
(2008) 07 JH CK 0163
In the Jharkhand High Court

Santlal Sah @ Shah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Citation : (2008) 4 JCR 2

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—Appellant Santlal Sah has preferred this appeal under Clause 10 of the Letters Patent against the order passed by the learned single Judge in WP(S) No. 4637 of 2005 on 17.9.2007 whereby the learned single Judge dismissed the writ by refusing to quash the termination order of the appellant as contained in memo No. 765 dated 30.6.2005.

2. Appellant was initially appointed as Assistant Teacher on the recommendation of District Establishment Committee pursuant to the letter issued by the Special Secretary, Department of Education, Government of Bihar, Patna in the year 1983. Appellant stated that on account of certain dispute, salary of the appellant and others was stopped for which they preferred writ vide CWJC No. 5860 of 1984 which was disposed of by the Patna High Court on 12.2.1985 with the direction to the respondents-authorities to release their salary. It is further stated that after some time, the respondents-authorities terminated him from the service and against the said order of termination, he preferred another CWJC No. 407 of 1985. Writ was admitted and stay was granted therein on 1.2.1985. Appellant in view of the stay order continued in the service but it was finally disposed of on 13.5.1996 with the direction to the respondents-authorities to conduct an enquiry within eight weeks with the opportunity to the appellant to be heard. The enquiry could not be conducted and concluded within the stipulated period of eight weeks inspite of the fact that in the meantime the appellant herein obtained certified copy of the order of the Patna High Court dated

13.5.1996 and produced the same before the authority concerned but without action till the impugned order of his termination dated 30.6.2005.

3. Learned Counsel submitted that the appellant served the department continuously till his termination by dedicating the valuable period of his life in rendering services in the teaching job for about 22 years but the respondents-authorities took long ten years in coming to conclusion and ultimately he was terminated without assigning reasons.

4. It was pointed out that respondents-authorities served show-cause notice upon the appellant vide memo No. 712 dated 6.4.1998 and stopped the salary but having been satisfied with the causes shown by the appellant, his salary was released and since then he was continuously working without break until his termination.

5. According to learned Counsel, appellant had submitted his representation before the respondents-authorities on 8.2.2005 with the relevant supporting papers together with copy of his explanation already given dated 22.5.1996 but of no avail and he was terminated without taking into account of his long twenty-two years of unblemished service.

6. Appellant assailed the order of learned single Judge on the ground that his writ vide WP (S) No. 4637 of 2005 was dismissed relying upon the Girdhari Sah's case, reported in 2003(3) JCR 465 whereas the case of the appellant was entirely on different footing and further learned single Judge failed to consider while dismissing the writ of the appellant that the respondents-authorities took long ten years in taking decision though it was directed to conduct the enquiry within eight weeks which caused prejudice to the appellant.

7. Heard Mr. B.N. Tiwary, JC to Sr. SC-I on behalf of the respondents.

8. We are very much conscious about the grounds taken in this appeal that the appellant was terminated on 30.6.2005 after, long ten years of the order passed by the Patna High Court in CWJC. No. 407 of 1985, whereby respondents-authorities vide order dated 13.5.1996 were directed to conduct and conclude the enquiry within eight weeks with the opportunity to the appellant to be heard.

9. The writ petition of the appellant was dismissed by the learned single Judge under the following observation,

8. There is nothing to show that petitioners were appointed after following the legal procedure. They were not selected and included in the final panel which was prepared far back in 1994 after considering the objections. Their claim for relaxing the age bar was also rejected in 1996. Petitioners continued illegally, apparently in collusion with the erring officers of the department. They cannot be heard to say that as they have continued for a long period, their case is different from similarly situated persons, who were not reappointed or were removed from service due to non-inclusion of their names in the final panel. Mr. Singh submitted that, as the petitioners were allowed to continue, they did not

challenge the final panel prepared in 1994 and the rejection of their claim in 1996 on the ground of over age. Such submission is wholly fallacious and unacceptable. Petitioners had no right to continue, and only because of such illegal continuance, they did not acquire any right. Further, in the facts and circumstances, noticed above, it also cannot be accepted that before removing them, a departmental proceeding should have been started. In view of Full Bench Judgment (1991) 1 BLJR 441 and the Division Bench Judgment 1994 (1) BLJR 68 the rules of natural justice were not required to be followed in such cases. However, show cause notices were issued to the petitioners but they could not show any basis for their continuance in service. When similarly situated persons have not been reappointed or have been removed, petitioners cannot be allowed to continue.

The contention of Mr. Singh that these cases are not covered by the judgments of High Court and Supreme Court is also not acceptable. These writ petitions are fully covered by the judgment of Girdhari Sah and Ors. (supra) affirmed in LPA No. 477 of 2003 on 23.8.2004, and then in S.L.A. (Civil) No. 1493-1494/2005 by Hon"ble Supreme Court on 31.1.2005.

10. Learned Counsel for the appellant failed to satisfy that the appellant and others were appointed after following the legal procedure and they were not selected and included in the final panel prepared in the year 1994 after considering the objections raised.

11. We are in agreement with the learned single Judge when observed that the submission made on behalf of the appellant was wholly fallacious and unacceptable on the ground that as the appellant and others were allowed to continue, they did not prefer to challenge the final panel prepared in 1994.

12. We find that the learned single Judge after conscious consideration did not find sustainable claim of the appellant as his very entry in the job was through illegal process which cannot be legalised because he served for 22 years. The learned Counsel for the appellant failed to show any ground so as to call for interference in the order passed by the learned single Judge in WP(S) No. 4637 of 2005 on 17.9.2007.

13. There being no merit, this appeal is dismissed.