
(2011) 10 JH CK 0071
In the Jharkhand High Court
Case No : C.W.J.C. No. 2545 of 2000 (R)

Rajendra Prasad

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Limitation Act, 1963 — Section 5

Citation : (2012) 1 JCR 145

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Judgement

1. Heard the learned counsel for the parties.
2. The petitioner, by way of this petition, has prayed for quashing of the order dated 18.05.1999 (Annexure-13) passed by the respondent No. 3, whereby representation of the petitioner has been rejected. The petitioner has further prayed for issuance of direction to reinstate the petitioner without breakage of service and also for the payment of due salary.
3. It is the case of the petitioner that he was appointed in pursuance to the Advertisement, dated 4.6.1993, Issued by the Regional Deputy Director of Education, Hazaribagh. According to the petitioner, he was interviewed in response to Interview letter dated-12.07.1993 by the Regional Deputy Director of Education, Hazaribagh and thereafter, he was selected and appointed on the post of Assistant by appointment order, dated 17.09.1993, against sanctioned vacant post on regular basis and upon his appointment, he Joined the services by submitting the joining report on 21.09.1993. It is the case of the petitioner that despite Joining of service on 21.09.1993, he was not paid his salary and therefore, he was constrained to file a writ petition vide C.W.J.C. No. 2690 of 1995 (R) and the said writ petition was disposed of as per order dated 13th December. 1995 whereby the petitioner was asked to make representation before the authority concerned i.e. the District Education Officer (respondent No.

4) within 15 days from the date of the order and the respondent No. 4 was also directed to decide the matter by assigning reasons within one month after affording an opportunity of hearing the petitioner. It was further directed that if the petitioner's appointment is found legal and valid, then In that case, the payment should be made forthwith in respect of arrears of pay and current payment. Thereafter, vide letter dated-12th January, 1996, the petitioner was asked to appear in person before the District Education Officer and after hearing the petitioner, the order was passed by the District Education Officer. Dhanbad, dated 29th March. 1996 and thereby the appointment/services of the petitioner was treated as regular service and accordingly, the payment of salary was also ordered to be released. Thereafter, the petitioner was transferred on 01st June, 1996 and accordingly, he resumed his duty at the place of transfer on 02.07.1996 and thereafter the Principal of the School has reported to the District Education Officer regarding his resumption of duty vide its letter, dated-11.09.1996. Thereafter, the then District Education Officer vide its order dated 16th May, 1997, which is produced vide Annexure-10, has terminated the services of the persons who were appointed on the post of Class III and Class IV during the tenure of the former District Education Officer, Shri Tete Benedict as the said appointments were made illegally by the then District Education Officer. On the basis of the order dated- 16th May, 1997, passed by the District Education Officer, declaring all the appointments done by Tete Benedict, former District Education Officer, illegal, as the same was done without having any authority, the relieving order was passed by the Principal, Jharia Raj High School and the same was served upon the petitioner on 30th May, 1997 and thereby the petitioner was ordered to be relieved from the services. According to the petitioner, the termination of the petitioner vide order dated 30th May, 1997, which was came to be passed in pursuance to the order dated 16th May, 1997, is illegal, as the order dated- 16th May, 1997, passed by the District Education Officer was in respect with the appointments done by the former District Education Officer, Shri Tete Benedict, whereas the petitioner was appointed by the Regional Deputy Director of Education, Shri Surajmani Khalkho, as per its order dated 17.09.1993, which is produced as Annexure-3.

4. Learned counsel for the petitioner has vehemently submitted that the second paragraph of Annexure-10. i.e. order dated-16th May. 1997 is contemptuous, because the District Education Officer has observed in this order that all the persons appointed illegally by the former District Education Officer, Tete Benedict and other officials including the persons, who have been reinstated or regularized in terms of the order, passed by the High Court, be also relieved and their payment of salaries be stopped. It is submitted by the learned counsel for the petitioner that since the petitioner was appointed after following due process and procedure against the regular vacancy in terms of appointment letter dated-17.09.1993 (Annexure-3) and his services was ordered to be regularized as per order dated 29th March, 1996 vide Annexure-7, there was no question of reliving him in pursuance to the order dated 16th May, 1997. It is submitted that

