
(2004) 10 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 9912 of 2000

Shankar Kamal Kishore Singh and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 30
Constitution of India, 1950 — Article 226

Citation : (2005) 1 PLJR 394

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh, Dilip Kr. Tiwari, S.B.K. Mangalam, Pramod Kumar, Mr. Kant Pandey and Ajay Kr. Sharma in 9912, 11804, 12675, 13782 of 2000 and 947/2001, M/s R.P. Singh No. 5, Rakesh Kr. Singh, J.P. Sharma and Santosh Kr. Jha in 995, for the Appellant; Bijay Kr. Pandey, S.K. Singh, A.K. Sharma and S. Kumar, Sanjay Singh and C.K.P. Bhagat, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In all the writ applications, common question of law with little variation on facts arise and as such, they are being disposed of by this common judgment. Petitioners are teachers and for the purpose of relief can be classified in two sets. Prayer of one set of the petitioners is to quash the order whereby the promotions granted to them in Intermediate trained scale and Graduate trained scale have been cancelled, whereas the prayer of the another set, is to quash the order by which their dates of promotions in the aforesaid scales have been shifted to later dates.

2. Shorn of unnecessary details, facts giving rise to the present applications are that the State Government, under the National Education Policy, on the recommendation of the Central Education Council created 471 posts of Agriculture Teachers in the year 1972-73 prescribing the qualification of Matriculation with Diploma in Agriculture for such an appointment. Out of 471 posts, 71 posts were in the scale of Rs. 240-396/- and remaining 400 posts were

created in the scale of Rs. 150/- per month. Later on, all the 471 posts were made permanent in the scale of Rs. 240-396/-and such of the Matriculate Teachers who had training or Diploma in Agriculture were regularised as Agriculture teachers on 1.3.1975.

3. The Director of Primary Education, by its letter dated 17th of August, 1988, directed that the Agriculture Teachers also belong to the cadre of Assistant Teachers in the Bihar Lower Subordinate Education Service, hereinafter referred to as the "BLSES". Assistant Teachers, other than Agriculture teachers, hereinafter referred to as the General Teachers, aggrieved by the same, filed C.W.J.C. No. 8899 of 1988 before this Court, inter alia, contending that the Agriculture Teachers cannot be included in the cadre of BLSES along with them. The Agriculture Teachers, however, contended that they belong to the BLSES and they are entitled to be given the benefit of that service. The writ application filed by them was registered as C.W.J.C No. 9003 of 1988 (Ishwar Mahto & Ors. vs. The State of Bihar & Ors.). The writ application filed by the Agriculture Teachers and General Teachers were taken up together and disposed of by a Division Bench of this Court by common judgment dated 3rd of August, 1995 in the following words:

"The grant of promotion to the Science Teachers without considering the cases of the petitioners who claimed to be senior to the Science Teachers was, therefore, unjustified and even though the promotion of the Science Teachers has been upheld by this Court, the judgment and order of this Court as well as the order granting promotion to the Science Teachers, do not prevent the State from considering the cases of the petitioners and to include their names in the Gradation List in the order of seniority even if that adversely affects the seniority of the Science Teachers. We are not required to express any opinion at this stage about the relative seniority of the petitioners and the Science Teachers because that is a matter which must be decided by the concerned authorities in accordance with law. In the result, C.W.J.C. No. 9003 of 1988, 1232 of 1993 and 1717 of 1993 are allowed to the extent that it is declared that the petitioners are Assistant Teachers in Agriculture belong to the cadre of Assistant Teachers in the BLSES and that their names should be included in the Gradation List maintained at the Divisional Level. They will be entitled to all consequential benefits. The respondents must revise the Gradation List, if necessary, after including the names of the petitioners, in the Gradation List. Since the petitioners have been waiting for several years, the Regional Deputy Director of Darbhanga is directed to implement this order within period of three months from the date of which a copy of this order is either served upon him or received by him in an ordinary course whichever is earlier. C.W.J.C. No. 8899 of 1988 is rejected on a finding that the Assistant Teachers (Agriculture) cannot be excluded from the Gradation List as they belong to the cadre of Assistant Teachers in the BLSES."

