
(2016) 05 PAT CK 0124

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.20837 of 2014

Pawan Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 448

Hon'ble Judges : Smt. Anjana Mishra, J.

Bench : Single Bench

Advocate : Mr. G.P. Ojha, G.P.-22, for the State; Mr. K.K. Sinha, Advocate, for the Health Society; Mr. Arup Kumar Chongdar, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Smt. Anjana Mishra, J. - In the present writ application, the petitioners seek quashing of letters dated 24.9.2014, as contained in Annexure-13 Series, whereby and where under the petitioners' joining was refused with retrospective date on the ground that they completed their courses from Distance Education. The petitioners further pray for a direction to the respondents to reinstate them on the post on which they were working before the issuance of the aforesaid letters dated 24.9.2014. A further writ/order/direction has also been sought, commanding the respondents to pay to the petitioners their salary and other consequential benefits from the date of termination from service till the date of reinstatement on the post on which they were working after following the due selection process. They have also prayed for payment of arrears of salary for the working period of eight months i.e., from the date of their joining till the date of their termination.

2. The present writ petitioners were appointed after having followed the due process of selection on the post of Lab. Technician (MLT), for which the educational qualifications had been fixed as Intermediate Science/10+2 or equivalent and a pass in Diploma in MLT from a Government recognised

institution. The said fact is evident from the advertisement, vide Memo dated 7.2.2008.

3. Petitioner Nos.1 to 3, namely, Pawan Kumar, Pradeep Kumar and Awadhesh Prasad Das, respectively, have passed Intermediate Science from Bihar School Examination Board in different years. Petitioner Nos.1 and 3 are in possession of a pass Lab. Technician Courses (BMLT) from Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University) (referred henceforth as "JRNR, Vidyapeeth") whereas Petitioner No.2 has obtained the Lab Technician Course degree from Allahabad Agriculture Institute (now known as "Sam Higgingbottom Institute of Agriculture, Technology & Science"), referred as "AAU" (Deemed University). The said degrees were obtained by the petitioners from Distance Education and both the Universities are recognised by the UGC as well as from the Department of Higher Education, Ministry of Human Resources Development, Government of India, and are also approved from Distance Education Council, New Delhi.

4. Thus, duly qualified, the petitioners applied for the post of MLT and their applications were duly accepted by the competent authority, namely, respondent No.3. After verification of their qualifications, the petitioners were issued admit cards and they appeared in the written test on 22.2.2009. The results of the aforementioned test were published on 18.8.2009 in the daily newspaper "Dainik Jagran", in which they were declared successful.

5. The petitioners received individual call letters for appearing in the interview/counselling and after consideration of the original relevant documents, on 9.11.2009, the first lot of results of 185 candidates was declared. Two lists were published by the Directorate of Health; one of 329 candidates on 29.6.2010, which was subsequently revised to 324 candidates on 16.8.2010. By letter dated 29.6.2010, some of the candidates were also posted under various Civil Surgeons/Civil Surgeon Medical College.

There was the third list of 62 candidate, including the petitioners, which was contained in Memo No.1722(4) dated 6.11.2012.

6. A writ application, bearing CWJC No.16227 of 2010, was filed by two candidates having vocational degrees, challenging the aforementioned results. This Court after hearing the parties, vide order dated 22.11.2012, granted stay and directed that no further appointment be made. However, Petitioner No.2 filed an intervention application with a prayer to vacate the stay, which was duly allowed and vide order dated 11.1.2013, this Court vacated the stay granted on 22.11.2012 (Annexure 8 series).

7. After vacation of the order of stay, the Directorate of Health invited the petitioners to appear in the interview, fixing 10.12.2013 and 11.12.2013 and accordingly, the petitioners appeared in the test on their respective dates. The petitioners were then declared successful vide departmental Letter No.21.1.2014 by which 38 candidates, including the petitioners, were declared selected for the post of MLT. The Directorate of Health, Government of Bihar, on 4.7.2014, vide

its letter No.561(4) also confirmed the appointments made on 21.4.2014.

8. The trouble of the petitioners arose when a new condition was imposed in letter dated 21.1.2014, wherein, for the first time, in Column 2(J) a new condition was brought in only to disqualify the 38 candidates who had come in and with an intention of debarring them from the selection. In Column "J" the candidates, who had the qualification from Distance Education, have been disqualified from being eligible for the post of MLT. However, other similarly situated candidates who had applied along with the petitioners as well as the 150 candidates who had been selected from the list dated 16.8.2010 were continued in service. Thus, 38 candidates were discriminated upon by imposing terms which were contrary to the advertisement and their joining was annulled, whereby it implied that their services were terminated and that too without giving them a show cause notice and also without paying them the arrears of salary for the working period, i.e., from January 2014 to September, 2014.