the petitioner's appointment cannot be treated as an illegal appointment because it was done in accordance with law. Learned counsel for the petitioner has also placed reliance on Annexure-1 of the supplementary affidavit, which indicates that the petitioner was registered with the Employment Exchange and the said Employment Exchange has advertised the said post as per Annexure-2 of the supplementary affidavit and in pursuance thereof, he applied for the post and got selected after following due selection procedure, which was undertaken by the Regional Deputy Director of Education, Hazaribagh. The learned counsel for the petitioner has also invited attention of this Court to the fact that similarly situated persons are still in employment and serving with the respondent Nos. 3 and 4 and in support of this contention, the learned counsel has placed reliance on Annexure-15 i.e. the order, passed in C.W.J.C. No. 1384 of 1996, whereby this Court vide its order dated-15.11.1996, has given a direction to consider the case of the petitioner with that of other similarly situated persons as per Annexures-6 and 6/1 of the petition and accordingly, the writ petition was disposed of, whereby this Court has held that the part of Annexure-10, by which, the petitioner's service was said to be illegal, is hereby quashed and it hereby ordered that the petitioner should be considered as that of the other similarly situated persons as per Annexures-6 and 6/1 and he should also be paid the same benefit as that of the other. Likewise, the learned counsel has also invited attention to the order passed in C.W.J.C. Nos. 2283 and 2284 of 1996 (R). The order was passed by this Court on 20th February, 1997 directing the concerned respondents to consider the order passed in C.W.J.C. No. 1384 of 1996, whereby the case of the petitioners, therein, was also allowed and the termination order caused by Annexure-6, was withdrawn. It is further directed that the petitioners should be considered as in continuous service and their salary should be paid accordingly. The learned counsel for the petitioner has also submitted that being aggrieved with the said order, the State preferred an appeal vide L.P.A. No. 524 of 1997 but as the said appeal was time barred, it was submitted along with the delay condonation application but the Court has rejected the appeal u/s 5 of the Limitation Act. According to the learned counsel for the petitioner, the State preferred an SLP before the Supreme Court but the said SLP was not entertained by the Hon'ble Apex Court and therefore, the order passed by this Court are confirmed and required to be followed in the letter and spirit by the respondents authorities. It is also submitted by the learned counsel for the petitioner that the petitioner was not in any other gainful employment after his relief till date and therefore, he is entitled to the full back wages because the petitioner has been kept out of job without there being any fault on the part of the petitioner.

5. As against that, learned counsel for the State has referred to and relied upon the averments made in the counter-affidavit, filed by the respondent Nos. 2 to 4 and submitted that the appointments done by the then District Education Officer was not in accordance with law and without any authority of law and therefore, the respondents decided to terminate the services of the petitioner. With regard to the contention of the petitioner regarding payment of salary for the period for

which he has been kept out of employment, learned counsel for the State has submitted that as the petitioner has not performed the actual duty, he cannot claim the full salary.

6. Considering the aforesaid rival submissions and on perusal of the materials available on record, it transpires that the petitioner was appointed on the post of Assistant/Clerk, as per order passed by the Regional Deputy Director of Education, North Chhotanagpur Division, Hazaribagh on 07.08.1993 against the sanctioned vacant post of Clerks/Assistants. Copy of the said order is produced at Annexure-3. It appears that the said appointment order was passed by the Regional Deputy Director of Education, Hazaribagh after following due process of selection, in pursuance to the Advertisement, dated-04.06.1993. On perusal of the copy of the said Advertisement, which is produced vide Annexure-1, it appears that the copy of the said Advertisement was forwarded to all the local newspapers as well as Employment Exchanges. It also appears from the supplementary affidavit filed by the petitioner that the petitioner's name was registered with Employment Exchange vide Registration No. B/S/T-25/92 with effect from 20th, March, 1992. It also appears that the said Employment Exchange has received the advertisement and it was displayed on the notice board of the Employment Exchange on 12.06.1993. Copy of the said Advertisement is produced vide Annexure-2 of the supplementary affidavit. It appears that in response to the said advertisement, the petitioner has applied for the post, in question, and thereafter, he was interviewed by the Regional Deputy Director of Education, Hazaribagh on 20.7.1993. The intimation received by the petitioner with regard to interview is produced at Annexure-2. As the petitioner was selected by the Regional Deputy Director of Education, Hazaribagh for the post, in question, appointment order was given to him on 17.9.1993 and thereafter, as the petitioner was not paid his due salary, he filed a writ petition before this Court vide C.W.J.C. No. 2690 of 1995 and this Court vide its order dated-13th December, 1995, directed the petitioner to make a fresh representation before the respondent No. 4 within 15 days and thereafter, the respondent No. 4 was directed to decide the said representation within one month thereafter. It is further observed in the said order that if the appointment of the petitioner is found legal and valid, then in that case, the payment of arrears and current salary be released forthwith. It appears that after passing of the said order, the District Education Officer, Dhanbad (respondent No. 4), passed an order dated 19th March, 1996 and thereby regularized the services of the petitioner and passed an order to release the payment of salary due to the petitioner. It appears that on 16th May, 1997, the District Education Officer, Dhanbad passed an order declaring all the appointments done by the former District Education Officer, Tete Benedict on the post of Class III and IV, as illegal and irregular, as the same were done by the said District Education Officer without any authority of law. It also appears that it is not proper on the part of the District Education Officer to pass an order, dated 16th May, 1997 to terminate/ relieve the employees from the services without taking permission or

