

(2016) 03 SC CK 0038

In the Supreme Court Of India

Case No : C.A. No. 2433 of 2016 (Arising out of SLP (C) No. 12032 of 2007)
with C.A. No. 2434 of 2016 (Arising out of SLP(C) No. 12031 of 2007)
and C.A. No. 2435 of 2016 (Arising out of SLP(C) No. 18094 of 2014)

State of Bihar and others

APPELLANT

Vs

Arun Kumar

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2016) 3 Scale 276 : (2016) 13 SCC 218

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla;S.A. Bobde, JJ.

Bench : Division Bench

Advocate : Abhay Kumar, A.O.R, Tenzing Tsering, Advocate, A.K. Trivedi,
Saurabh Mishra and Avinash Kumar Trivedi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.
2. As the issue involved in all these appeals by way of special leave are identical, these appeals are disposed of by this common order.
3. The respondents in these appeals came to be appointed by identical orders dated 25th July, 1983 as Clerk cum Accountant in the Office of District Adult Education Officer on temporary basis under a project Scheme called "Adult Education Scheme". Their services came to be terminated by orders dated 18th June, 1992. The respondents along with other similarly placed employees stated to have approached the High Court and pursuant to orders passed by the High Court they were all re-employed on and after 28th February, 1993 under a different Scheme called "Informal Education Scheme" meant for primary school children. Subsequently their services came to be terminated again on 12th September, 2001. Again there was a challenge made by the employees pursuant to which they were re-employed in the year 2005-2006.
4. In fact, Mr. Dinesh Dwivedi, learned senior counsel appearing for the appellant-

State submitted before us that there were as many as 1,427 such employees like that of the respondents herein who came to be initially appointed by orders dated 25th July, 1983, terminated once in 1991, re-employed in 1993, again terminated in 2001 and now absorbed on a regular basis from the year 2005/2006 onwards. The learned senior counsel also submitted that in the case of the respondent in Civil Appeal arising out of SLP(C) NO.12031/2007, he has been paid 100 per cent back wages and also all other terminal benefits and similarly in the case of respondent in Civil Appeal arising out of SLP(C) No. 18094 of 2014 such payment of back wages and terminal benefits have been granted in full. In the case of respondent in Civil Appeal arising out of SLP(C) No.12032 of 2007 he is stated to have been paid 40 per cent back wages and that he continues in service.

5. In the above stated background, we are concerned with the question as to the justification of the orders passed by the learned Single Judge in favour of the respondents herein as confirmed by the Division Bench.

6. By the impugned order, the Division Bench has confirmed the order of the learned Single Judge by merely stating that there was no flaw in the said order of the learned Single Judge. When we perused the order of the learned Single Judge, we find that the learned Single Judge in the case of respondent in Civil Appeal arising out of SLP(C) NO.12031 of 2007 which is dated 13th September, 2004, has relied upon the judgment passed in another Writ Petition being CWJC No. 12469 of 2002 filed by one Krishnanand Singh. The order further discloses that the learned counsel for the State was not in a position to distinguish the case of the present respondents herein from that of Krishnanand Singh and consequently the order of termination was set aside. To find out the reason which weighed with the Court in the case of Krishnanand Singh, we perused the said order also which is dated 23rd May, 2003 passed in C.W.J.C. No. 12469 of 2002.

7. A perusal of the said order discloses that there was an advertisement by the Bihar Public Service Commission and a selection process was made. The name of Krishnanand Singh was found at Serial No. 10 of the Select List which related to selection for vacant posts in different departments. Since pursuant to the said selection, the said Krishnanand Singh came to be appointed on a regular basis and that his services were not under any particular Project or Scheme his termination was held to be justified. It was on that basis the termination order dated 29th July, 2001 of Krishnanand Singh was set aside in the order dated 23rd May, 2003. Unfortunately, while deciding the case of the present respondent herein in his Writ Petition being C.W.J.C. No. 11771 of 2003, in the order dated 13th September, 2004, the learned Single Judge completely omitted to take note of the vital fact namely the appointment of the present respondent herein was not pursuant to any advertisement made by the Bihar Public Service Commission but was based on a Scheme to provide employment for the unemployed persons in the State of Bihar based on the support extended by the Central Government. Such programmes were in the form of "Adult Education Programme" as well as

"informal education for primary children".