4. The General Teachers aggrieved by the aforesaid judgment of this Court, preferred Special Leave to appeal which was registered as SLP No. 26271 of

1995 and the Supreme Court, by its interim order dated 1st of November, 1996, directed the State Government to take a decision in regard to the claim of the Assistant Teachers, Agriculture and General Teachers, notwithstanding the decision of the High Court, within six weeks. Relevant portion of the order of the Supreme Court reads as follows:

"XXX We, therefore, direct the State Government to take a decision in this matter notwithstanding the impugned decision of the High Court and communicate the same to this Court within six weeks from the date of the receipt of this order. "XXX

5. It seems that the Supreme Court gave the aforesaid direction on the plea of the General teachers that it is only the State Government which can amalgamate the Agriculture teachers in "BLSES" and not the Director. It is relevant here to state that even prior to the aforesaid order of the Supreme Court, the Secondary Primary and Adult Education Department of the Government of Bihar had sent a memorandum dated 21.5.1994 to the Cabinet with the proposal for amalgamation of the Agriculture Teachers in the BLSES. After the aforesaid order of the Supreme Court, the State Government came out with a resolution dated 19.3.1997 that the Agriculture Teachers working in the Government Basic Schools, shall be amalgamated in the BLSES (Primary) and their seniority shall be reckoned from the date of their original appointment in the matric trained scale. It specifically provided that the aforesaid decision shall be effective from the date of resolution that is 19.3.1997. Thereafter, the matter was taken up by the Supreme Court and finally the SLP preferred against the Division Bench judgment of this Court, was dismissed by order dated 23.10.1997.

6. While dismissing the said petition, the Supreme Court took into consideration the resolution of the State Government dated 19.3.1997 whereby it had decided that the Agriculture Teachers working in Govt. Basic Schools shall be merged in the BLSES (Primary), the seniority of Agriculture Teachers will be determined from the date of their appointment in the matric trained scale and Agriculture Teachers shall be given all the facilities like General Teachers of Government Basic Schools. The Supreme Court ultimately directed that the Agriculture Teachers will get the benefit of the Government's resolution merging them in the cadre of BLSES (Primary) in the following words:

"Therefore we do not see any reason to entertain these special leave petitions. We would, however, like to make it clear (1) that only those teachers who have been regularised and who possess diploma in agriculture or training qualification will get the benefit of the Government Resolution merging Agriculture Teachers in the cadre of Lower Subordinate Service (Primary); (ii) Their seniority will be determined from the date of their regular appointment; (iii) in the case of those teachers who have obtained a diploma or training qualification subsequent to their regular appointment, the seniority will be determined from the date of the acquisition of such qualification."

7. In the light of the judgment of this Court and of the Supreme Court, the Director of Primary Education, by letter dated 31st of December, 1997 directed all the Regional Deputy Directors to ensure their compliance and prepare seniority list accordingly. In the light of the aforesaid order, the position of the Agriculture Teachers in the seniority list became higher and accordingly, the promotions granted to the petitioners in Intermediate trained scale and Graduate trained scale have either been cancelled or their dates of promotions have been shifted to latter dates.

8. It is not in dispute that petitioners who are General Teachers, were granted promotion in Intermediate and Graduate trained scales without considering the case of the Agriculture Teachers, notwithstanding the decision of the Director dated 17.8.1988 and the judgment of Division Bench of this Court dated 3rd of August, 1995. After the judgment of this Court and the Supreme Court dismissing the Special Leave Petition, it was found that had the case of the Agriculture Teachers been considered along with General Teachers, they ought not to have got promotion in higher scale and accordingly by the impugned orders, their promotions have been cancelled and in some of the cases, same have been shifted to latter dates.

