
(2007) 02 JH CK 0009
In the Jharkhand High Court
Case No : L.P.A. No. 270 of 2004

State of Bihar (Now Jharkhand) and Others

APPELLANT

Vs

Sita Ram Kumhar @ Kumar

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Citation : (2007) 3 JCR 570

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Permod Kohli, J

Bench : Division Bench

Advocate : Pradeep Modi, G.P.-I, for the Appellant; Lalit Kr. Lal, for the Respondent

Final Decision : Dismissed

Judgement

Permod Kohli, J.—This Letters Patent Appeal is directed against the orders dated 28th July, 1997 and 10th November, 2003, passed in C.W.J.C. No. 2776 of 1994 and Civil Review No. 1 of 2000 respectively. Earlier the present appeal was dismissed on account of rejection of the application for condoning the delay of 6 years, 7 months and 10 days vide order dated 20th December, 2004. This order, however, has been set aside by the Apex Court in Civil Appeal No. 3912 of 2006 vide its order dated August 25, 2006 and the matter has been remitted back to this Court with the observation that the matter should be heard on its own merit after condoning the delay. Hon"ble Apex Court has also imposed cost of Rs. 5,000/- to be paid to the respondent. Learned Counsel appearing for the respondent-writ petitioner has admitted that his client has received the cost of Rs. 5,000/-. Under these circumstances we have condoned the delay by a separate order.

2. We have heard learned Counsel appearing for the parties on the merits of the controversy, as the matter is required to be disposed of by the end of February, 2007 as directed by the Apex Court. Briefly stated the facts, giving rise to the present appeal, are that the respondent-writ petitioner applied for the post of Assistant Teacher, Geography, pursuant to the advertisement, issued by the

Managing Committee of Shival High School, Musabani. The Selection Committee in its meeting dated 13th March, 1973 found the writ petitioner fit for appointment but recommended that the teacher should be appointed in future, if required. The writ petitioner was also interviewed on 15th March, 1973. He was appointed vide order dated 5th March, 1974, subject to approval by the Government of Bihar under the prevailing norms. The writ petitioner-respondent submitted his joining on 21st May, 1974 pursuant to his appointment. However, his joining report was forwarded to the Secretary of the Managing Committee by the Principal of the School in view of the impending summer vacation. On opening of the school, the writ petitioner joined on 24th June, 1974 and, thereafter, continued to perform his duties. The writ petitioner-respondent approached this Court seeking his regularization by filing C.W.J.C. No. 2105 of 1991(R). This petition came to be disposed of vide order dated 7th November, 1991 with a direction to the Director, Secondary Education-cum-Special Secretary, Bihar, Patna, to examine the grievance of the writ petitioner and to dispose of the same with a reasoned order. The writ petitioner was also permitted to file a representation annexing all the relevant documents before the Director, Secondary Education-cum-Special Secretary, Bihar, Patna. The representation was directed to be disposed of within a period of three months. Consequent upon the aforesaid directions, the Director, Secondary Education, Bihar, Patna, disposed of the representation, rejecting the claim of the writ petitioner for regularization of his services. Aggrieved of the action, the writ petitioner-respondent filed yet another writ petition being C.W.J.C. No. 2776 of 1994(R). This writ petition came to be disposed of vide order dated 28th July, 1997. It is relevant to notice that a large number of private schools, including the school where the writ petitioner was appointed, were taken over by the State Government. The Government had also issued Govt. Circular No. 1940 dated 18th June, 1977, whereunder, services of the teachers appointed in such private schools between 28th September, 1973 to 21st May, 1974 were required to be regularized. The writ petitioner had based his claim of regularization on this circular. His claim for regularization was rejected vide order dated 30th June, 1992 on the ground that he joined the services on 24th June, 1974 i.e. beyond the cut off date and, thus, is not entitled to seek regularization under the aforesaid circular in view of the cut off date being 21st May, 1974. Same ground was urged by the appellant-State before the writ court in C.W.J.C. No. 2776 of 1994(R). The writ court, however, rejected the contention of the State and relied upon the certificate dated 30th May, 1994 issued by the Headmaster of the school, stating therein, that the petitioner was appointed on 5th March, 1974 but due to illness he joined on 24th June, 1974. The Court also observed that the petitioner submitted his joining on 21st May, 1974 i.e. within the time prescribed in the circular and hence is entitled to regularization. Resultantly the order of the Director, Secondary Education, dated 30th June, 1992 as also the order dated 16th June, 1993, declining the regularization, were set aside and the writ was allowed with a further direction to the State-respondent to pay the salary of the petitioner for the period during which he had worked. The respondents were also

directed to reconsider the case of the petitioner and regularize his services on the post of Assistant Teacher.

