
(2015) 07 JH CK 0017
In the Jharkhand High Court
Case No : L.P.A. No. 443 of 2013

Nagendra Thakur and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Bihar State Universities Act, 1976 — Section 10(6)
Constitution of India, 1950 — Article 226

Citation : (2015) 07 JH CK 0017

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Rajiv Ranjan, for the Appellant; Sarvesh Kr. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order dated 3rd October, 2013 passed by the learned Single Judge in W.P.(S) No. 5308 of 2009 preferred by these appellants (original petitioner), whereby the said petition was dismissed.

Submissions made on behalf of the appellants

2. Annexure B to the counter affidavit of the University in the writ petition, which was heavily relied upon by the Single Judge, is not applicable to the appellants: Counsel for the appellants (original petitioners) submitted that they were appointed as Class IV employees during the period between 1973 to 1976. Individual dates of appointment has also been given in the writ petition. Later on, they were promoted to Class III post by the Vice Chancellor of the Ranchi University. Thereafter, they were again reverted as Class IV employees in the year 1995 and therefore, writ petition, being W.P.(S) No. 5308 of 2009 was preferred by these appellants (original petitioners) to restore their positions as Class III employees. It is submitted by the counsel for the appellants that Annexure B to the counter affidavit filed by the respondent University in the writ

petition has been heavily relied upon by the learned Single Judge while dismissing the writ petition, but the same was not applicable to the present appellants. Moreover, it is submitted that on perusal of Annexure 1 to the Letters Patent Appeal, it becomes clear that promotion was given to the appellants by the Vice- Chancellor of the University. This aspect of the matter has not been properly appreciated by the learned Single Judge.

3. Principles of delay and laches is not applicable in the facts of the present case : Counsel for the appellant has also relied upon the decision rendered by the Hon"ble Supreme Court in the case of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , para 11 and has submitted that the principles of delay and laches is not applicable to the facts of the present case. These aspects of the matter have not been properly appreciated by the learned Single Judge and hence judgment and order dated 3rd October, 2013 passed by the learned Single Judge in W.P. (S) No. 5308 of 2009 deserves to be quashed and set aside.

Submissions made on behalf of the University

4. Learned Single Judge rightly dismissed the writ petition relying the detailed counter affidavit filed by the University : Counsel for the respondent University has submitted that detailed counter affidavit has been filed in the writ petition by the respondent University, which is annexed by way of supplementary affidavit filed by this appellants in this Letters Patent Appeal. On perusal of paragraph Nos. 6, 7, 8 and 11 of the said counter affidavit, it appears that no error has been committed by the learned Single Judge in dismissing the writ petition.

5. Long and unexplained delay : In fact, for the cause of action that arose in the year 1995, this appellants approached the court in the year 2009. Thus, there is a long unexplained delay.

6. Appointments were made in contravention of the provisions of Bihar State Universities Act, 1976 and against unsanctioned posts: Even on merits also, these appellants have no cause of action at all mainly for the reason that after the Bihar State Universities Act, 1976 has been brought into force, the power to appoint class III and Class IV employees has been vested in the Vice-Chancellor of the respondent University as per Order 10 (6) of the said Act. Moreover, looking to the facts of the present case, Principal of the Doranda College, Doranda, Ranchi made appointment of these appellants as Class IV employees, especially of Mr. Nagendra Thakur and Mr. Rajendra Prasad Chourasia, i.e. Appellant Nos. 1 and 2 on 11th October, 1977 and on 13th October, 1977 respectively, i.e. after the Bihar State Universities Act, 1976 came into force. So far as appellant No. 3 and 4 are concerned, they were also appointed as class IV employees by the Principal of the same college against unsanctioned post.

7. The employees are back door entrants and University was more than lenient in retaining their services on the Class IV posts :Thus, these employees are back door entrants and the Universities could have terminated their services, but,

instead of that they were retained in service as Class IV employees. Though their services have been regularised with retrospective effect, i.e. from the Initial date of appointment, but, they are certainly not entitled to any promotion. Perhaps, this is the reason for their stoic silence and from the year onwards from 1995 nothing was done by these appellants. On these two counts detailed counter affidavit has been filed and therefore, it has been submitted that no error has been committed by the learned Single Judge in dismissing the writ petition preferred by this appellant relying upon the decision rendered by Hon''ble the Supreme Court in the case of State of Uttaranchal and Another Vs. Sri Shiv Charan Singh Bhandari and Others, and hence this Letters Patent Appeal may not be entertained by this Court.

Submissions made on behalf of the respondent State

8. Counsel for the State is accepting the arguments advanced by the counsel for the University and has submitted that no error has been committed by the learned Single Judge in dismissing the writ petition.

REASONS

9. Having heard counsel appearing for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this appeal mainly for the following facts and reasons:

"(I) Appointments of the appellants were made in contravention of the Bihar State Universities Act, 1976 and against unsanctioned post, but the University took a lenient view of the matter :These appellants are the original petitioners, who preferred a writ petition, being W.P.(S) No. 5308 of 2009 challenging the cause of action that arose in the year 1995. Details regarding appointment of these four appellants is given as under:

Section 10(6) of the Bihar State Universities Act, 1976 reads as under:--

"10(6) The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and Ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants."

(Emphasis supplied)

In view of the aforesaid provision, Class III and Class IV employees can be appointed by the Vice Chancellor of the respondent University, whereas in the present case they were appointed by the Principal of Doranda College, Doranda, Ranchi, especially in the case of Appellant No. 1 and Appellant No. 2, who were appointed after enactment of the Bihar State Universities Act, 1976 as per paragraph Nos. 6, 7, 8 and 11 of the counter affidavit filed by the respondent University.

