
(2019) 12 JH CK 0134
In the Jharkhand High Court
Case No : L.P.A. No. 793 Of 2018

State Of Jharkhand

APPELLANT

Vs

Ranjeet Das And Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 12 JH CK 0134

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Atanu Banerjee, Piyush Chitresh

Final Decision : Dismissed

Judgement

I.A. No. 2715 of 2019

1. This interlocutory application has been filed for condoning the delay of 120 days in preferring the present appeal.

2. Vakalatnama has been filed on behalf of the respondents.

3. Heard parties.

4. Having regard to the averments made in the application and submission made on behalf of the parties, we are of the view that the appellants were

prevented from sufficient cause in filing the appeal within the period of limitation. As such, the delay of 120 days in preferring the present appeal is

hereby condoned.

5. I.A. No. 2715 of 2019 stands allowed.

L.P.A. No. 793 of 2018

6. The instant intra-court appeal is directed against the order dated 25.07.2018 passed by learned Single Judge of this Court in W.P.(S) No. 5158 of

2017 whereby and whereunder the writ petitioners have been held entitled for reinstatement in service forthwith along with the salary between the period from 12.05.2018 till they are actually reinstated in service.

7. The brief facts which are necessary for appreciating the argument advanced on behalf of the parties and the legality and propriety of the order are required to be referred which read hereunder as :-

The appellant-State of Jharkhand had published one advertisement being Advertisement No. 7/2015, which was displayed on the website also, inviting

application from the candidates for recruitment to the post of Inter-trained Assistant Teachers and Inter-trained Urdu Teachers under Gair-Yojna and

Yojna respectively in the schools of Chatra district with the condition stipulated therein to the effect that there shall be 50% seats reserved for the

working para teachers. The writ petitioners, who were working as para teachers, applied for consideration of their candidatures in terms of the

aforesaid advertisement for appointment as Inter-trained Assistant Teachers and Inter-trained Urdu Teachers in which they were found to be

successful and in consequence thereof, they were called upon to participate in the different stages of counseling which was conducted by the

Screening Committee headed by the Deputy Commissioner, Chatra.

The recruiting agency prepared a merit list on proper verification of the respective documents and finally the writ petitioners were appointed as non-

para teachers. They were allowed to continue in service for a period of 19 months but the authorities came out with a general public notice, publishing

it in the daily newspaper, calling upon reply to show cause explaining the reason as to why their services be not dispensed with since they have been

appointed in the non-para teacher category although they were working as para teacher.

The writ petitioners submitted their reply explaining the entire facts and defending their appointment on the ground that no such condition has been

stipulated in the advertisement depriving para teachers from appointment under non-para teacher category if they compete with the other categories

earmarked for non-para teachers. It has also been stated that there was no misrepresentation on their part since they had brought the fact that they

are working under the para teacher category, filled up their application forms clearly reflecting therein about the category of para teachers under

which they were working and, after being satisfied, they were appointed, allowed to discharge their duties and remained in service for the period of 19

months and hence, dispensing with their services is not at all proper and legally justified in view of any condition not being provided under the

advertisement that a candidate, if working as para teacher, will not be entitled for consideration of appointment under the non-para teacher category

even if they compete with the candidates of non-para teacher. The writ petitioners were terminated in purported departmental enquiry vide order

dated 02.08.2017. It appears from the impugned order that writ petition being W.P.(S) No. 1027 of 2018, in which subject matter of order dated

01.12.2017 was involved by which two teachers namely Md. Ashraf Khan and Arun Kumar Ravi (who was the writ petitioner in W.P.(S) no. 1032 of

2018), were terminated from service on the ground that they were appointed under non-para teacher category. The order of termination was

separately assailed by Md. Ashraf Khan and Arun Kumar Ravi in W.P.(S) No. 1027 of 2018 and W.P.(S) No. 1032 of 2018 respectively.

Counter affidavit was filed by the respondent State of Jharkhand in W.P.(S) No. 1032 of 2018 which was adopted by the respondent State in W.P.(S)

No. 1027 of 2018. In both these writ petitions prayer for a direction for payment of salary to the petitioners for the period during which they had

actually worked was also made. The reference of another writ petition being W.P. (S) No. 40 of 2017 has also been made, in which altogether three

petitioners were there, who were also terminated from service vide order dated 02.12.2016. They also assailed the order of termination along with a

prayer for a direction upon the respondents to make payment of salary. Likewise, W.P.(S) No. 554 of 2017, W.P.(S) No. 555 of 2017 and W.P.(S)

No. 6715 of 2017 have also been referred having similar issue.