seeking modification in the previous order passed by the High Court. On the basis of the said order, the Principal of Jharia Raj High School, passed an order dated 30th May, 1997 and relieved the petitioner from the post of Assistant. This Court finds substance in the arguments advanced by the learned counsel for the petitioner that the petitioner was appointed in pursuance to the Advertisement given by the Regional Deputy Director of Education, Hazaribagh and his appointment was done after following due process and the petitioner applied for the said post on the basis of intimation received by the Employment Exchange, Sindri (Dhanbad), where his name was registered from 20th March, 1992. The Regional Deputy Director of Education, Hazaribagh circulated the said Advertisement through the local newspapers as well as Employment Exchanges of that area and in response thereto, the petitioner applied for the post, in question and got selected and therefore, it cannot be said that the appointment of the petitioner was done without following due process of appointment for the post in question. Moreover, it also appears that the order dated 16th May, 1997 came to be passed in respect of appointments done by Shri Tete Benedict, the former District Education Officer, whereas the appointment of the petitioner was done by Shri Surajmani Khalkho, the Regional Deputy Director of Education, North Chhotanagpur Division, Hazaribagh. Moreover, it also transpires that since the petitioner was not getting his regular salary, he made representations before the concerned authorities in the year 1995 but since his representation was not considered favourably, he was constrained to approach this Court by filing C.W.J.C. No. 2690 of 1995 (R), which was disposed of vide order dated 13.12.1995 (Annexure-5) directing the respondent No. 4 to consider the representation of the petitioner within one month from the date of the order giving reasons and after hearing the petitioner. It was also ordered by the Court that if the petitioner's appointment is found legal and valid, then in that case, the arrears of salary and current salary may be released. It appears that thereafter, by order dated 29th March, 1996, the services of the petitioner was recognized as regular service and the payment was ordered to be released by the District Education Officer, Dhanbad, meaning thereby that the respondents authorities made all scrutiny and declared the services of the petitioner as regular service by its order, dated 29th March, 1996, therefore, there was no question of declaring the appointment of the petitioner as illegal by order dated 16th May, 1997. The order dated 30th May, 1997, passed by the Principal of Jharia Raj High School, appears to be the order, passed without non-application of mind. The basis of the said order is an order, passed by the District Education Officer, Dhanbad, dated 16th May, 1997 which is not applicable to the case of the petitioner. Moreover, it also appears that similarly situated persons approached this Court by filing a writ petition. C.W.J.C. No. 1384 of 1996 and C.W.J.C. Nos. 2283 and 2284 of 1996 and this Hon"ble Court passed an order, dated 15.11.1996 as well as the order dated 20th February, 1997 and thereby quashed and set aside the order of termination passed in those matters. It appears that being aggrieved by the said order, the respondent-state preferred an L.P.A. but as the said L.P.A. was time-barred, this Hon"ble Court rejected the said

application filed u/s 5 of the Limitation Act. It appears that the respondents have nowhere denied this fact in their counter-affidavit filed in the matter that the similarly situated employees are still working with the respondents-authorities and are also enjoying the service benefits available to them.

7. In a matter concerning public employment, when the similarly situated persons are allowed to continue in the employment and are enjoying service benefits, the requirement of Articles 14 and 16 of the Constitution of India is that, all the similarly situated persons are required to be treated equally and equal treatment and benefits are required to be extended to all of them without any discrimination. Thus, in the light of the aforesaid backgrounds of the matter, the petitioner is eligible and is also entitled to have the same treatment as the similarly situated employees are getting. Under the circumstances, the present petition deserves to be allowed. This writ petition is accordingly, allowed. The order issued by the Principal, Jharia Raj High School, dated 30.05.1997 relieving the petitioner is hereby quashed. The respondents -authorities are directed to allow the petitioner to resume his duties. Though the petitioner was regularly appointed on the post, he was kept out of job without there being any fault on the part of the petitioner, 25 per cent of the basic salary be paid to him. This Court is of the view that this is a fit case wherein, the respondents-authorities are required to be directed to comply with the order, passed by this Court, within one month from the date of receipt of the order. Accordingly, the respondents-authorities are directed to comply with this order within one month from the date of receipt of the order.