
(2011) 07 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 15530 of 2006

Ram Nandan Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 131 FLR 549

Hon'ble Judges : M.K. Jha, J

Bench : Single Bench

Advocate : Dinu Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

M.K. Jha, J.—Heard Mr. Dinu Kumar, learned Counsel for the petitioner and Counsel for the State.

The prayer of the petitioner in this writ application reads as follows:--

1(i) For quashing the part of the order vide memo No. 206 dated 3.8.2000 issued by the Director, Primary Education, respondent No. 2 by which it was decided to give extension of one year service to the petitioner on the basis of national award and payment of salary for the period of one year i.e. 1.1.96 to 31.12.96 shall be subject to result of the enquiry.

(ii) Also for directing the respondents to grant extension of service for second and third years i.e. from 1.1.1997 to 31.12.1997 and 1.1.1998 to 31.12.1998 respectively and pay salary for the said period to the petitioner.

Mr. Dinu Kumar, learned Counsel for the petitioner would submit that once the authority had found the petitioner eligible for grant of extension on account of his being national award winner teacher, such extension had to be for a period of three years in view of the earlier Government policy as contained in resolution dated policy as contained in resolution dated 16.5.1973 and 25.11.1981 (Annexure Nos. 2 & 3 to this writ application). He would, therefore, turn to the

reasons mentioned in the impugned order curtailing the extension of the petitioner only for a period of one year on account of subsequent change in the Government policy dated 23.5.1996, which according to him would not apply to the cases of such national award winner teachers who was entitled for extension of service under the earlier Government instruction. In this context, he has placed reliance on the order of this Court dated 17.3.1997 in CWJC No. 2848 of 1996 (Suresh Prasad v. State of Bihar and others).

2. Learned Counsel for the State, on the other hand with the help of the counter-affidavit, would submit that such decision for extension of service to the national award winner teachers, being in the form of an executive decision was capable of being changed for good and valid reasons. He would explain that the amended Government policy dated 23.5.1996 in fact was enforced on a valid ground but, the same was held by this Court to be made operative only for the persons becoming eligible for grant of extension of service w.e.f. 23.5.1996. Thus a clarification was issued by the State Government on 18.10.1996 that all such persons, who were earlier granted extension and were continuing on the one year extended period, whether by way of the first or second extension, would automatically cease to have any further extension after completion of their period of extension. He has also submitted that the said circular dated 18.10.1996 (Annexure-B), having been not considered by this Court in the case of Suresh Prasad (supra), that judgment actually will have no relevance to the facts of the present case.

3. In the considered opinion of this Court, the limited right that the petitioner had for grant of extension of service was based on his continuing in service as on 31.12.1995. The petitioner earlier came to this Court and this Court had given direction for consideration of his case in terms of the existing Government policy. The petitioner, however, understood it that such direction was for a period of three years and, therefore, he had filed a contempt application when the authority had passed the impugned order giving him extension only for a period of one year. This Court in the contempt petition MJC No. 1968 of 2003, while disposing of the same on 20.12.2004, had clearly held as follows:--

Heard learned Counsel for the parties.

It is not in dispute before me that since after passing of the order by this Court especially in M.J.C. No. 320 of 1999 the petitioner made a detailed representation and a final order has been passed on 31.7.2000. According to the petitioner the authorities were wrong in granting only one year extension while similarly situated persons were given extension for three years in accordance with the policy. In the opinion of this Court the High Court did not direct three years extension be granted. If the scheme leaves scope of discretion in favour of the authority then the authority should be entitled to pass any order. If the petitioner feels that he has been discriminated and he was in fact entitled to three years extension then he will have to challenge the correctness, validity and propriety of the order dated 31.7.2000/2.8.2000 (Annexure-17 of this petition).

The petition is disposed of.

(Italicised for emphasis)

4. This inter-parte order will bind both the petitioner and the State Government. There is a specific findings arrived by this Court that in all the earlier orders, there was no direction for giving extension of service to the petitioner for a period of three years. There was of course a direction for considering his case as per the existing policy and, therefore, if the authorities have passed the impugned order dated 31.7.2000/2.8.2000 giving extension of one year, the petitioner may have a reason to challenge the same but he cannot claim that there was any earlier direction of this Court for his giving him three years extension. Such impression of the petitioner, therefore, that he was held entitled by this Court in any of the earlier order for grant of three years extension, is wholly misconceived.

5. The next aspect will be if the petitioner was to be given extension even as per earlier policy, it was to be given in three instalments of one year each as will appear from the following extract of the policy:

6. Now from reading of the aforementioned circular, it would be clear that the petitioner was entitled for extension of service in the first go only for one year and while the petitioner's services were extended from 1.1.1996 to 31.12.1996, an order was issued by the State Government as contained in Annexure-A dated 23.5.1996 and 18.10.1996, which for the sake of clarity is also reproduced hereinbelow:--

7. The aspect that a person will not be deprived from getting benefit of extension who was continuing in service prior to 23.5.1996 was definitely decided by this Court in the case of Suresh Prasad (supra) and it was held that a teacher who was already granted extension or was eligible for such extension as on 23.5.1996 could not be defeated his right of being considered for grant of extension. This Court, however, did not in the order of Suresh Prasad (supra) hold as to what would be the tenure of extension. Infact it only had gone to hold the circular dated 23.5.1996 to be non-applicable for persons becoming eligible for extension prior to that date. For all these class of cases, therefore, when the order of this Court in the case of Suresh Prasad (supra) came on 17.3.1997 without considering the effect of the notification dated 18.10.1996, that order or judgment of this Court cannot be held to be settler for the issue being raised by the petitioner in this writ application.

8. Even otherwise on merit, this Court would find that the petitioner had a right of being granted extension at best initially for one year and in that one year if the petitioner had not challenged the revised policy dated 18.10.1996 for not giving extension to any one beyond a period of one year as is clear from the reading of the notification dated 18.10.1996, that by itself cannot be said to be discriminatory in nature. It is well settled that even a statutory right created for superannuation in service could be curtailed by a subsequent service rules. Here

in this case, it is merely a reduction of tenure of extension of service on the basis of an executive instruction. Such executive instruction, therefore, could have easily changed curtailing the scope of earlier tenure of extension provided in the circular dated 16.5.1973 and/or 25.11.1981.

9. Judged in this background, this Court will find no error in the decision of the authority in confining the extension of the services of the petitioner only for a period of one year, inasmuch as, after 31.12.1996, the petitioner could not have granted the extension of service in view of the resolution of the State Government dated 18.10.1996 (Annexure-B).

10. It has always to be kept in mind that the petitioner was aware of the handicap created on account of the notification dated 18.10.1996 (Annexure-19) but he did not assail its correctness by filing any interlocutory application. As the things stand today the State Government by a subsequent resolution dated 11.4.2007 has altogether done away with the very scheme of granting extension of service of any national/state award winning teacher by substituting it by payment of lumpsum amount of Rs. 30,000/- and Rs. 15,000/- for such national and state award winner teachers respectively. In that view of the matter, this Court would not find any merit in this application and the same is, accordingly, dismissed.