9. Mr. Ganesh Prasad Singh, Senior Advocate appearing on behalf of the petitioners submits that the petitioners got the benefit of Intermediate and Graduate trained scales prior to the date of the resolution, that is, 19.3.1997 which had specifically provided that the resolution of merger shall be effective from the date of its issuance, the benefits given to them, cannot be withdrawn after the judgment of the Supreme Court. He also highlights that the resolution of the State Government providing for the merger of the Agriculture Teachers in "BLSES" has been approved by the Supreme Court and as such, not only the said resolution, had merged in the order of the Supreme Court, but also the decision of the Division Bench of this Court which had directed to treat the Agriculture teachers as belonging to "BLSES".

10. Learned counsel representing the respondents, however, contend that the decision of merger was taken by the Director of Primary Education as back as on 17.8.1988 and the Agriculture Teachers filed writ application for its implementation whereas the General Teachers questioned the same and this Court in specific words directed the State Government to revise the Gradation List after including the Agriculture Teachers and the plea of the General Teachers for excluding the Agriculture Teachers was rejected. In view of aforesaid, the respondents contend that the resolution or no resolution, the respondents are bound by the order of this Court which has not been upset by the Supreme Court and as such, the benefit of that has to be given to the Agriculture Teachers and the petitioners having come in their way and got the benefits illegally have to be deprived of their benefits.

11. Having considered the rival submission, I find no substance in the submission of Mr. Singh. The controversy as to whether the Agriculture Teachers can be

included in the BLSES, in the light of the decision of the Director dated 17.8.1988 has been settled by this Court, by judgment dated 3rd of August, 1995, and it observed that the Agriculture Teachers cannot be excluded from the Gradation List as they belong to the cadre of Assistant Teacher in the BLSES. This Court further directed for revision of the Gradation List on that basis. Ignoring the same, petitioners have been given the Intermediate and Graduate trained scales and after the SLP against the judgment of this Court was dismissed, the respondents took steps to implement the order of this Court and Supreme Court leading to passing of the impugned orders either canceling the promotions or shifting to the latter dates. I am of the opinion that that allowing the petitioners to take benefit of Intermediate and Graduate trained scales without considering the case of Agriculture Teachers, shall be in the teeth of the decision of the Director dated 17.8.1988 affirmed by the Division Bench of this Court. In the circumstances, the State Government had no option than to cancel the same so that the benefits due to the Agriculture Teachers and flowing from the judgments of this Court and Supreme Court are given to them. I do not find any error in the same.

12. Mr. Singh then contends that in sum and substance the act of the respondents in cancelling the grant of Intermediate and Graduate trained scales amounts to depriving the petitioners the benefits which they have got prior to the merger and therefore, same is not permissible in the eye of law. In support of his submission, he has placed reliance on a Division Bench judgment of this Court in the case of Purshottam Singh and Ors., vs. The State of Bihar and Ors. reported in 1985 PLJR 1148 and my attention has been drawn to para-12 of the judgment which reads as follows:

"12.-The petitioners however, were not similarly situated. They were employed in Kosi Project Department which did not merge with the River Valley Project till 1968. Their claim that they were entitled to be promoted to the post of Asstt. Engineer according to the quota rule does not appear to be tenable. It cannot be disputed that respondent 5 to 8 and also 14 to 19 were performing duties of the Asst. Engineer from before the petitioner's promotion to the post of Asstt. Engineer. It is also not in dispute that the said respondents were confirmed as Asstt. Engineer with effect from the dates earlier than the dates of promotion of the petitioners as Asstt. Engineers. The petitioners have challenged the retrospective confirmation of the concerned respondents at a belated stage i.e. 1980. If the petitioners had seriously disputed that by occupying the post of S.D.Os respondents would be validly said to be working to the post of the status of Asstt. Engineers which would justify the retrospective appointment. From the documents marked annexures 9, 12 and 13 it appears that it was in the year 1955 that the Kosi Project Department was constituted. In 1960 the River Valley Project Department was created by bringing together the Gandak and the Sone Project Department including some posts of Irrigation Department on execution of River Valley Work. It was in this River Valley Project Department that the respondents were promoted temporarily as a overseer S.D.Os holding

