at paragraphs 13. There is no discussion of the contents and consideration of the same. To the best understanding of this Court, it is difficult to decipher the materials considered and the reasoning for unacceptability. Reliance was placed on the case of *Ganesh Prasad Srivastav (supra)* which as discussed related to Central Government notifications and the notification dated 11.1.1991 did not engage the attention of the Court.

8. The discussion at paragraph-23 of the judgment notices an earlier reasoned order in C.W.J.C. No. 14029 of 2010 passed by the same Bench granting relief holding the qualification equivalent to graduation inter alia relying on a Full Bench decision in LPA No. 985 of 1996. Referring to *Ganesh Prasad Srivastav (supra)* without further discussion the former was simply observed to be per incuriam.

9. The Division Bench order in *Sanjay Kumar (supra)* was noticed at paragraph 25 but declined to be followed.

10. Consistency and predictability is the hall mark of judicial decision making. Judicial discipline and judicial propriety shall therefore have the first call. There can be no two opinions that the judgment in *Ganesh Prasad Srivastav (supra)* and *Reeta Srivastava (supra)* need to be reconciled. Both did not have the benefit of considering the Government notification dated 11.1.1991. The Bihar Education Code as considered in *Rita Srivastava (supra)* is silent with regard to the qualification of Sahityalankar.

11. Judicial discipline and propriety required that if there are two Division Bench judgments with any element of inconsistency the Bench must refer it to a Division Bench. Unsubstantiated differentiation may leave both the lawyer and the litigant unanswered and the issue unresolved. In *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, , on the issue of judicial discipline and judicial propriety in such cases it has been observed at paragraph-19 as follows:--

19. Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two Judges of the same High Court in *Deorajin Debi and Another Vs. Satyadhan Ghosal and Others*, , was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

12. The aspect of judicial discipline and judicial consistency in decision making was again noticed in *Shri Bhagwan and Another Vs. Ram Chand and Another*, holding as paragraph-18 as follows:--

18. Before we part with this appeal, however, we ought to point out that it would have been appropriate if the learned Single Judge had not taken upon himself to consider the question as to whether the earlier decisions of the Division Benches of the High Court needed to be reconsidered and revised. It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court, indeed, the judgment delivered by the learned Single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his attention was drawn to the decision of this court in *Laxman Purshottam Pimputkar Vs. State of Bombay and Others*, . It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that

enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself.

13. In *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, it has been observed at paragraphs 18, 22 and 23 as follows:--

18. It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a Multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure.

22.In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of Judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate Courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute.

23. Judge Learned Hand has referred to the tendency of some Judges "who win the game by sweeping all the chessmen off the table". This is indeed to be deprecated. It is needless to state that the judgment of superior courts and Tribunals must be written only after deep travail and positive vein. One should never let a decision go until he is absolutely sure it is right. The law must be made clear, certain and consistent.

14. More recently in *Official Liquidator Vs. Dayanand and Others*, it was observed at paragraph 78 as follows:--

78. There have been several instances of different Benches of the High Courts not following the judgments/orders or coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed

the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.

15. The distress of the Supreme Court can be noticed at paragraphs 90 and 91 as follows:--

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

16. It is considered appropriate that there should be an authoritative pronouncement by a Division Bench of the Court with regard to the issue of equivalence for a qualification of Sahityalankar from Hindi Vidyapeeth at Deoghar as equivalent to Graduation for services and promotion in the State of Bihar more particularly in light of the Education Code and the decision of the State Government dated 11.1.1991 and what may be contained in letter no. 1346 dated 27.8.2008.

17. Let the petitioners file one more set of the writ application within one week preemptory. Counsel for the State submits that he shall be filing a counter affidavit within four weeks. Reeta Srivastava and Others Vs. The State of Bihar

and Others, is appropriately referred to a Division Bench. Let the records be placed before Hon"ble the Chief Justice for appropriate consideration and orders.