

(2005) 12 PAT CK 0024
In the Patna High Court
Case No : LPA No. 1240 of 2004

Neelam Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Citation : (2006) 1 PLJR 416

Hon'ble Judges : V.N. Sinha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh and Pramod Kumar, for the Appellant; Ramesh Kumar Datta and Piyush Lal, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Ganesh Pd. Singh, Senior Advocate appearing for the appellant and Mr. Datta, S.C. IV representing the State. In the facts and circumstances of the case the delay in filing the appeal is condoned.
2. Proceeded to hear the parties on merits.
3. This appeal is directed against the judgment and order passed by a learned Single Judge dismissing the appellant's writ petition seeking to challenge an office order, dated 12.7.2000 issued by the Regional Deputy Director of Education, Tirhut Division. The impugned order was issued in pursuance of a Government decision by which the grant of higher intermediate trained and graduate trained scales of pay to a number of teachers were cancelled and in the case of some others the effective dates of the grant of higher scales were shifted ahead. The name of the appellant-petitioner figured at serial No. 26 of the list of teachers in the B.A. trained scale of pay in the impugned office order.
4. The dispute has its origin in an earlier controversy with regard to the induction of the Agriculture Teachers in the cadre of the Bihar Lower Subordinate Education Service. In the 1970s the State Government created certain number of posts of Agriculture Teachers for project schools in terms of the National Education Policy.

The qualification for appointment as an Agriculture Teacher was matriculation with a diploma in agriculture. Later on, by an order of the Director, Primary Education, dated 17.8.1988, Agriculture Teachers were directed to be inducted in the cadre of the Bihar Lower Subordinate Education Service. Their induction in the cadre was resisted by the science teachers in the project schools and in the year, 1988 a batch of writ petitions came to this court with regard to the controversy; some of the writ petitions were filed by the science teachers resisting the induction of the Agriculture Teachers in the cadre and some of the writ petitions in the batch were filed by the Agriculture Teachers seeking their induction in the cadre. That batch of writ petitions was disposed of by a Bench of this court by judgment and order, dated 3.8.1995. By that judgment the writ petitions filed by the science teachers were dismissed and those by the agriculture teacher were allowed. The judgment directed the concerned authorities in the State Govt. in no uncertain terms to induct the Agriculture Teachers in the cadre of the Bihar Lower Subordinate Education Service and following their induction to prepare a combined seniority list in which the Agriculture Teachers should be given due places on the basis of their seniority reckoned from the date of their regular appointment in service.

5. The aggrieved party took the matter to the Supreme Court in SLP No. 2627 of 1995. It should be stated here that in the SLP there was no stay of the High Court order. However, it seems to have been contended before the Supreme Court that the authority competent to take a decision with regard to amalgamation of cadres or for the induction of any non-cadre employees into a particular cadre was the State Govt. and the Director, Primary Education was not competent to make any such direction. Apparently, it was in view of the contention that the Supreme Court gave certain interim directions on 1.11.1996. The order passed by the Supreme Court on 1.11.1996 is reproduced below:

"We have perused the judgment of the High Court as well as the affidavit filed by the State Government. The question regarding the determination of the cadre of Assistant Teachers (Agriculture) could not be completed by the State Government because of the intervening order of the High Court in CWJC No. 8899/88 dated 3.8.95. We, therefore, direct the State Government to take a decision in this matter notwithstanding the impugned decision of the High Court and communicate the same to this court within six weeks from the date of the receipt of this order. Let a copy of the order be given to P.B. Sinha in addition to the same being communicated through (illegible) thereafter."

6. In pursuance of the Supreme Court direction the State Govt. considered the matter and by resolution, dated 19.3.1997 took the decision that the Agriculture Teachers working in the project schools should be absorbed in the cadre of the Bihar Lower Subordinate Education Service. The decision further provided that the seniority of the Agriculture Teachers would be reckoned from the date of their initial appointment in the matric trained pay scale. It was further stipulated in the resolution that it would become effective from the date of its issuance.

7. The resolution of the State Govt. was produced before the Supreme Court whereupon the SLP was finally disposed of by order, dated 23.10.1997. The operative portion of the Supreme Court order is reproduced below:

"Therefore, we do not see any reason to entertain these special leave petitions. We would, however, like to make it clear (i) that only those teachers who have been regularised and who possess diploma in agriculture or training qualification will get the benefit of the Government Resolution merging agriculture teachers in the cadre of Lower Subordinate Service (Primary) till their seniority will be determined from the date of their respective appointment and (ii) in the case of those teachers who have obtained a diploma or training qualification subsequent to their regular appointment, the seniority will be determined from the date of the acquisition of such qualification.

