

(2018) 07 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1228 of 2015

Rabindra Nath Sinha & Ors

APPELLANT

Vs

State of Bihar & Ors

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Citation : (2018) 07 PAT CK 0019

Hon'ble Judges : AHSANUDDIN AMANULLAH, J

Bench : Single Bench

Advocate : Umesh Kumar Mishra, Manoj Kumar Sinha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and the State.
2. The petitioners have moved the Court for the following reliefs: (i) For issuance of an appropriate writ in the nature of Certiorari for quashing the memo no. 02/2994 Patna dated 31.12.2014 issued under the signature of the Director, Scheduled Caste and Scheduled Tribe Welfare Department, Bihar Patna by which the selection of such selected teachers whose services are not pensionable, their services is being terminated from the date of issuance of letter without any show cause notice or providing opportunity of hearing to the teachers and also for quashing the consequential memo no. 02 dated 03.01.2015 issued by the District Welfare Officer, Siwan by which he has communicated to the headmaster for implementation of the same.
(ii) For issuance of an appropriate writ in the nature of prohibition by restraining the respondent authorities concerned to not make any kind of hindrance in proper functioning of the petitioners as teachers in the concerned schools in which they are imparting education.

(iii) For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to allow the petitioners to continue as a teacher in their respective schools with payment of honorarium without any further delay.

(iv) For issuance of an appropriate writ in the nature of a mandamus commanding and directing the respondent authorities concerned to pay the arrears of honorarium since their initial date of engagement as teacher after their retirement since the date of joining i.e. petitioner no. 1 Ravindra

Nath Sinha on 17.01.2014, petitioner no. 2 Gautam Singh on 23.01.2014 and petitioner no. 3 Mahendra Rai 25.01.2014 respectively.

(v) For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to not make any kind of discrimination merely on the ground that the petitioners have been appointed as Assistant Teachers as per the direction of the Honâ??ble

Supreme Court as per Special Teachers Rules 2010 and they have superannuated after attaining the age of superannuation and as per the

advertisement the petitioners have been selected after following the procedure and they are discharging their duties in the concerned schools.

(vi) For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to allow the further contract of the petitioners after expiry of period time to time till the age of 65 years.

(vii) For issuance of any other appropriate relief(s) for which the petitioner is entitled in view of the facts and circumstances of the present case.â??

3. The basic issue involved is whether the ground taken by the respondents for being discharged from service from the post of teacher in SC and ST

Residential Schools, is legally valid.

4. The petitioners were contractual teachers and upon superannuation on attaining the age of 60 years applied for employment in SC and ST

Residential Schools on contractual basis in terms of the advertisement dated 29.07.2013. The same stipulated that retired teachers would be employed

on contract basis in the SC and ST Welfare Department for which the maximum age limit to apply was 63 years. One of the clauses was that the

remuneration for the post would be the salary minus pension which the teacher would be receiving upon his superannuation. The petitioners were

selected and also appointed and were teaching on their post when the impugned direction of the respondent no. 6 dated 31.12.2014 was issued by

which all such teachers whose previous service was non pensionable were directed to be discharged from service.

5. Learned counsel for the petitioners submitted that such interpretation of the clauses of the advertisement and even otherwise is totally erroneous

and nowhere it was stipulated that only such teachers, who have retired from pensionary service would be entitled to be appointed, once after being

selected through a due process of selection and on being appointed having worked, the petitioners could not have been discharged from their post in

the manner as has been done. It was further submitted that they were teachers, though getting a fixed monthly remuneration, even regular

Government teachers now after 2005, are not entitled to payment of pension on superannuation and, thus, there is absolutely no logic or justification or

reasonableness to such interpretation and the ground taken for their discharge requires to be interfered with.

6. Learned counsel for the State submitted that the recruitment was of superannuated teachers with the purpose that they would be paid only the

difference of the pension subtracted from the salary and, thus, the petitioners ought not to have been even selected.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the decision of

the respondent which is impugned herein cannot be sustained. As the terms of the advertisement clearly did not specify that only those retired

teachers who were entitled to pension upon their superannuation would be employed, the petitioners also having retired, though without any pensionary

benefit, and thereafter taking part in the selection process and having been appointed, cannot be discriminated against in the manner as has been done.

Moreover, the State cannot create a sub-class in the class of retired teachers, all of whom were being paid from Government exchequer. The ground/

justification that because of the condition that their remuneration should be fixed after deducting what they were receiving by way of pension and, due

to which there was difficulty in arriving at the figure, for teachers who were not getting any pension, in the considered opinion of the Court, cannot be

a ground for such drastic decision to discharge the petitioners from service. The stipulation that their pay/ contractual amount would be after deducting

the pension received by them does not lead to any confusion or problems. The formula being that the contractual amount/pay of the post minus pension received has to be adhered to. This means that whatever pay is fixed for the post, from that the monthly pension of the person shall be reduced and paid to him. If the person does not receive any pension, the amount deducted would be zero. Thus, there is no change or tinkering of the formula and the only requirement is that necessary and appropriate method has to be applied while calculating the monthly remuneration to which such teachers would be entitled. In the present case it would mean that the full pay/remuneration of the post on which the petitioners were appointed was required to be paid, as the deduction would be zero since they do not receive any pension.

8. For the reasons recorded above, the writ petition is allowed. The impugned order pursuant to which the petitioners were discharged from the post stands set aside. The petitioners are held entitled to continue on the post on which they were appointed till they attain the age of 65 years. They are further held entitled to the remuneration/contractual amount whatever has been fixed by the concerned Department to be paid to them for the said period.

9. Coming to the issue of payment for the period the petitioners were out of job, though the principle of no work no pay would normally apply, but in the present case, as for no fault or laches on their part, they have been removed/discharged from their post and further that they had approached this Court within a month of being discharged from the post by filing the writ petition, the Court is inclined to allow them all consequential benefits.

Moreover, the petitioners have taken a categorical stand that they have worked for over a year without payment. The same has not been denied or controverted.

10. Accordingly, the petitioners stand reinstated on the post on which they were appointed/selected and further they shall be allowed to work and payment be made to them, along with arrears for the entire period for which no payment has been made to them pursuant to their joining on the post.

The same be paid within two months from the date of production of a copy of this order before the respondent no. 6. It goes without saying that the concerned authorities shall not only accept the joining of the petitioners but shall

also allow them to work.