
(2013) 07 JH CK 0125

In the Jharkhand High Court

Case No : L.P.A. No. 431 of 2012 with L.P.A. No. 432 of 2012

Natwa Hansdak

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 74

Citation : (2013) 4 JLJR 343

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Mahesh Tewari and Mr. Om Prakash Singh, for the Appellant; Rajesh Shankar, G.A. and Mr. Dheeraj Kumar, J.C. to G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. We are deciding both these appeals by this common judgment as the judgment under challenge is also the common and the facts are the same.

2. There is chequered history of the case which has been taken note of by the learned Single Judge in the impugned judgment dated 12.09.2012.

3. We would like to reiterate brief facts of the case. The petitioner was working as lecturer in Government Polytechnic. However, Bihar State published an advertisement dated 26.06.1994 calling applications for appointment to one post of Controller of examination in the State Board of Technical Education, Bihar. This post was kept reserved for Scheduled Caste candidate. The petitioner, though was not a member of Scheduled Caste, applied for the said post and he, without being a member of Schedule Caste, was selected and appointed on the post of Controller of examination in the State Board of Technical Education, Bihar. The petitioner's appointment was challenged by filing C.W.J.C. No. 2189 of 1995 by one Dr. Shyam Kishore Singh. The said writ petition was allowed vide judgment dated 15.10.1996 by the learned Single Judge of Patna High Court wherein it has

been held, that one single post could not be reserved for the reserved category and, therefore, the appointment in pursuance of the said advertisement dated 26.6.1994 was not valid. The said judgment of learned Single Judge was challenged in the Division Bench of Patna High Court by preferring L.P.A. being L.P.A. No. 1275 of 1996 wherein interim direction was issued that petitioner would continue on the post in terms of appointment during the pendency of L.P.A. During the pendency of said L.P.A., The Bihar Re-organisation Act, 2000 came into force and State of Jharkhand was created with effect from 15.11.2000. The petitioner was then allocated to the Jharkhand State and was appointed as Examination Controller of the Jharkhand State Technical Board. The L.P.A. of the year 1996 was decided on 12.01.2007 and the Division Bench of Patna High Court, while dismissing the L.P.A., observed that the appellant would discharge his duties attached to the said post until selection and appointment of fresh incumbent. Such order was passed in spite of the fact that petitioner's appointment was found to be illegal. Because of the interim order passed in the said L.P.A., the petitioner continued on the post of Controller of examination initially in the State Board Technical Education, Bihar and subsequently as Examination Controller of Jharkhand State Technical Board from the year 1994 to 2007. Even after the decision of the L.P.A. being L.P.A. No. 1275 of 1996, dated 12.01.2007, the petitioner continued to hold the post because of the order passed by the Division Bench of Patna High Court holding that the appellant would discharge his duties attached to the said post until selection and appointment of fresh incumbent. The said judgment was challenged in SLP being Special Leave to Appeal (Civil) No(s). 12232 of 2007 before Hon"ble Supreme Court. The said SLP was dismissed by Hon"ble Supreme Court vide order dated 04.10.2010, which is quoted as under:-

UPON hearing counsel the Court made the following

ORDER

No ground is made out for our interference with the impugned judgment. The SLP is dismissed accordingly. However, we clarify that insofar as the future promotion of the petitioner in the Lecturer cadre is concerned, his claim will be considered on its own merits uninfluenced by the dismissal of the present Special Leave Petition.

4. It will be appropriate to mention here that even during currency of the interim order passed by the Division Bench of Patna High Court, yet another order was passed to send the petitioner back to the post of lecturer which was challenged by petitioner by filing another writ petition being W.P. (S) No. 4122 of 2012 by the petitioner wherein interim order was also passed and petitioner remained to continue on the said post.

5. Learned counsel for the petitioner vehemently submitted that it is true that petitioner's appointment was challenged and adverse order was passed in the writ petition preferred by Dr. Shyam Kishore Singh in C.W.J.C. No. 2189 of 1995

and petitioner's appointment was held to be invalid by learned Single Judge of Patna High Court which was upheld by Division Bench of Patna High Court. The Division Bench clearly passed the order that petitioner would be allowed to continue on the post till new selection is made available. In the year 2000, The Bihar Re-organisation Act, 2000 came into force. Section 74 of the said Act provides that every person, who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State.

6. According to learned counsel for the appellant-petitioner, Mr. Mahesh Tewari, in view of the said specific provision of the Act of 2000, it is clear that petitioner was holding the post of Controller of examination in the State Board of Technical Education, Bihar and after coming into force of The Bihar Reorganisation Act, 2000, the petitioner's post along with petitioner's service was allocated to State of Jharkhand and petitioner was sent to State of Jharkhand, therefore, petitioner on that day was holding and discharging the duty of the post of Controller of examination and in view of Section 74, he would be deemed to be duly appointed to the post of Controller of examination in the State of Jharkhand.

7. We have considered the submission of learned counsel for the appellant-petitioner and we perused the facts which we have referred above. It is clear from the facts of the case that initially the petitioner's appointment was held to be illegal by learned Single Judge. Thereafter, the petitioner continued on the said post by virtue of the interim order of Division Bench of Patna High Court in L.P.A. No. 1275 of 1996 and that was only an interim arrangement and not the appointment on the post. The petitioner then did not raise this point before Division Bench up till the year 2007 that he acquired any right in view of Section 74 of The Bihar Re-organisation Act, 2000 even though petitioner's L.P.A. was decided on 12.01.2007. Not only this, before Hon'ble Supreme Court, in SLP No. 12232 of 2007, this point was not raised by the petitioner and Hon'ble Supreme Court specifically held, that there is no ground made out for any interference in the impugned judgment passed by the Patna High Court and then, made a specific observation that petitioner's future promotion will be considered in the lecturer cadre on its own merits uninfluenced by the dismissal of the said SLP. It clearly indicates that petitioner's appointment on the post of Controller of examination was found to be illegal by learned Single Judge and then upheld by the Division Bench of Patna High Court and thereafter, by Hon'ble Supreme Court and petitioner's subsequent appointment, at that point of time, was only on his original post which he was holding in the Government Polytechnic. Therefore, it cannot be presumed by any of the stretch that petitioner was "holding" any of the post of Controller of examination on appointed date or he can take benefit of Section 74 of "The Bihar Reorganisation Act, 2000" because

of the order passed by Division Bench in L.P.A., in the fact situation and that fact situation was that petitioner was allowed to continue on the said post by virtue of interim order of Division Bench of Patna High Court, even after holding that the petitioner's appointment on the said post was illegal. Therefore, Section 74 of the Act of 2000, in that fact situation, cannot be applied. In view of the above reasons, we are of the considered opinion that there is no merit in these L.P. As., which are accordingly, dismissed.