

(2009) 04 PAT CK 0099
In the Patna High Court

Smt. Anjulata Kumari, Suman Kumar and Others, Sunil Kumar Pandey and Others and Meera Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0099

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

C.W. J.C No. 8539 of 2008

2. The matter relates to an order dated 24.12.2007 communicated by another letter dated 28.3.2008 for a direction for termination of services, stoppage of her salary and the consequent termination of the services of the petitioner as Panchayat Teacher in the District of Araria on the ground that the qualification held by her was of an Upshastri (Intermediate) from Kameshewar Singh Darbhanga University.

3. Learned Counsel for the petitioner submits that she was appointed as a Panchayat Teacher on 4.10.2007 after undergoing selection process. He next relies upon a government instruction of 29.9.1996 that Upshastri was equivalent to Intermediate. He further places reliance on an order of this Court in CWJC No. 5863 of 2008 dated 19.1.2009 decided by this Court that termination on the ground of an Upshastri degree from Kameshewar Singh Darbhanga University was not sustainable in law.

4. A counter affidavit has been filed on behalf of respondent No. 5. It states that the petitioner was not qualified to be appointed being a holder of an Upshastri degree which was not equivalent to Intermediate. That the matter was subjudice in LPA No. 496 of 2008.

5. Learned Counsel for the petitioner informs this Court that LPA No. 496/2008 has been dismissed on 18.7.2008.

6. Matters of eligibility, qualifications, are for the employer to decide. These decisions are to be taken before the selection process commences. What interpretation the respondents propose to give to the eligibility and qualifications based on their needs and requirements is for the respondents to decide before the selection process commences. Unless it be a case outrightly of wanting in qualification, the respondents cannot be permitted to resort to deciphering of the eligibility, qualification, after the selection process is over and the selected person joins. An old English adage says "look before you leap". The respondents firmly believe in leaping unmindful of the consequence.

7. Once this Court has decided on the issue that a degree of Upshastri was equivalent to Intermediate qualification, this Court expects that in a rule of law, the respondents shall abide by the decision of this Court with regard to all persons similarly situated. To require each of the petitioners to obtain individual orders could only be evidence of arbitrariness on the part of respondents generating frivolous multiplicity of litigations.

8. In *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, it was observed in the relevant extract at Para 22 as follows:

22. Generally legal positions laid down by the Court would be binding on all concerned even though some of them have not been made parties nor were served nor any notice of such proceedings given.

9. The Supreme Court with regard to the duty of respondents when an issue of law has been decided by the Court, to accord similar treatment to all persons similarly situated without requiring them to obtain individual orders, has observed in *Vishwas Anna Sawant and others Vs. Municipal Corporation of Greater Bombay and others*, in the relevant extract at Para 4 as follows:

4. ... It is seen that when Mr. Mane had approached the High Court for granting the relief in the previous writ petition which was filed in a representative capacity not only for himself but for all backward class citizen he was given benefit of promotion, when he initiated contempt proceedings. But when the appellants had approached the High Court by an individual writ petition, the same benefits was not given to them. The appellants stand in the same position as Mr. Mane and therefore the Corporation cannot take a different and inconsistent stand denying promotion to the appellants who stand at par with Mr. Mane.

10. In *State of Karnataka and Others Vs. C. Lalitha*, it has been held in the relevant extract at Para 29 as follows:

29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently....

11. In *K.T. Veerappa and Others Vs. State of Karnataka and Others*, , the Supreme Court at Para 16 observed as follows:

16. The defence of the State government that as the appellants were not the petitioners in the writ petition filed by 23 employees of the respondent University to whom it benefit of revised pay scales was granted by the Court, the appellants are estopped from raising their claim of revised pay scales in the year 1992-94, is wholly unjustified, patently irrational, arbitrary and discriminatory. As noticed in the earlier part of this judgement, revised pay scales were given to those 23 employees in the year 1991 when the contempt proceedings were initiated against the Vice-Chancellor and the Registrar of the University of Mysore. The benefits having been given to 23 employees of the University in compliance with the decision dated 21.6.1989 recorded by the learned Single Judge in WPs Nos. 21487-506 of 1982, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time.

12. This Court therefore expects and directs that as and when a petitioner whose writ application is pending before this Court files a representation enclosing a copy of the present order along with details of his writ application, the respondents shall be obliged to consider his case and pass appropriate orders in accordance with law. Nothing in this order shall be construed as an interdict on the powers of the respondents to pass a reasoned and speaking order to their satisfaction if they be otherwise satisfied that an individual petitioner was not entitled to the benefits of this order. The mandate of this Court is to decide the representation filed in pursuance of the present order. Should the respondents fail to do so, despite the filing of such a representation, and the matter has to be taken up individually, burdening this Court with what is otherwise now completely avoidable litigation, this Court may be constrained to view the matter seriously, if necessary, with regard to imposition of costs and fixation of responsibility.

13. Let a copy of this order be forwarded to the Principal Secretary, Human resources Department, Government of Bihar, for circulation to all concerned authorities dealing with the issue.

14. Orders have already been passed for reinstatement and payment of full salary in CWJC No. 5863 of 2008. This Court accordingly directs grant of similar relief to the present petitioner to be complied within a period of two weeks from the date of receipt and/or production of a copy of this order.

15. In CWJC Nos. 16422, 16425 & 1958 of 2008 the petitioners are also Intermediate qualification holder from Kamesahwar Singh Darbnhanga University. They are acknowledged to be still in service. They apprehend termination of their services in pursuance of instruction dated 15.11.2007. The writ application is disposed off in similar terms. The petitioners shall be entitled to their salary if any with held for the aforesaid reasons.