Copy of paragraph No. 6, 7, 8 and 11 of the counter affidavit filed by the respondent University in the writ petition reads as under:

"6. That the petitioners No. 1 and 2 were appointed by the Principal after the take over of the College as a Constituent Unit of the Ranchi University on 1.7.1977. On the said date Doranda College had already become a Constituent unit of the Ranchi University. The respondents have prepared a list of colleges under the Ranchi University, Ranchi, their year of affiliation and the date of conversion/take over. The name of Doranda College appears at serial number 3 and the date of take over is shown as 1.7.1977.

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7. That the respondent state that so far as petitioners number 3 and 4 are concerned their appointments were made prior to the date of take over of the college but both the said petitioners were appointed by the Principal against unsanctioned post Even the appointment letter of the petitioners No. 3 and 4 are not available in the records.

8. That the respondents state that an enquiry committee was constituted by the University and based upon the report of the committee the Ranchi University vide its office order No. RU/VC/R 2005-83 dated 2.12.1990 has passed the following orders:--

(i) No work should be taken from such Grade III and Grade IV employees who were not paid their salary in their bank account through cheque prior to 30.11.1988.

(ii) In respect of such employees in whose favour there is no evidence of payment of salary through individual bank account by cheque or individual cheque from the concerned bank prior to 30.11.1988 or their appointment, promotion has been notified by the College/University after 30.11.1988. Such appointment/promotion is in violation of the Bihar State Universities Act, 1976 and therefore the services of such category of non teaching employees should be cancelled and they should be dismissed with immediate effect.

(iii) In the aforesaid notification it has also been directed that a list of such Grade III/IV employees be submitted in the University who have been paid their salary through their Bank A/c prior to 30.11.1988 and also indicate the Savings Bank A/c No.

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11. That the respondents state that as all the 4 writ petitioners were appointed by the Principal of the College against unsanctioned posts, hence the promotion granted to them vide letter No. 1075-84 dated 7.3.1990 contained in Annexure 1 to the writ application was cancelled and by an office order contained in Memo No B/932-37 dated 1.3.1995 the services of the petitioners were regularized against the posts available against Grade IV. The names of the petitioners appear

in List 1 at serial numbers 10, 11, 13, 8 respectively"

(Emphasis supplied)

In view of the facts of the present case it appears that the initial appointments of these four appellants were absolutely dehors the Bihar State Universities Act, 1976. In fact, their services could have been terminated by the respondents, but, it appears that lenient view has been taken by the respondent University to regularise their services later on with retrospective effect from the date of their initial appointments.

(II) Long unexplained delay : it appears that there is a long unexplained delay by these appellants as the cause of action arose in the year 1995 and writ petition was filed in the year 2009. It appears that as their services were later on regularised, they were satisfied and therefore, they have not challenged the action of the respondent University.

(III) The Hon"ble Supreme Court in the case of State of Uttaranchal and Another Vs. Sri Shiv Charan Singh Bhandari and Others, , in paragraph 15 and 16, has been pleased to hold as under:

"15. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or the other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.

16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf years. It is interesting to note that when the regular selection took place, they accepted the position solely because seniority was maintained and, thereafter, they knocked at the doors of the Tribunal only in 2003. It is clear as noonday that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15-11-1983.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been

entertained by the Tribunal and accepted by the High Court."

(Emphasis supplied)

Thus, in view of the aforesaid decision, whenever there is long unexplained delay, court may not exercise power under Article 226 of the Constitution of India. Those who come to the court, must remain vigilant and should file their petitions as immediately as possible. In the facts of the present case, there is a delay of 14 years in approaching the court and there is no explanation at all for this delay.

In support of his argument that in the facts of the present case principles of delay and laches are not applicable, Counsel appearing for the appellant has relied upon the decision of the Hon"ble Supreme Court in the case of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , para 11.

The facts of the present case is absolutely different from the facts of the aforesaid decision for the following reasons:

"(a) Initial appointments of these four appellants were de hors the Bihar State Universities Act, 1976

(b) Against no sanctioned vacancy or against no vacancy appellant No. 3 and 4 were appointed and appellant No. 1 and 2 were appointed by the Principal of Doranda College, whereas, the Vice-Chancellor of the University is the appointing authority.

(c) Services of these Appellants, who are back door entrants, could have been terminated by the respondent University, but, they were regularised as Class IV employees. Only the promotion, which was given in the year 1990 from Class IV to Class III, was withdrawn in the year 1995. It appears that as they were serving since long, instead of their termination they were regularised as class IV employees. Thus, cause of action was of the year 1995 and it was brought into challenge in the year 2009 with no explanation for the delay, much less a reasonable explanation. Perhaps, the appellants were aware their appointments were not made as per the rules and therefore, they chose not to take any action when they were reverted back from Class III post to Class IV posts in the year 1995 and it was after a long lapse of time writ petition was filed."

The aforesaid facts of the present case are remarkably different from the facts of the case reported in the decision rendered by the Hon"ble Supreme Court in the case of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, and hence the said decision is not helpful to the appellants.

10. The aforesaid facts, reasons and judicial Pronouncement have been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by these appellants. No error has been committed by the learned

Single Judge and we see no reason to take any other view than what has been taken by the learned Single Judge in the order dated 3rd October, 2013 passed in W.P.(S) No. 5308 of 2009.

11. There is no substance in this Letters Patent Appeal and the same is, hereby, dismissed.