

(2008) 07 JH CK 0039
In the Jharkhand High Court

Shaikh Irshad Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Citation : (2008) 3 JCR 518

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Petitioner has filed the instant writ application with a prayer for directing the respondents to count the services of the petitioner as continuity of service on and from his date of appointment i.e. 1.1.1989 and also to make payment of full back wages to the petitioner which has not been paid to him since November 1991 till 29.8.1992 and further, additional amount of salary accrued since after termination of his service on 23.7.1992 till the date of his reinstatement on 5.2.2000.

2. Shri Mahesh Tiwari, learned Counsel for the petitioner explains that the petitioner was employed in the Education Department under the State Government and he was absorbed in services on 1.1.1989. After he put in continued service till July 1992, he was served with an order of termination of his service on 23.7.1992 on the ground that his appointment was not in consonance with the procedure in as much as, the authority under whose instruction appointment was made, did not have the powers to sanction for the appointment.

The petitioner and other employees whose cases were identical to that of the petitioner, had challenged the orders of their termination before the Patna High Court vide CWJC No. 3825 of 1993 (R) and other writ applications which were disposed of by the Court on different dates commencing from 18.3.1994 to 3.3.1998. While disposing of one of the writ applications being CWJC No. 520 of 1996 (R) vide order dated 3.3.1998. this Court allowed the prayer of the petitioners and directed the respondents to consider the representation of the petitioners for their reinstatement in service since the ground on which service of

the petitioner was terminated was untenable. Against this order. State of Bihar moved in appeal vide L.P.A. No. 439 of 1998 (R), but the same was dismissed by this Court vide order dated 7.9.2000. Thereafter, pursuant to the representation filed by other employees, they were reinstated in service and, the petitioner also gained benefit of reinstatement from 5.2.2000. However, despite the order passed by the High Court in the aforesaid writ petitions, directing the respondents not only to consider the cases of the petitioners for their reinstatement, but also to grant them all consequential benefits, the respondents have not counted the period of service of the petitioner from the date of his initial appointment, nor have they paid salary to the petitioner which was due to him from the date of his appointment. It is further stated that the representation of the petitioner has not been disposed of and on the contrary, a declaration as appearing in the counter-affidavit of the respondents has been made to the effect that the petitioner is entitled to counting of his service from the date of his reinstatement, suggesting thereby that he will not be paid his arrears of salary for the period commencing from the date of his initial appointment.

3. Counter-affidavit has been filed on behalf of the respondent No. 4 stating therein that since the petitioner's service was terminated on 23.7.1992, salary from 24.7.1992 to 29.8.1992 cannot be paid to him and likewise, no salary can be paid to him for the period prior to his reinstatement on 5.2.2000. It is stated that if salary since the month of November 1991 has not been paid to the petitioner, prior to 23.7.1992, the same shall be paid to him.

4. It appears from the Annexures in eluding the copy of the judgment passed in CWJC No. 520 of 1996 (R) filed by the petitioner and others that by order dated 3.3.1998 the observation corresponding to a direction to the respondents was recorded in the following terms:

6. It appears that some retrenched employees similarly situated had been given that benefit, but the petitioners had not been given so. In that view of the matter, this writ petition is hereby allowed. The respondent No. 3. the Director, Secondary Education, New Secretariat at Patna and the respondent No. 4, the District Education Officer at Dhanbad are hereby directed to make provisions for the petitioners as similarly situated persons had already been given, so that they can continue in their service or if for some grounds their earlier appointments are said to be irregular or illegal then they should be given preference to be appointed in sanctioned posts which are lying vacant but in no case there should be any discrimination in respect of the petitioners when similarly situated persons had been given benefit by the orders of this Court. The petitioners should be provided job either in the continuity of the previous service or against a new post within two months next from the date of presentation of a copy of this Order from the side of the petitioners to the respective respondents.

5. It is informed by the learned Counsel for the petitioner and it has not been controverted by the respondents in their counter-affidavit that pursuant to the aforesaid order of the Court, representation of the petitioner and several other

employees was considered and their prayer for reinstatement was allowed and two of such employees namely, Badri Das and Manindra Kumar, have also been given the benefit of continuity of their service from the date of initial appointment till the date of their reinstatement. Furthermore, both these employees have been paid full back wages computed from the date of termination till the date of their reinstatement. Learned Counsel prays therefore that the same benefit should also be extended to the petitioner in the interest of equity and natural justice.

6. Considering the above facts, since it is informed by the counsel for the respondents that representation of the petitioner has not been finally disposed of by the respondents, the petitioner is directed to file a fresh representation in respect of his demand for counting continuity of his service from the date of his Initial appointment and for payment of arrears of salary, before the Director, Secondary Education, Project Building, Ranchi (respondent No. 2), who in his turn; shall consider the same and dispose of the representation, in accordance with the direction contained in the order of this Court passed on 3.3.1998 in CWJC No. 520 of 1996 (R) and also considering the fact that relief as claimed by the petitioner has already been acknowledged and given to other employees whose names have been mentioned above.

7. With the aforesaid observations and directions, this writ application is disposed of.