3. Instead of preferring appeal against the aforesaid order, the respondent-State chose to file review after more than two years being Civil Review No. 1 of 2000. This review application was, however, dismissed vide order dated 10th November, 2003 concurring with the findings of the court in C.W.J.C. No. 2776 of 1994(R) that the petitioner joined the post on 21st May, 1974. the Court further ruled that there is no error apparent on the face of the records, warranting interference in review.

4. Mr. Modi learned Counsel appearing for the appellant-State has vehemently urged that the petitioner's joining the services on 24th June, 1974 is the only relevant date for the purposes of his consideration for regularization and said date being beyond the cut off date, as prescribed under the Govt. circular No. 1940 dated 18th June, 1977, he is not entitled for regularization. He has further stated that after passing of the order dated 28th July, 1997 in C.W.J.C. No. 2776 of 1994(R), an enquiry was conducted and a report was submitted wherefrom it is revealed that there were two appointment orders both dated 5th March, 1974, issued by the Principal of the School. In one of the orders the petitioner's appointment was made subject to approval of the authorities whereas in the 2nd appointment order it was mentioned that the petitioner's appointment shall be effective from the date of joining. He has stated that the petitioner has procured the judgment on the basis of forged document and an F.I.R. has also been registered against him. It is, accordingly, urged that the petitioner having perpetrated fraud on the court, the order under appeal is liable to be set aside.

5. It is admitted case of the State that no such plea was raised before the writ court either in C.W.J.C. No. 2105 of 1991(R) or in C.W.J.C. No. 2776 of 1994(R), though such a plea was raised in Civil Review No. 1 of 2000. It is not in dispute that the petitioner was appointed vide order dated 5th March, 1974. Which of the two orders is forged and who is responsible for forging the order has not been spelt out. Even the enquiry, said to be conducted, was held at the back of the respondent-employee. Even if it is assumed that one of the appointment orders is fake, unless it is established that the writ petitioner is responsible for forgery or any undue advantage has been secured by him, claim of the writ petitioner cannot be rejected in absence of any such material. However, all these questions were not raised in the writ applications. But the fact remains that the writ petitioner-respondent was appointed on 5th March, 1974 and he submitted his joining on 21st May, 1974, which document has been placed on record by the State itself. There is an endorsement by the Headmaster of the School on the joining report of the petitioner, forwarding the same to the Secretary of the School. It is also the case of the State-appellant that the School authorities forwarded the case of the respondent-writ petitioner to the Director, Secondary Education, for approval but no approval was ever granted. However, there is nothing on record to show that any such approval was mandatory. When all

these documents were forwarded to the Director, Secondary Education, it was for the State to have placed on record the appointment order, which was forwarded to it to establish that the other appointment letter is forged. On asking of the Court, Mr. Modi learned Counsel appearing for the appellant-State could not say as to which of the documents is forged. In any case, appointment of respondent is not disputed and there is an appointment order dated 5th March, 1974 on record. The only relevant question is whether the respondent-writ petitioner is deemed to be appointed on 24th June, 1974 or on an early date. The petitioner submitted his joining on 21st May, 1974, which fact is also not disputed. He later performed his duties with effect from 24th June, 1974. The joining of the respondent-writ petitioner and performance of duties are on the basis of the appointment order dated 5th March, 1974. We have also perused the circular dated 18th June, 1977, copy whereof has been placed on record as Annexure-7 to the present appeal. Perusal of the circular indicates that teachers, appointed between 28th September, 1973 to 21st May, 1974 in the nongovernmental schools, were entitled to regularization. What is relevant is the appointment during this period. Joining in such a situation become irrelevant. Admittedly, the respondent-writ petitioner was appointed on 5th March, 1974 and he later joined on the basis of this appointment letter. The date of appointment of the respondent-writ petitioner is, thus, 5th March, 1974 and not 24th June, 1974. The date of appointment falls within the period prescribed under the Govt. circular of 1977 i.e. between 28th September, 1973 to 21st May, 1974. Therefore, whether the respondent-writ petitioner has actually joined on 21st May, 1974 or 24th June, 1974 may be inconsequential. Even if the date of joining is to be considered as the date of appointment, respondent submitted his joining on 21st May, 1974 and if for any reason authorities postponed the actual date of joining due to summer vacations, respondent cannot be blamed for that. This is particularly when he was allowed to perform duty on the basis of joining submitted on 21st May, 1974. Thus, as far respondent-employee is concerned, he joined on 21st May, 1974, which date is admittedly the last date to become eligible for regularization under Govt. circular. In this view of the matter, we do not find any merits in this appeal, which is, accordingly, dismissed. The respondent-writ petitioner shall be entitled to all the consequential benefits.

6. However, in the facts and circumstances there shall be no order as to costs.