independent charge. In 1968 the Kosi Department was also included and on 9.1.1969 the cadre of Asstt. Engineer of River Valley Project and of Irrigation Department were amalgamated. In this context it has been rightly contended on behalf of the respondents that the post of overseer S.D.Os being equivalent to the post of Asstt. Engineers, the retrospective confirmation of the respondents as Asstt. Engineers is valid and the petitioner's claim to earlier promotion on the supposition that they were entitled to the so called quota promotion in the River Valley Project Department is not maintainable, more so, in view of the fact that it has been held in *M.G. Sharan and Others Vs. State of Bihar and Others*, that River Valley Project Department was not under a separate cadre in the year 1964, 65 and 66. Alternatively it was also argued and in my opinion, rightly, that respondents were senior to the petitioners as overseer S.D. O. and they as such continue to be senior to the petitioners in the promoted cadre of Asstt. Engineers too."

13. I do not find any substance in the submission of Mr. Singh and the decision relied on is clearly distinguishable. The very assumption of the petitioners that the merger took place on account of passing of the resolution of the State Government dated 19th of March, 1997, is misconceived. In case, I uphold this contention, the judgment of the Division Bench of this Court, shall be rendered meaningless. Even at the cost of repetition. I may observe that in the writ applications filed by the Agriculture Teachers and General Teachers, the decision of the Director Primary Education dated 17.8.1988 deciding that the Agriculture Teachers belong to the BLSES was questioned by the General Teachers whereas the Agriculture Teachers prayed before this Court for its implementation. This Court, in specific term, directed for revision of the Gradation List considering the Agriculture Teachers to be belonging to the BLSES and the plea of General Teachers was rejected. Thus, the Government and its functionary were under an obligation to treat the Agriculture Teachers as belonging to BLSES. Ignoring the same, General Teachers were given the benefit. In view of the direction of this Court, the benefits given to them have to be withdrawn so that it is given to the Agriculture Teachers. By the impugned orders, the respondents have attempted to do the same but they have done it after the disposal of the SLP by the Supreme Court.

14. Mr. Singh then submits that the direction for recovery of the amount is bad as no fraud having been attributed to the petitioners, same is arbitrary. I do not find any substance in this submission of Mr. Singh also. Petitioners were given the higher scale which they were not entitled and once it is found so, nothing prevents the respondents from effecting recovery. Reference in this connection can be made to a decision of this Court in the case of *Vijay Kumar Singh and Others Vs. The State of Bihar and Others* in which it has been held as follows:

"29.-The question in the present case is as to whether the direction for recovery of excess payment made to the employees is valid or not. No doubt, there is no fraud or misrepresentation on the part of the appellants, but the fact remains

that this is not a case of only few teachers having been given the benefit. This is a case of interpretation of policy involving several crores of rupees. Large number of Assistant Teachers of the nationalised schools have been wrongly given benefit of additional increment though they are not entitled as admittedly they were not carrying the duties and responsibilities of greater importance than those attached to the post held by them. The huge amount of public money of a poor State has been paid to them by wrong understanding of the provision of law by the Education Department as well as by the Drawing and Disbursing Officer of the School. When there is a question of involvement of public interest in a case like this, balance has to be struck off between the private interest and public interest. The balance lies in favour of public interest. The sympathy and benevolence has no doubt some role to play while exercising the powers under Article 226 of the Constitution of India, but discretion cannot be exercised at the cost of public interest.

33. Taking into consideration the totality of the circumstances even on the strength of the above discussions, we are unable to hold that no order should be made for the recovery of the excess amount. We would, however, require the State Government to recover the amount in easy and proper installments. The total amount paid to the employees may be recovered without interest in at least 50 installments provided such an employee has the tenure of 50 months or more. If an employee does not have a tenure of 50 months or more then the installments may be reduced to a reasonable period so that such an employee does not suffer unnecessary brunt of a cut in the payment/salary etc."

15. However, at the same time, I am of the opinion that recovery should be made in installments. Petitioners shall be free to represent before the authority for refund of the amount in installment. The respondents shall fix the installments depending upon the number of years of service left to the petitioners. In the result, I do not find any merit in these applications and they are dismissed accordingly with the observation aforesaid but without any order as to cost.