

(2011) 11 PAT CK 0104
In the Patna High Court
Case No : LPA No. 1455 of 2010

State of Bihar and Others

APPELLANT

Vs

Ram Kumar Prasad and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Citation : (2012) 1 PLJR 257

Hon'ble Judges : Shivaji Pandey, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Manoj Kumar, for the Appellant; Tara Nath Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the appellants and Learned Counsel for the respondents. By the order under appeal dated 6th April, 2010 the writ court has allowed the writ petition preferred by the respondents, i.e., C.W.J.C. No. 5238 of 2006* to an extent by holding that the writ petitioners are fully covered by judgment of this Court passed in C.W.J.C. No. 522 of 1979. They shall be deemed to be persons equivalent to Demonstrator on the date they came to be appointed as graduate Laboratory Assistant and that they are entitled to the UGC scale.

2. Learned Counsel for the appellant submits that UGC scale cannot be applied to employees like the petitioners who are employees of the State Government working in technical institution. The further submission is that although the advertisement which led to appointment of the writ petitioners was of the year 1986 i.e. prior to coming into force of AICTE Act, 1987, actual appointment was done in the year 1989 and therefore the State is free to follow the statutory norms laid down by the AICTE and to fix appropriate remuneration and wages accordingly.

3. In our considered view, the submissions on behalf of State are untenable. The issue of grant of UGC scale is not at all a material issue because the order under

appeal as well as the judgment in C.W.J.C. No. 522 of 1979 disclose that the State itself had granted UGC scale to Demonstrator and in C.W.J.C. 522 of 1979 a Division Bench of this Court held that as the Laboratory Assistants were performing same nature of duties and were required to have same qualification for appointment, they were also entitled to the UGC scale as granted to Demonstrator and State could not discriminate between persons holding same nature of post and performing similar duties. That judgment has attained finality and there is no good ground to take a different view in the matter. So far as the defence arising out of AICTE Act is concerned, the writ court, in our view, has taken a correct view that as per advertisement of 15.10.1986 the qualification prescribed for the post held by the writ petitioners was graduation i.e. a higher qualification than 10+2 qualification prescribed for Laboratory Assistants under the AICTE norms. The writ court has held that the delay by the State Government in making the appointment shall not result in variation of the terms of the appointment.

4. We find no good ground to interfere with the order of the writ court specially when it has already been clarified at page 10 of the order under appeal that any fixation of pay scale on the post of Laboratory Assistants by the State Government under the AICTE norms shall have to be prospective. In other words, those who are appointed on the basis of advertisement made as per AICTE norms with lesser educational qualification, for them the State may be free to fix different pay-scales. The appeal is dismissed.