

(2006) 06 JH CK 0013
In the Jharkhand High Court
Case No : L.P.A. No. 279 of 2004

Ranchi University

APPELLANT

Vs

Sri Parsuram Singh

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2(1), 25F

Citation : (2006) 4 JCR 373 : (2007) 1 LLJ 256 : (2006) 111 FLR 41

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; D.K. Sinha, J

Bench : Division Bench

Advocate : A.K. Mehta, for the Appellant; S.B. Gadodia and Sumeet Kumar Gadodia, J.C., for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. Both these appeals have been preferred by Ranchi University, Ranchi, against the common judgment dated 1st March 2004 passed by the learned Single Judge in C.W.J.C. No. 90 of 2001 and C.W.J.C. No. 308 of 2001, whereby and whereunder the learned Single Judge while dismissed both the writ petitions preferred by the Ranchi University, Ranchi, affirmed the common Award dated 15th July 1999 passed by the Presiding Officer, Labour Court, Ranchi, in Reference Case Nos. 10 of 1996 and 1 of 199.

2. By the aforesaid common Award dated 15th July 1999, the Labour Court answered the reference in favour of the workmen-respondents, holding their orders of termination illegal and unjustified and directed the Ranchi University to reinstate them with full back wages and other consequential benefits.

3. One of the questions was raised by the University as to whether the University is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the I.D. Act, 1947), but such question is not required to be answered in this case, in view of seven Judge decision of the

Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In the said case while discussing the meaning and scope of "Industry" the Supreme Court held that "educational Institution" including the University is an "Industry".

4. In the present case now the only question required to be determined is "whether the termination of respondents" fall within the definition of "Retrenchment" within the meaning of Section 2(oo) of the I.D. Act, 1947 ?".

5. The brief fact of the case is that the Governor of Bihar in exercise of power conferred u/s 10 of the I.D. Act, 1947 made the following terms of reference for adjudication by the Labour Court, Ranchi, vide notification No. 3/DI-11019/19 L & E -440 dated 8th June 1996 in respect to Sri Parsuram Singh."

Whether the termination of services of Sri Parsuram Singh by the Management of Marwari College, Ranchi, is justified? If not, what relief he is entitled to.

6. By another notification No. 3/D1-11046/94 L&E-1108 dated 18th November 1996 the Governor of Bihar made the following terms of reference to Labour Court, Ranchi, for adjudication in respect to Sri Mahip Narayan Singh :

Whether termination of services of Sri Mahip Narayan Singh by the Management of Marwari College, Ranchi, is justified? If not, what relief the workman is entitled to ?

7. The aforesaid two references were registered as Reference Case No. 10 of 1996 (In respect to Sri Parsuram Singh) and Reference Case No. 1 of 1997 (in respect to Mahip Narayan Singh); were heard together and were decided by the common judgment/Award dated 18th July 1999.

8. The case of respondents Sri Parsuram Singh and Mahip Narayan Singh before the Labour Court, Ranchi were as follows:

According to Sri Parsuram Singh there being vacancy in G.L.A. College, Daltonganj, he applied and was appointed by the Principal, G.L.A. College, Daltonganj as an "Assistant" vide a letter dated 14th November 1986 in the scale of Rs. 580-860 per month and he joined the post on 19th November 1986. The similar the case of Mahip Narayan Singh was that for the post of peon in G.L.A. College, Daltonganj, he applied and was appointed by the Principal. G.L.A. College, Daltonganj, as "Peon" vide letter dated 15th December 1986 in the scale of Rs. 350-425.

Further case of both Sri Parsuram Singh and Sri Mahip Narayan Singh was that while they were working in G.L.A. college, Daltonganj, the Vice-Chancellor, Ranchi University, Ranchi approved their appointments and communicated it vide letter dated 11th April 1990 issued by the Registrar, Ranchi University, Ranchi, in favour of Principal, G.L.A. College, Daltonganj. Thereafter, by Order No. RU/V.C./1329-33/90 dated 15th June 1990 the services of Sri Parsuram Singh was transferred to Marwari College, Ranchi, and pursuance to the said letter he joined

on 16th June 1990 in Marwari College, Ranchi. Sri Mahip Narayan Singh. Was also transferred vide Order No. RU/V.C./4491-98/90 dated 25th June 1990 to Marwari College, Ranchi, where he joined on 26th June 1990.

It appears that the Principal, Marwari College, Ranchi, by his letter No. 192 dated 6th November 1992 directed both Sri Parsuram Singh and Sri Mahip Narayan Singh to submit their personal records and service books. The Principal, Marwari College, Ranchi, thereafter, stopped their salary.

