

(2008) 03 JH CK 0066
In the Jharkhand High Court

State of Jharkhand and Others

APPELLANT

Vs

Bimal Kumar Sinha

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 2 JCR 577

Hon'ble Judges : M. Karpaga Vinayagam, C.J;D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Order dated 2.5.2003 passed by the learned single Judge in WP (S) No. 6440 of 2002 has been challenged in this appeal filed on behalf of the appellant-State.

2. In our view, the order passed by the learned single Judge is not correct in view of the fact that earlier appointment of the respondent was made under the Scheme, which was abolished and the respondent was re-appointed on the condition that his past services will not be taken into account, since the post on which he worked was not a substantive post and therefore the respondents is not entitled to pensionary benefits as per Rule 58 of the Bihar Pension Rules.

3. As correctly pointed out by the learned Counsel for the appellants, this point was considered by the Supreme Court in the case of Dhyani Singh and Others Vs. State of Haryana and Others, "wherein the Apex Court held as follows:

The continuance/engagement of the appellants under a specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at times by some foreign country but the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed. The appellants' fresh recruitment as

teachers in accordance with the earlier directions of the Supreme Court was by way of concession. No right flowed from the post service rendered by them as Adult Education Supervisors under Non-formal Education Scheme. No rules or regulations have been shown which even confer pensionary benefits for the past service rendered by the appellants under the Scheme. Benefit of past service under the Scheme is therefore not admissible.

4. The above observation of the Apex Court is applicable to the facts of case in hand. We find that the appointment of the respondent was made under the Scheme which was abolished and therefore the respondent was re-appointed on the specific condition that past services rendered by him will not be taken into account. In this view of the matter, the order passed by the learned single Judge suffers from illegality and is contrary to the ratio decided by the Supreme Court. For the foregoing reasons, this appeal is allowed and the order passed by the learned single Judge is set aside.

5. Learned Counsel appearing on behalf" of the respondent submits that the Government of Bihar has passed order relaxing the condition that past services will not be taken into account and as such this would apply to Jharkhand State as well. This is the subsequent development and therefore we cannot hold in favour of the respondent on this ground.

6. However, it will be open for the respondent to make a representation with a copy of this order to the Government of Jharkhand, showing the order of the Bihar Government and in that event, the Government of Jharkhand may consider the representation of the respondent and dispose of the same by passing an appropriate order.