"With these modifications, the special leave petitions are disposed of."

8. Even though the direction of the High Court in the judgment, dated 3.8.1995 was clear that the Agriculture Teachers should be included in the seniority list of the cadre and any promotions should be made only after the revision of the seniority list and even though the matter was pending in appeal before the Supreme Court and as per the direction of the Supreme Court a decision on the issue was pending before the State Government, the Regional Dy. Director of Education, Tirhut Division, Muzaffarpur deemed fit to issue certain office orders granting the higher intermediate/graduate trained scales to a number of teachers. In respect of the petitioner an office order was issued on 26.2.1997, that is to say, few days before the issuance of the resolution, dated 19.3.1997 by the State Govt. The saving grace, however, is that in the office order, dated 26.2.1997 by which the petitioner was granted the higher scale it was clearly stated that the grant of the higher scale was provisional and in case any irregularity was detected later, the grant of the higher scale would not only be cancelled but recovery would also be made from her of all excess payments in one instalment.

9. After the decision of the State Govt. and the order of the Supreme Court the seniority list in the cadre was revised and the agriculture teachers were also included in the list with their seniority shown from the date of their initial appointments.

10. From the foregoing it is apparent that the Science Teachers, including the petitioner were granted the higher scales of I.A. trained and B.A. trained scales of pay on the basis of the unrevised seniority list and the grant of higher scales to them was, therefore, liable to be cancelled or shifted to some date in future after the seniority list was revised following the inclusion of the Agriculture Teachers as directed by the High Court and the Supreme Court. The impugned Government decision is, thus, nothing more than a corrective measure and a natural consequence to the orders of the High Court and the Supreme Court. But this decision has been taken by the petitioner as another occasion to reagitate

the matter before the court.

11. Mr. Ganesh Pd. Singh made strenuous arguments relying upon the stipulation in the Govt. resolution that it would become effective from the date of its issuance. Learned counsel submitted that any change, alteration or modification in the seniority list of the cadre would, therefore, become effective from 19.3.1997 and the higher scale granted to the petitioner by office order, dated 26.2.1997 would, therefore, remain completely unaffected. When it was pointed out to him that accepting his submission would render the decision of the High Court as dead letter, Mr. Singh submitted that that was so by virtue of the Supreme Court order itself. Mr. Singh submitted that in the interim order passed by the Supreme Court on 1.11.1996 the State Govt. was directed to take a decision on the matter of induction of the Agriculture Teachers in the cadre "notwithstanding the impugned decision of the High Court". Learned counsel submitted that even though the SLP was finally disposed of without any interference with the decision of the High Court, the use of the expression "notwithstanding" in the earlier interim direction would signify that the order of the High Court was set aside and the Supreme Court was proceeding on a clean slate.

12. We are completely unable to accept the submission. The mere use of the word "notwithstanding" in the interim direction given by the Supreme Court can by no stretch of imagination be construed as to setting aside the definite and clear directions of the High Court which was not even stayed by the Supreme Court in the S.L.P.

13. We are, therefore, satisfied that the decision of the State Govt. to cancel the grant of the higher intermediate and graduate scales of pay in some cases and in some cases to shift the effective dates ahead is no more than translating into reality the directions of the High Court affirmed by the Supreme Court on the basis of the Govt. decision and the learned Single Judge has correctly decided the issues involved in the case.

14. In support of his submission Mr. Singh relied upon the decision of this court in *Purushottam Singh vs. State of Bihar and Ors.*, 1985 P.L.J.R. 1148. The facts of the reported case are completely different from the facts of the case in hand. In that case the promotions were granted prior to a proper amalgamation of the cadre and hence those promotions were held not liable to any interference. In the present case the higher scale was granted in the teeth of the High Court's direction and by an order which is prima facie provisional.

15. Coming now to the question of recovery, nothing can be said in favour of the petitioner in view of the clear stipulation in the office order, dated 26.2.1997. As noted earlier the grant of the higher scale to the petitioner was quite provisional and it was stipulated in the order that in case any irregularity was found later on the higher scale would not only be recalled but the petitioner would also be liable to recovery of the excess amount paid to her. In that view no interference is

warranted even on the issue of recovery. We find no merit in this appeal. It is accordingly dismissed.