According to Respondents their services were terminated by a verbal order. When they requested to disclose the reason for termination, they were handed over with a copy of the impugned letter No. B/6630 dated 22nd July 1993 issued under the signature of the Registrar, Ranchi University, Ranchi. By the said letter their services were terminated along with another on the ground that they were not appointed in the G.L.A. College, Daltonganj, and their orders of transfer was based on wrong information.

Further case of respondents Sri Parsuram Singh and Sri Mahip Narayan Singh was that no departmental proceeding was ever initiated against them; no charge sheet was ever issued for the alleged submission of false information and without any enquiry or finding their services were terminated. An F.I.R. was ordered to be lodged. Before the Labour Court It was alleged that their termination orders were illegal, invalid, improper, unjustified and against the Principle of Law having been passed in violation of mandatory provision of Section 25F of the I.D. Act, 1947. It was also alleged that they were not paid salary nor paid any compensation as per Section 25F of the I.D. Act, 1947.

9. The case of the Ranchi University, Ranchi, before the Labour Court, Ranchi, was that one Sri Bahadur Singh was the Principal, G.L.A. College, Daltonganj, between the years 1985 to 1990. Said Sri Bahadur Singh had developed corrupt practices resorting to illegal acts misusing the authority of the post of the Principal to meet his undeserving wisdom including financial gain. Under such oblique motive and malafide intention Sri Bahadur Singh committed various misdeeds and made some illegal appointment of non-teaching staff without having any authority to do so. Subsequently all the misdeeds of Sri Bahadur Singh were detected for which he was suspended and disciplinary action was taken against him. Criminal case was also lodged against Sri Bahadur Singh.

10. It was specifically pleaded that Sri Bahadur Singh, the then Principal of G.L.A. College, Daltonganj had no authority to appoint any non-teaching staff in the constituent college. The appointment letter of Sri Parsuram Singh and Sri Mahip Narayan Singh were not issued from the college. They were issued by Sri Bahadur Singh, the then Principal of G.L.A. College, Daltonganj, may be, from his residence but there were never documented in the college Register or other documents; the appointments were made without following the procedures; the posts were not sanctioned as per Law; there was no vacant post to appoint either Sri Parsuram Singh or Sri Mahip Narayan Singh. The appointments were alleged

to be illegal and void ab-initio having been made in violation of procedure laid down under Bihar State Universities Act 1976.

11. It was specifically pleaded that Sri Parsuram Singh and Sri Mahip Narayan Singh were never paid salary in G.L.A. College, Daltonganj. Their names were not recorded in the Acquittance Roll, nor they made their attendance in G.L.A. College, Daltonganj. A false order of transfer was shown to have been issued showing them transferred to Marwari College, Ranchi, and by way of transfer they were inducted in the service of Marwari College first time in the month of June 1990. The order of transfer was obtained by duping the authorities of the University. The order of transfer was got issued as Sri Bahadur Singh, the then Principal of G.L.A. College, Daltonganj, was transferred by that time to Marwari College, Ranchi. However, immediately thereafter when one Sri G.P. Tulsyan took charge of Principal could find out all the foul game in the matter of appointment by way of transfer of Sri Parsuram Singh and Sri Mahip Narayan Singh, hence, he asked them to submit necessary papers/documents with regard to their service in G.L.A. College, Daltonganj, which they could not produce. Non-production of the documents further gave doubt and hence he wrote several letters to the Principal of G.L.A. College, Daltonganj and requested to submit all the related papers/documents. The last letter was dated 14th September 1992. It was not responded to by the Principal, G.L.A. College, Daltonganj, so, the matter was brought to the notice of the Registrar, Ranchi University, Ranchi and the University was asked for its instruction. The Registrar, Ranchi University, Ranchi, sent special messenger vide letter dated 12th July 1993 to the Principal/ Prof.-in-charge of G.L.A. College, Daltonganj, to forward the Photo copy of Acquittance Roll of non-teaching staffs of G.L.A. College, Daltonganj for the month of May 1990 onward and to forward the copies of the salary sheet in respect to the non-teaching staffs of G.L.A. College. The Prof.-in-charge Sri B.K. Pathak of G.L.A. College, Daltonganj, in compliance of the University's letter forwarded the photo copy of Acquittance Roll and salary sheets of the non-teaching staff of the G.L.A. College, Daltonganj, vide letter dated 14th July 1993 and brought to the notice of the Registrar that Sri Parsuram Singh and Sri Mahip Narayan Singh and two others were never in the services of G.L.A. College, Daltonganj and their names were not appearing in the Acquittance Roll or salary sheet. Thereafter, the University, issued the impugned letter No. B/6630 dated 22nd July 1993 terminating the services of Sri Parsuram Singh and Sri Mahip Narayan Singh.

