
(2005) 09 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 7099 of 1993

Natheshwar Sah and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Citation : (2006) 1 PLJR 1

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherjee and Gayanand Ray, for the Appellant; Tej Bahadur Singh, for the Respondent

Judgement

Narayan Roy, J.—Heard Mr. Shyama Prasad Mukherjee, learned Sr. Counsel for the petitioners and Mr. Tej Bahadur Singh, learned Standing Counsel No. 2 for the respondents. At the outset, it is submitted by learned counsel for the petitioners that he is not pressing this writ application so far as petitioner No. 2 is concerned as he has been allocated to the State of Jharkhand.

2. This writ application, accordingly, is dismissed so far as petitioner No. 2 is concerned.

3. By this writ application the petitioners have prayed for issuance of direction upon the respondents to regularise/absorb their services on the post of Lecturers in their respective faculties in Bihar Institute of Silk and Textiles, Nathnagar, Bhagalpur, hereinafter referred to as the "Institute" from the initial date of their appointment/ engagement as Lecturers. A further prayer has also been made for issuance of a direction upon the respondents to pay them the admissible salary of Lecturers on the principles of equal pay for equal work.

4. Mr. Mukherjee, appearing on behalf of the petitioners submitted that initially petitioner No. 1 was appointed as part time Lecturer by the Principal of the Institute vide order No. 474 dated 21.11.1983 and he continued on that post till 9.4.1984. Likewise, petitioner No. 3 was appointed initially as part time Lecturer

in the faculty of Weaving with effect from 30th September, 1985 where he continued till 2.1.1986. Petitioner No. 4 initially was appointed in the Institute on a sanctioned vacant post of Manager and subsequently he was transferred to the sanctioned vacant post of Lecturer in the Institute and since then he is working as Lecturer. So far as petitioner No. 5 is concerned, he was appointed as Manager (equivalent to the post of Lecturer) in Tasar Thread Spinning Weaving Centre, Aasanbani, Santhal Pargana on ad hoc basis. It is further submitted that since the petitioners were appointed on the post of Lecturers or to the equivalent post and they had continued on the post they were required to be considered for regularisation on the post of Lecturers on the basis of their educational qualification. By way of instance, learned counsel has drawn my attention to annexure-22 of the writ application to demonstrate that in past also the Lecturers working on temporary basis were considered for regularisation and ultimately necessary notification was issued by the Government making appointment on the post of Lecturers on regular basis.

5. Learned counsel appearing on behalf of the State, on the contrary, submitted that petitioners were engaged to work as Lecturers on purely temporary basis, but they were never given a scale of Lecturer and even though they continued to work for sometime they would not be entitled for regularisation on the post of Lecturer, specially when they were regularised on the post of Assistant Superintendent or equivalent post. Learned counsel has also drawn my attention to the order dated 5.8.1994 passed in this case to show that this writ application is not maintainable as the matter substantially had come to this Court at the behest of petitioner Nos. 2 and 5 in two writ applications, namely, C.W.J.C. No. 7979 of 1991 and C.W.J.C. No. 4803 of 1992 and the last writ application, i.e. C.W.J.C. No. 4803 of 1992 was dismissed. Learned State counsel also submitted that petitioners deliberately have suppressed the material fact that earlier also they had come for a relief which had semblance with the relief sought for in this writ application. Learned counsel, therefore, submitted that this writ application is liable to be dismissed as not maintainable.

6. From the counter affidavit it appears that initially petitioner Nos. 2 and 5 had approached this Court in C.W.J.C. No. 7979 of 1991 for grant of a scale of Assistant Professor of the Institute. The writ application aforesaid was disposed of with a direction to the petitioners to file their respective representations and the representations were directed to be disposed of in accordance with law. The representation so filed by petitioner Nos. 2 and 5 was ultimately rejected vide order as contained in annexure-C. Petitioner Nos. 2 and 5 again approached this Court in C.W.J.C. No. 4803 of 1992 challenging the decision rendered by the authorities as contained in annexure-C. However the writ application aforesaid was dismissed on 3.7.1992. Immediately after dismissal of the writ application on 3.7.1992, the present writ application was filed by these petitioners including the writ petitioners of earlier case on 21.7.1993 virtually for the self same grievances, though their grievances have been termed as regularisation on the post of Lecturer. Despite all these facts, at the face of the order passed by this

Court on 5.8.1994, as referred to above, this writ application was admitted for hearing on 8.12.1995. However, the question of maintainability remains to be considered.

7. At this stage, Mr. Mukherjee, submitted that the factum that petitioner Nos. 2 and 5 had earlier come to this Court now has been mentioned in reply to the counter affidavit, so in stricto sensu it would not be a case of suppression of material fact.

8. Even assuming that at a later stage petitioners disclosed the factum of disposal of their earlier writ application, the fact remains that their prayer for grant of a scale meant for Assistant Professor of the Institute was declined. The petitioners again have prayed for equal pay for equal work and to regularise them on the post of Lecturer. The relief sought for by the petitioners, therefore, is the connected relief which was sought for in the earlier writ application.

9. Regard being had to the facts and circumstances of the case, therefore, it would not be appropriate for this Court to issue any positive direction to the respondents. However, in view of the statements made in today's affidavit filed on behalf of the petitioners wherein it is stated that petitioner No. 3 has again been transferred on the post of Lecturer (Weaving) in the Institute, vide memo No. 2502 dated 31.12.2003, I am tempted to observe that the cases of these petitioners firstly be treated in the like manner it has been done in the case of petitioner No. 3 and thereafter the authorities may consider them for regularisation keeping in view the eligibility criterion in accordance with law. With this direction/observation, this writ application is disposed of.