
(2012) 09 JH CK 0088

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4357 of 2006

Natwa Hansdak

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Citation : (2013) 1 AJR 194 : (2013) 1 JLJR 538

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Mahesh Tewari in W.P.S. No. 4357 of 2006 and Mr. Mahesh Tewari in W.P.S. No. 4122 of 2012, for the Appellant; A.K. Sinha, Advocate General, R. Krishna and J.S. Tiwari, Advocate in W.P.S. No. 4357 of 2006 and M/s. A.K. Sinha, Advocate General, Rajesh Shankar, G.A. P.P. Roy and Abhay Prakash, J.C. to G.A. in W.P.S. No. 4122 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh

1. Both the writ petitions are being heard finally with the consent of learned counsels appearing for the parties. Admittedly, petitioner was working as lecturer in Government Polytechnic; Bihar State published an advertisement dated 26.06.1994 calling applications for appointment to the one post of Controller of examination in the State Board of Technical Education, Bihar; one post so advertised was kept reserved for the Schedule Caste candidate; petitioner had applied pursuant to the advertisement dated 26.6.1994 for the post of Controller of examination; a writ petition being C.W.J.C. No 2189 of 1995, Dr. Shyam Kishore Singh Vs. State of Bihar was filed challenging the advertisement on the ground that single post cannot be reserved for the Scheduled Caste candidate; meanwhile petitioner was selected and was appointed on the post of Controller of examination in the State Board of Technical Education, Bihar; writ petition no. 2189 of 1995 was allowed by the learned Single Judge vide judgment dated 15.10.1996 (annexure no. 1); learned Single Judge in the judgment dated

15.10.1996 held that one single post could not be reserved for the Scheduled Caste category and observed that the appointment pursuant to the advertisement dated 26.06.1994 was not valid; judgment of the learned Single Judge was challenged by the petitioner in L.P.A. No. 1275 of 1996 before the Division Bench of Patna High Court; L.P.A. Bench had issued interim direction that petitioner would continue on the post in terms of appointment during the pendency of L.P.A.; meanwhile State of Bihar was bifurcated pursuant to the Bihar Reorganisation Act, 2000; State of Jharkhand was created and came into existence w.e.f. 15th November 2000; petitioner was allocated to the Jharkhand State and was appointed as Examination Controller of the Jharkhand State Technical Board; L.P.A. No. 1275 of 1996 was dismissed vide judgment dated 12.01.2007 (annexure no. 2); while dismissing the L.P.A. learned Division Bench of the Patna High Court had observed that appellant would discharge his duties attached to the said post until selection and appointment of fresh incumbent; judgment of the L.P.A. Bench was also challenged by the petitioner in SLP No. 12232 of 2007; Hon"ble Apex Court vide judgment dated 04.10.2010 (annexure no. 3) was pleased to dismiss the SLP However, Hon"ble Apex Court had clarified that as far as the future promotion of the petitioner in the lecturer cadre was concerned, his claim would be considered on its own merits uninfluenced by the dismissal of the S.L.P.; State of Jharkhand vide order dated 29.06.2006 had transferred the petitioner to the post of lecturer, Government Polytechnic, Adityapur; feeling aggrieved petitioner had approached this Court by filing W.P.S. No. 4357 of 2006; this court vide interim order dated 10.08.2006 passed in W.P.S. No. 4357 of 2006 was pleased to stay the impugned order dated 29.06.2006 in respect of petitioner and respondent no. 5; petitioner continued to discharge the duties of the Examination Controller under the protection of interim order dated 10.08.2006 passed in W.P.S. No. 4357 of 2006; vide order dated 23.06.2012. However, once again petitioner has been reverted back to his parent cadre i.e. lecturer in the Government Polytechnic, Adityapur; feeling aggrieved petitioner once again has approached this Court by way of filing W.P.S. No. 4122 of 2012.

2. I have heard Mr. Mahesh Tewari, learned counsel for the petitioner as well as Mr. A.K. Sinha, learned Advocate General for the State.

3. Mr. Tewari, learned counsel appearing for the petitioner has argued that since the petitioner was allowed to discharge the function of Examination Controller till new incumbent is selected and appointed by the L.P.A. Bench of Patna High Court vide judgment dated 12.01.2007 petitioner neither can be transferred nor can be reverted back to his parent cadre and should be allowed to continue till new incumbent is selected and appointed on the post of Examination Controller, Jharkhand State Technical Board. Mr. Tewari, learned counsel for the petitioner has further contended that otherwise also, since petitioner was allocated to the State of Jharkhand, therefore, petitioner shall be deemed to have been regularised on the post and cannot be reverted back.

4. Admittedly, the petitioner had applied for the post of Examination Controller of the Bihar State Technical Board and his appointment was held to be invalid by the learned Single Judge of the Patna High Court which was upheld up to Supreme Court. In the firm opinion of this Court, direction of L.P.A. Bench of the Patna High Court to the effect petitioner would be allowed to continue on the post till new incumbent joins is confined to the post of Examination Controller, Bihar State Technical Board and the same cannot be stretched to the post of Examination Controller of Jharkhand State Technical Board.

5. Since initial appointment of the petitioner was held to be invalid upto the Apex Court, services of the petitioner as Examination Controller of Jharkhand cannot be deemed to have been regularised simply because petitioner was allocated to Jharkhand. Therefore, I find no force in the arguments of Mr. Mahesh Tewari.

6. In the firm opinion of this Court, after the allocation of the petitioner to the Jharkhand, Petitioner should have informed the L.P.A. Bench of the Patna High Court that he was no more working as the Examination Controller of the Bihar State Technical Board under the interim direction of the L.P.A. Bench; however, without informing the L.P.A. Bench, petitioner had argued the appeal on merit. In the opinion of this Court, had this fact been placed before the Patna High Court that petitioner had already been allocated to the Jharkhand and was not holding post of Examination Controller of Bihar Technical Board, Patna High Court would not have passed the order that petitioner would continue to hold the office of Examination Controller of the Bihar State Technical Board till new incumbent joins.

7. Litigant is duty bound to place all the correct facts before the Court. Litigant, concealing the important fact or placing the incorrect fact before the Court shall be guilty of perjury and serious fraud. Fraud and perjury vitiate entire proceedings. Order so obtained by playing fraud or perjury can be ignored in subsequent proceedings. In the opinion of this Court, petitioner seems to be guilty of playing fraud and perjury by concealing from the L.P.A. Bench of Patna High Court that he had already been relieved from the post of Examination Controller of Bihar State Technical Board and had joined in Jharkhand.

8. In view of the above discussion petitioner has absolutely no legal right to continue on the post of Examination Controller, Jharkhand State Technical Board, therefore, petitioner has to be reverted back to his parent cadre of Government Polytechnic. Consequently, both the writ petitions fail and are hereby dismissed.