12. The Presiding Officer, Labour Court, Ranchi having noticed the aforesaid facts and perusal of statement of the witnesses made the following observations:

...Ext. B series are salary sheets of G.L.A. College, Daltonganj, for July 88, Dec., 89 and May 90, Ext. C is payment sheet. Admittedly the name of concerned workmen are not mentioned in Ext. B and C. Ext. D is the Acquittance Roll. These documents also do not bear the name of the concerned workmen. Both the concerned workmen while deposing in this Court as W.W.1 and W.W.2 admitted that they were not paid either prior or after of the approval. Thus, above

documents are not of any important.

...M.W.1 Umeshwar Pathak, Head Clerk, G.L.A. College, Daltonganj in the second sentence of itself stated that Parsuram Singh and Mahip Narayan Singh are not known to him. He admitted the signature of the then Principal Ext.1 and Ext.1/E. Admittedly Ext.1 and 1/E are the appointment letters of the concerned workmen. According to him those letters were issued at the residence of the Principal and never reached the office. From this it is clear that Ext.1 and 1/E are genuine.

... M.W.2 Jagarnath Prasad, Accountant, G.L.A. College, Daltonganj has been examined inspite that concerned workmen were neither appointed nor served at any time in G.L.A. College, Daltonganj. He also identified the signature of Dr. Bahadur Singh, the then Principal, G.L.A. college on Ext.1 and 1/E. According to him those papers are forged but I do not find any fact stated by him to substantiate that Ext.1 and 1/E are forged. In cross-examination, he clarified that due to non-availability of its copy in his office he termed as forged. To my view this explanation is not sufficient to prove any document as forged.

...M.W.3 Ram Narayan Prasad, Asstt. Registrar, Ranch University, Ranchi proved certain documents and said that there was an enquiry regarding the appointment and transfer of the concerned workmen. According to this witness in view of Ext. A the appointment and transfer was obtained by playing fraud. This witness has not alleged that fraud was played by the concerned workmen.

...MW.4 B.K. Pathak is retired professor and head Deptt., G.L.A. College, Daltonganj proved Ext. A and A/1 and stated that Parsuram Singh and Mahip Narayan Singh never worked in the college. This witness also never alleged any allegation against the concerned workmen.

...It is dear that services of the concerned workmen was terminated presuming that they were neither employed in a G.L.A. College, Daltonganj nor worked there for any period. This charge has not been substantiated.

13. From the aforesaid facts; evidence on records and finding of the Labour Court the following facts emerged :

i. Sri Parsuram Singh and Sri Mahip Narayan Singh were never appointed in pursuance of any advertisement; no interview was taken; nor any selection list was prepared.

ii. Exts.1 and 1/E, so called letter of appointment dated 14th November 1986 and 15th December 1986 were issued by Sri Bahadur Singh, the then Principal of G.L.A. College, Daltonganj.

iii. The letter of appointments was not issued from the college; nor any documents available in the college with regard to appointment of Sri Parsuram Singh and Sri Mahip Narayan Singh.

iv. The principal, G.L.A. College, Daltonganj has no jurisdiction to appoint class III and class IV employees in the constituent college.

v. The university specifically pleaded that the appointments were not made against any vacant post nor any sanctioned post. It was not denied nor proved by the respondents.

vi. Sri Parsuram Singh and Sri Mahip Narayan Singh while appearing as W.W. 1 and W.W. 2 have admitted in their cross examination that they were not paid salary either prior or after the approval that means they were never paid salary either by the G.L.A. College, Daltonganj or by the Marwari College, Ranchi.

vii. Ext. B series and C Series i.e. salary sheets and payments sheets and Ext. D, acquittance roll show that Sri Parsuram Singh and Sri Mahip Narayan Singh were not in the roll of G.L.A. College, Daltonganj.

14. From the aforesaid facts it would be evident that Sri Parsuram Singh and Sri Mahip Narayan Singh were never appointed in the services of G.L.A. College, Daltonganj, therefore, the question of their transfer to Marwari College, Ranchi does not arise and the order of transfer to Marwari College, Ranchi can be held to be nonest in the eye of law.