8. Though Mr. Abhay Kumar, learned counsel appearing for the respondent attempted to contend that the respondent in Civil Appeal arising out of SLP(C) NO.12031 of 2007 was also appointed on a regular basis pursuant to the advertisement of Public Service Commission, having perused the documents relied upon by the learned counsel, we are not in a position to countenance such a plea advanced on behalf of the respondent. On the other hand, the appointment order dated 25th July, 1983, as well as the subsequent proceeding since the year 1992 as well as 2005 amply disclose that the appointment of the respondents herein was only in a Project by way of "adult education programme" and "informal education for primary children". In such circumstances, the order of the learned Single Judge dated 13th September, 2004 in the case of Harihar Prasad Sharma was not justified. Inasmuch as, the reliance placed upon the case of Krishnanand Sharma was wholly misconceived and in such circumstances the said order of the learned Single Judge cannot stand. Consequently, the non speaking order of the Division Bench by merely confirming the order of the learned Single Judge cannot also stand and the impugned orders both of the learned Single Judge as well as that of the Division Bench are liable to be set aside and are accordingly, set aside. As the orders of the learned Single Judge passed in the case of the respondents in Civil Appeals arising out of SLP(C) No. 12032 of 2007 and 18094 of 2014, were based on the orders passed in the case of the respondent in Civil Appeal arising out of SLP(C) No. 12031 of 2007, the said orders also have no legs to stand and the order of the Division Bench confirming the order of the learned Single Judge are also liable to be set aside and are, accordingly, set aside.

9. However, we are bound to take note of the proceedings issued by the appellants dated Nil, May, 2005 by which pursuant to the second round of litigation at the instance of the respondents and similarly placed other employees, the appellants passed orders adjusting the retrenched employees including the respondents herein numbering 1427. The operative part of the said order reads as under:-

"h. the adjustments shall be done from out of the panel as per the available vacancy of the posts from time to time under the approval of the Chief Secretary to the Government.

i. The adjustment of the retrenched employees shall be taken as fresh recruitment. These employees shall not be eligible for seniority by claiming their period of service before their adjustment. However, their previous service period shall be calculated for their pension fixation.

j. The list of retrenched employees, who cannot be adjusted immediately due to non-availability of vacancies, shall be maintained and action shall be taken for their adjustment in the next five years on availability of vacancies."

Pursuant to the said proceedings dated Nil of May, 2005 it is now stated that the

respondents as well as the similarly placed other employees have been adjusted, the appellants have also come forward to count their past services for the purpose of fixation of pension, though it was stated that such adjustments would be taken as fresh recruitment. It was also made clear that this period of service before their adjustment would not be counted for seniority.

10. In the light of the above said order, the only other question which has to be examined is as to whether the respondent herein as well as other similarly placed employees would be entitled for back wages and other attending monetary benefits for the past period. Insofar as the present respondent herein in Civil Appeals arising out of SLP(C) Nos. 12031 and 12032 of 2007 are concerned, since these have already been paid 100 per cent back wages, we are of the view that since both of them have also been superannuated and in receipt of pension, and as they were not responsible for the payment of the back wages it may not be appropriate to permit the appellants to recover whatever payment already made towards the back wages. Similarly, in the case of the respondent in Civil Appeal arising out of SLP(C) No. 18094 of 2014, he was paid 40 per cent of back wages, the payment of which was not at his request or demand, no recovery can be ordered at this point of time.

11. It is also submitted on behalf of the appellants as well as contesting respondents that all similarly placed employees have moved the High Court claiming back wages. The writ petitions by similarly placed employees are pending in the High Court, We, therefore, do not express any opinion as to the entitlement or otherwise of the back wages or any other benefit in this appeal arising out of SLP(C) No. 12031 of 2007 or the other connected matters. We confine our consideration only to the correctness or otherwise of the impugned orders of the learned Single Judge as well as the Division Bench.

12. In the light of our orders passed in appeals arising out of SLP(C) NO.12031 of 2007 and the case of respondents in SLP(C) Nos. 12032 of 2007 and 18094 of 2014 are identically placed, the impugned orders in these appeals are also set aside. Leaving it open for the High Court to decide any other relief to be granted to the similarly placed employees on its own merits, these appeals are allowed with the above limited direction relating to non-recovery of whatever back wages paid to the respondents herein.

13. The appeals stand allowed on the above terms.