9. It was submitted by the petitioners that after their appointment, the petitioners had given their joining in Shree Krishna Medical College, Muzaffarpur (hereinafter referred to as "SKM College, Muzaffarpur") on 21.1.2014 and vide letter dated 24.7.2014, the petitioners were called upon to file affidavit regarding their qualifications. The said directive to the petitioners was duly complied with by them, by which they supported their qualifications. The certificates of the petitioners were also sent forth for verification to the Directorate of Distance Education, Janardan Rai Nagar Rajasthan Vidyapeeth University and Sam Higginbottom Institute of Agriculture, Technology and Sciences (formerly known as Allahabad Agriculture University). Both the Universities had sent their report supporting the degrees and qualifications of BMLT granted in favour of the petitioners by them. The degrees are also recognised by the Distance Education Council, U.G.C., New Delhi and also from the Human Resources Development Department, Government of India and accredited by the National Assessment and Accreditation Council (NAAC).

10. Learned counsel for the petitioners further submitted that despite such confirmation by their Institutes, respondent No.5, the Principal, S.K.M. College, Muzaffarpur, vide different letters dated 24.9.2014, terminated the services of the petitioners without affording any opportunity to them to explain the case.

11. The grounds on which the writ petitioners have assailed the impugned orders, contained in Annexure-13 series, are :

(i) The authorities cannot add a new term and condition in the qualification contrary to the terms and conditions mentioned in the advertisement, particularly when the selection process has already started and the petitioners had already been selected.

(ii) The concerned authority having once adopted particular terms and conditions cannot distinguish between one set of candidates and adopt another set of parameters with regard to the candidates having same qualifications. Any

attempt to debar the other candidates from appointment would be discriminatory and also contrary to the terms of the advertisement.

(iii) The authority cannot change the rule in the middle of selection process, particularly in the case of the petitioners whereas persons belonging to the list of successful candidates dated 16.8.2010 having qualification from the Distance Education have been appointed on one set of rules, but the petitioners having the same qualification from Distance Education have been debarred.

(iv) The act of the Department of Health, Government of Bihar, denying/derecognizing or declaring invalid the degrees granted by AAU and JNRN and debarring the petitioners who were in possession of degree granted by the University established under an Act of Parliament/State Legislature, duly recognised by the University Grants Commission (UGC) as well as from the Ministry of H.R.D., Department of Higher Education, Government of India and also approved from NAAC, New Delhi, is wholly excessive.

(v) The State cannot go beyond the terms of advertisement and its act of inserting, after selecting a new term, such as, non-consideration of Distance Education, that too being applied only in the case of the petitioners, is untenable in law and cannot be sustained.

(vi) The termination orders issued against the petitioners were bad in the eyes of law, discriminatory, against the principle of audi alteram partem and violative of Article 14 of the Constitution, particularly because other similarly situated persons were working.

12. It was thus contended that the impugned orders terminating the services of the petitioners be declared illegal, arbitrary and be, thus, quashed. It was prayed that the petitioners be reinstated in service along with all consequential benefits, which included not only the payment of the salary for the period for which they had worked but also thereafter.

13. A solitary counter affidavit has been filed in the present case on behalf of respondent No.5, namely, the Principal, SKM College, Muzaffarpur. The stand taken by them is that the Principal, though having passed the impugned orders, is not the appointing authority, but he is bound by the directives of the Director-in-Chief, Health Services, Government of Bihar. The contention of the Principal was that the appointments of the petitioners were subject to the verification of the original documents of the candidate and on such verification, it was found that the petitioners had obtained their technical education from Distance Education mode. As such, the appointments of the petitioners were cancelled as Para 2 (J) of the above mentioned Government Order dated 21.1.2014 clearly stipulated that the candidates having certificates from Distance Education mode were ineligible for appointments. As such, the Principle issued the impugned orders and communicated the same to the Principal Secretary, Health as well as the Director-in-Chief, Health Services vide Memo dated 24.9.2014. In view of such facts and circumstances, it was contended by respondent No.5 that the case

of the petitioners was devoid of any merit and thus the writ petition was fit to be dismissed.