15. So far as letters of appointment (Ext.1 and Ext. 1/E) are concerned, they having been issued by a person having no such jurisdiction and the appointments of Sri Parsuram Singh and Sri Mahip Narayan Singh having been made against no vacancy, the letters of appointment (Ext. 1 and Ext. 1/E) are void ab initio; they can be ignored for all purposes. Therefore Sri Parsuram Singh and Sri Mahip Narayan Singh were never in the services of G.L.A. College, Daltonganj or Marwari College, Ranchi or in the services of the Ranchi University and they can not be held to be employees of the college or the University and thereby they do not fall within the definition of "worker" as defined u/s 2(l) of the I/D. Act, 1947. Therefore the question of retrenchment as defined u/s 2(oo) or the I.D. Act, 1947 is not applicable in the case of Sri Parsuram Singh and Sri Mahip Narayan Singh.

16. There is nothing on the record to suggest that Principal of Marwari College, Ranchi orally terminated the services of Sri Parsuram Singh and Sri Mahip Narayan Singh. No such evidence was brought to the notice of the Presiding Officer, Labour Court, Ranchi. On the other hand Sri Parsuram Singh and Sri Mahip Narayan Singh in their evidence have stated that they were served with a copy of letter No. B/6630 dated 21st July 1993 issued by the University under the signature of Registrar, Ranchi University, Ranchi. But it was not challenged by them nor any reference was made by the competent authority regarding legality and propriety of the letter No. B/6630 dated 21st July 1993. The only reference was made "whether termination of services of respondents by the management of Marwari College, Ranchi was justified or not". In absence of any termination order by the Marwari College, Ranchi written or oral, there was no occasion for the Presiding Officer, Labour Court, Ranchi to hold the orders of termination were "not justified".

17. So far as the order of termination issued by the University under the

signature of the Registrar as contained in letter No. B/6630 dated 21st July 1993 is concerned, it cannot be held to be an order of termination. In fact the said letter shows that the University refused to recognize Sri Parsuram Singh and Sri Mahip Narayan Singh and one Sri Ranjan Kumar as employees of the University, as evident from the said letter and quoted herein under:

RANCHI UNIVERSITY RANCHI

No. B/6630 Dated 21.7.93

To

The Principal Marwari College, Ranchi.

Sub: Cases of 3 (three non-teaching employees transferred from G.L.A. College, Daltonganj to Marwari College.

Sir,

With reference to your letter No. App/10/10/93-94 dated 16.6.93, I have to inform you that after proper enquiry it has been found that the following three persons mentioned in your letter were neither employed in G.L.A. College, Daltonganj nor worked there for any period, what-so-ever. They can not therefore be treated as the employees of the university as the transfer orders were based on documents on false informations.

1. Sri Mahip Narayan Singh, Peon
2. Sri Ranjan Kumar, Lab-technician
3. Sri Parsuram Singh, L.D. assistant

The transfer letters issued by the university as contained in memo No. RU/VC/4457-64/98 dt. 14.6.90, memo No. RU/VC/1329-33/90 dated 15.6.90 and RU/VC/4491-98/90 dated 25.6.90 are cancelled and therefore the services of these persons stand terminated with the dates of their joining your college and a case of forgery has been lodged with the police as an FIR

Yours faithfully

sd/- A. Prasad

21/7/93

REGISTRAR RANCHI UNIVERSITY, RANCHI

18. The University having not recognized Sri Parsuram Singh and Sri Mahip Narayan Singh as the employees of the University, there was no question of termination of their services and the sentence "services of these persons stand terminated" as used in the letter dated 21st July 1993 for all purposes to be treated as redundant in the eye of law. In any case both the respondents having not challenged the letter dated 21st July 1993, as quoted above, no reference

with regard to the legality and propriety of such letter having been made by the competent Government, the question of reinstatement of Sri Parsuram Singh and Sri Mahip Narayan Singh with full back wages do not arise.

19. In the facts and circumstances while we hold that the cases of Sri Parsuram Singh and Sri Mahip Narayan Singh do not fall within the meaning of "retrenchment" as defined u/s 2(oo) of the Act, hold the common Award dated 15th July 1999 passed by the Presiding Officer, Labour Court, Ranchi, in Reference Case Nos. 10 of 1995 and 1 of 1997 as illegal. Consequently, we set aside the Award aforesaid as also the common judgment dated 1st March 2004 passed by the learned Single Judge in C.W.J.C. No. 90 of 2001 and C.W.J.C. No. 308 of 2001.

20. Both the appeals are allowed with the aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to the costs.