

(2010) 01 JH CK 0053
In the Jharkhand High Court

Ram Naresh Prasad and Manikant Prasad Singh	APPELLANT
Vs	
Vinoba Bhave University, Hazaribagh	RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0053

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellants against the judgment and order dated 12.12.2007 passed by the learned Single Judge in W.P.(S) No. 7002 of 2002, whereby the learned Single Judge had been pleased to dismiss the writ petition, imposing a cost of Rs. 100/- each on the petitioners-appellants herein.

2. The background and the circumstances under which this appeal has been preferred indicated that the petitioners-appellants had been appointed on Class-IV post and started discharging their duties, after they were selected ever since 1983. However, a controversy arose whether the petitioners-appellants had been appointed on sanctioned post and whether they are fit to be continued in service, which gave rise to the filing of a writ petition bearing CWJC No. 3739 of 1995R for directing the State Government and the University to sanction non teaching post of Laboratory Boy/Gas Man with retrospective effect in B.S.K. College, Maithan and for other consequential relief. The University objected to the plea of the petitioners-appellants and submitted that the petitioners-appellants were not in service since 1991 and their names did not appear in the pay roll, which was confronted by the petitioners-appellants.

The aforesaid writ petition, however, was finally disposed of by the order dated 17.3.1998, whereby the learned Single Judge was pleased to hold that the petitioners could not have been granted any relief as they had no right over the post on which they claimed to have been appointed and continued in the service.

The learned Single Judge further held in regard to the continuance in the service that there is a strong controversy and such dispute cannot be decided under the writ jurisdiction. The learned Single Judge thus disposed of the writ petition but was pleased to make certain observation to the effect that if any post is created for Laboratory Boy/Gas Man, then the petitioners' case must be taken on priority basis for absorption against the posts if created in near future, considering their previous experience and circumstances.

3. Pursuant to the aforesaid observation, the University issued a Notification dated 14/15.10.1998 indicating therein that the services of the petitioners were regularized w.e.f. 17.11.1997 and it also indicated that the University will pay salary to the petitioners in the regular scale w.e.f. 17.11.1997 for which period the petitioner had actually worked and performed duty, including the current salary.

4. The ordeal for the petitioners-appellants did not end even after the aforesaid Notification as the petitioners-appellants were not paid their salary by the University in spite of the said Notification. This led to another round of litigation when the petitioners-appellants filed a writ petition bearing CWJC No. 3845 of 2000R wherein the petitioners-appellants prayed for payment of salary to them in view of the Notification dated 14/15.10.1998 by which they have been regularized in the service of the University.

5. The aforesaid writ petition bearing CWJC No. 3845 of 2000R was disposed of vide order dated 7.3.2002, by which the case was remitted to the Vice Chancellor, Vinoba Bhave University, who was directed to inquire into the matter and arrive at a conclusion and if the petitioners are found to have been regularized w.e.f. 17th November, 1997 by Notification dated 14/15.10.1998, the University will pay salary to them on the regular scale w.e.f. 17th November, 1997. It was further directed therein that if the respondent/University rejects the claim for one or other grounds, the reason was to be communicated to the petitioners.

6. It is, thus, obvious that the learned Single Judge on this occasion, although had remitted the matter to the Vice Chancellor to inquire into the matter, it clearly put restriction upon the authority not to go beyond the issue as to whether the services of the petitioners-appellants were regularized w.e.f. 17th November, 1997 vide Notification dated 14/15.10.1993. But, the Vice Chancellor on this occasion, instead of, entering into the question as to whether the Notification, in fact, had been issued on 14/15.10.1998 or not, went on scrutinizing as to whether the services of the petitioners-appellants were fit to be regularized or not and for doing so, it started digging the old grave i.e. the dispute which existed prior to 1997, completely missing that the dispute which existed prior to the period of 1997, had already reached to a conclusion when the learned Single Judge vide order dated 17.3.1998 directed the University to consider their case for regularization, giving them priority. Thereafter, when the Notification dated 14/15.10.1998 was issued, it was obvious that any dispute

that existed prior to 1997, had come to an end by virtue of the order dated 17.3.1998 passed in CWJC No. 3739 of 1995R. Unfortunately for the petitioners-appellants, the Vice Chancellor raked up even those disputes which were not even required to be gone into, as the remand obviously was related to the question as to whether the Notification dated 14/15.10.1998 was a correct and genuine notification or not. The Vice Chancellor, no doubt, went into the correctness of this Notification also but while doing so, he recorded that no order for regularization of the petitioners had been passed and the Registrar of the University had exceeded his jurisdiction by issuing a Notification dated 14/15.10.1998.

7. However, the Vice Chancellor as also the counsel for the respondent-University completely missed that there was no order in existence, cancelling the Notification dated 14/15.10.1998 and, therefore, the enquiry could not have been gone into in absence of any order of cancellation which could indicate that the Notification dated 14/15.10.1998 had been cancelled. The counsel for the University, however, relied upon the Noting of some file, indicating that the Notification dated 14/15.10.1998 should be cancelled. But, the said Noting finally never culminated into an order with the result that the Notification dated 14/15.10.1998 was never ever cancelled and the same remained on the file giving a clear reason to the appellants to continue in the job on which they had been discharging their duties and yet were not paid salary. Fortunately for the appellants, they received salary by virtue of the order passed by the learned Single Judge in a contempt petition which had been filed by the appellants-petitioners.