14. A query was made by this Court calling upon the respondents to verify and place before this Court as to whether any candidate possessing MLT from the Distance Education mode was functioning and performing his duties as Lab. Technician. A supplementary counter affidavit has been filed stating therein that so far as SKM College, Muzaffarpur is concerned, no such candidate is functioning. However, in the supplementary counter affidavit, the specific query of the Court has not been answered. Even more patent is the silence of the respondent-State in filing a counter affidavit wherein the allegations and submissions of the writ petitioners have remained unanswered/uncontroverted.

15. Having heard learned counsel for the parties and on consideration of the documents and the terms and conditions, as stated therein, particularly the advertisement, the main issue to be resolved is whether the petitioners' selection as Lab. Technician was annulled on the sole ground that they had obtained Technical Education from Distance Education mode and was contrary to Clause (J) of letter dated 21.1.2014.

16. This Court after consideration has noticed that the advertisement, which finally led to the selection/appointment of the petitioners, was issued in the year 2008. Pursuant to such advertisement, the State embarked on a selection process, wherein candidates having qualifications from Distance Education mode, were allowed to participate in the recruitment process of examination, interview and counselling and were also permitted to join the selection process made in the year 2009 and 2010. However, on 21.1.2014 when the penultimate list of 38 successful candidates were published, which included the present petitioners, new terms and conditions, which were contrary to those as contained in the advertisement, were added in the appointment letter. Even so, by letter dated 4.7.2014, such appointments, including that of the petitioners, were confirmed and the petitioners, having joined on 27.1.2014 in SKM College, Muzaffarpur, continued to work till 24.9.2014. The services of the petitioners came to be terminated on 24.9.2014 on the sole ground that they had completed their course from Distance Education. The persons, who had come out successful earlier, are still functioning in their respective Colleges whereas the petitioners have been singled out and thrown out from service.

17. It is well settled that the terms and conditions of the appointment would depend upon the conditions set out prior to the appointment.

18. In the instant case, it appears that all through in the selection process, there was no such stipulation debarring a person with Technical Education through Distance Education mode from applying or participating for being selected for the post. It was only after the third list was issued, that such stipulation came to be inserted in the appointment letter. Such action on behalf of the State does not appear either logical or based on sound rationale and is also against the law with

regard to the recruitments. In support of the contention, learned counsel for the petitioners has relied on a judgment of the Apex Court in the case of Maharashtra SRTC v. Rajendra Bhimrao Mandve, reported in (2001) 10 SCC 5, which came to be the basis of the decision in the case of K. Manjusree v. State of A.P., reported in (2008) 3 SCC 512, which is quoted hereunder:

"32. In Maharashtra SRTC v. Rajendra Bhimrao Mandve, this Court observed that "the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced". In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible."

19. Accordingly, I find and hold that the action of the respondents in altering the terms and conditions of selection in the case of the petitioners are wholly unjustified and warrant interference. Thus, the impugned orders of termination, as contained in Annexure-13 Series, being wholly violative of not only the Service Jurisprudence but also being discriminatory and violative of Article 14 of the Constitution of India, are set aside and the petitioners are directed to be reinstated in service.

20. Another issue, which has been raised by the writ petitioners, is with regard to the payment of the salary for the period the petitioners had worked i.e., between January, 2014 to September, 2014, i.e., from the date of joining till the date of order of termination.

21. In view of the fact that the petitioners had been arbitrarily terminated from service and their orders of termination have been held to be bad, it is directed that the petitioners be paid for the period they have worked in the College and performed their duties.

22. A further prayer has been made by the petitioners that having been illegally kept out of service, the respondents be directed to pay the petitioners the entire salary for the period they have been kept out of service, i.e., from the date of their termination of service till the date of reinstatement on the posts on which they were working in the College as they had been kept illegally out of service for the aforementioned period. In support of the said contention, learned counsel for the petitioners has referred to a judgment of the Apex Court in the case of Shiv Nandan Mahto v. State of Bihar, reported in (2013) 11 SCC 626. It was contended that in the aforementioned judgment, the Apex Court had directed that the petitioner therein be paid for the post he had been illegally kept out of service due to mistake committed by the respondent-State. It was held that in view of the fact that reinstatement had been ordered, the concerned employee was entitled to full back wages with interest from the date he was kept out of service till reinstatement within the stipulated time. In this regard, learned counsel for the petitioners has drawn the attention of this Court to paragraph 8

of the said judgment, which is quoted hereunder:

"8. Having heard the learned counsel for the parties, we are constrained to observe that the High Court failed to examine the matter in detail in declining the relief to the appellant. In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service."

(Emphasis added)

23. It is, thus, directed that the petitioners are entitled to be paid full back wages for the period they were kept out of service.

24. In the result, the writ application is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.