8. As already stated, the controversy did not come to an end even after this, as the matter was remitted to the Vice Chancellor to inquire into the correctness of the plea raised by the petitioners as to whether they had been regularized vide Notification dated 14/15.10.1998 but the Vice Chancellor traversed beyond the scope of the order of the remand and went into a scrutiny of the past history which had come to an end, when the plea of regularization of the appellants had been rejected but a liberty was left open to consider their cases and the University thereafter reconsidered and issued a Notification, which was never cancelled or withdrawn, except a Noting that was put on the File. Thus, the validity of the Notification dated 14/15.10.1998 could not have been assailed by the Vice Chancellor while rejecting the representation of the petitioners-appellants by which they had claimed their salary.

9. It is informed and could not be denied that the appellants all these years had been discharging duties without payment of salary as they were confident that in pursuance of the Notification dated 14/15.10.1998, they are bound to get salary sooner or later since the said Notification was never withdrawn or cancelled. But the order of remand opened another gate of litigation as the representation of the petitioners-appellants was rejected by the Vice Chancellor holding therein that they were not fit for regularization and salary could not be paid to them,

which they had challenged by filing writ petition being W.P.(S) No. 7002 of 2002, out of which this appeal arises and as already stated, the writ petition was rejected by the learned Single Judge holding therein that the claim of regularization was not fit to be sustained in view of the history that was related by the learned Single Judge in the order passed in CWJC No. 3739 of 1995R.

10. From the aforesaid fact it is crystal clear that the entire edifice of the plea of the petitioners-appellants rests on the Notification dated 14/15.10.1998 by which their services had been regularized and this notification was issued pursuant to direction issued by the learned Single Judge in CWJC No. 3739 of 1995R to the effect that the University should rethink and consider their claim on priority basis for absorption against the posts if the same was created in the near future. In pursuance of this order, the University had issued Notification dated 14/15.10.1998 and yet the controversy was not set at rest.

11. On an analysis of the fact leading upto the filing of this appeal, it is clear that the entire matter should have been set at rest once the Notification dated 14/15.10.1998 was issued in their favour as there was no scope left for the University to raise further controversy since the notification had never been cancelled. In spite of this, the University did not pay the salary to the petitioners-appellants but at the same time did not restrain them from discharging duty, which action of the University obviously cannot be treated to be just, fair and proper in any manner.

12. The learned Single Judge although has taken into consideration the two judgments/orders passed against the petitioners, completely missed the efficacy and impact of the Notification dated 14/15.10.1998, which has led to an erroneous conclusion. In our view, the order of the learned Single Judge, therefore, is fit to be quashed and set aside and the appeal is fit to be allowed.

13. The question, however, still remains as to whether the petitioners-appellants on their reinstatement would be entitled to claim their salaries for the period during which they had not discharged their duties or had been restrained from discharging duties.

14. The traditional school of thought reflected in various decisions although might give a reason to hold that once the appellants were illegally and wrongly restrained from discharging their duties and the same having been found to be illegal they should be entitled for arrears of salary for the period for which they were restrained from discharging their duties. But, we have found that the appellants have already been paid their salary for the period during which they had discharged their duties by virtue of the order passed by the learned Single Judge in a Contempt petition, arising out of CNJC No. 3845 of 2000R, upto March, 2003. But the learned Single Judge had not allowed the writ petition in favour of the appellants rather liberty was granted to the Vice Chancellor to enter into the correctness of the plea of the appellants as to whether they were fit to be regularized in service or not, in view of the Notification dated 14/15.10.1993.

15. Thus, during the period i.e. after the matter was remanded to the Vice Chancellor, the appellants were rightly not allowed to discharge their duties, since the final relief had not been granted to the appellants and hence the University, was well within its right to enter into the correctness of the Notification dated 14/15.10.1998 as this liberty was left open to be considered by the Vice Chancellor during this period. If the appellants thus were not allowed to discharge their duties and consequently not allowed to receive the salary, the same cannot be granted to them as they were not in service during this period by virtue of the order of the Court as the Notification dated 14/15.10.1998 was never held to be correct by the learned Single Judge although he had remitted the matter to the Vice Chancellor to consider the efficacy and existence of the said Notification. The Appellants, therefore, cannot claim arrears of salary for this period, which they have fairly not claimed even as per the statement of their counsel. But, in so far their reinstatement in service is concerned, in pursuance to the Notification dated 14/15.10.1993, the same cannot be denied for the reasons stated hereinbefore.

16. The appeal, therefore, is allowed and the appellants shall be reinstated on class-IV posts i of Laboratory Boy and Gas Man expeditiously and preferably within a fortnight of the receipt of the copy of this judgment and order. Consequently, they shall be entitled to the salary for the post(s) on which they are to be reinstated.