However, the present appeal arises out of W.P.(S) No. 5158 of 2017 but the impugned order since pertains to the issue raised by different petitioners

in different writ petitions, therefore, the learned Single Judge has heard the matter analogous and passed the impugned order and that is why reference

of aforesaid writ petitions have been made..

It appears from the impugned order that initially a decision was taken to reinstate some of the petitioners in service, particularly the petitioners in W.P.

(S) No. 5158 of 2017, and then to initiate a departmental proceeding against

them on the allegation that they have been wrongly appointed under non-para teacher category. Subsequently, departmental proceeding against them was dispensed with and on the basis of the order passed by this Court (learned Single Judge) in W.P.(S) No. 6031 of 2015 and W.P.(S) No. 173 of 2016 and they have again been terminated from service.

The contention raised by the writ petitioners who are respondents herein, that admittedly they were working as para teachers and as such, as per the earmarking of 50% of seats of the total vacancy advertised from amongst the para teacher category, they had applied and on the basis of assessment of their skill, they were selected and offered appointment which was accepted by them and they started rendering their duty. However, after allowing them to render service for a period of 19 months, their services were dispensed with on the ground that their selection was made under non-para teacher category, hence, they will be treated to be encroachers of the seats earmarked for the other category i.e. non-para teacher category.

Replying to such ground for dispensing with the services, they raised the issue that no such condition was laid down in the advertisement debarring them from appointment under non-para teacher category. They were competing with the candidates who were selected or proposed to be selected under non-para teacher category. The reference of the order passed by the Division Bench of this Court in L.P.A. No. 186 of 2017 has also been made wherein the plea which has been taken by the State respondents in dispensing with the services of such category of employee who were working as para teacher at the time of making application but appointed under non-para teacher category, was held to be unjustified on the ground that in the advertisement there was no such term or condition under which an applicant working as para teacher is not eligible to seek appointment under the category earmarked for non-para teachers.

While on the other hand, the State respondents have taken the plea that once 50% of the total advertised seats were reserved for para teacher category, the applicants, who at the time of submission of application, were working as para teachers, will be said to be not eligible to apply and get appointed under non-para teacher category, otherwise it will be treated to be encroaching the seats earmarked for the non-para teacher category creating imbalance in between the para teacher category and non-para teacher

category.

Learned Single Judge, after relying upon the order passed by the Division Bench of this Court in L.P.A. No. 186 of 2017 and L.P.A. No. 199 of 2017,

has come to the conclusion that dispensing with the services of the writ petitioners is absolutely unjustified and in consequence thereof, the order of

reinstatement has been passed as also direction for payment of salary from the date of termination till the date of reinstatement has also been given.

The said order is under challenge in the present intra-court appeal.

8. This Court, after appreciating the factual aspect of the matter as also the finding recorded by the learned Single Judge, before considering its

legality and propriety, deems it fit and proper to go across the advertisement which has been annexed as Annexure-1 to the writ petition. It transpires

therefrom that no such condition has been stipulated in the advertisement to the effect that a candidate working as para teacher cannot apply and get

appointed under the non-para teacher category.

9. It is settled position of law that the recruitment process of a public post purely depends upon the recruitment rule and the advertisement and there

cannot be any deviation from the statutory rule or the advertisement as has been held by the Honâ??ble Apex Court in the case of Bedanga

Talukdar Vs. Saifuddin Khan and Others reported in AIR 2012 SC 1803 wherein the position of law has been dealt with at para 28 which reads

hereunder as :-

â??28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all

appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no

arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly

in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same

has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is

specifically reserved. Such a power could be reserved in the relevant Statutory Rules.â??

Therefore, the settled position of law is that the recruitment is to be made

strictly in accordance with the terms and conditions of the advertisement.

Neither any condition is to be inserted nor deviated. It also requires to refer herein that admittedly, in the advertisement, 50% seats were earmarked to

be filled up from the para teacher category. The question here would be that what would be the position of such candidates who made application

while working as para teachers but got the marks at par with the candidates of non-para teacher category.

10. This Court, in order to give a finding to that effect, deems it fit and proper to refer herein the position in a case of reservation to be given to the

members of the reserved category i.e. S.T. or S.C. or OBC vis-à-vis their selection, if they get the marks at par with the non-reserved category

candidates. The Honâ??ble Apex Court has considered such situation elaborately by laying down the law, in the case of Jitendra Kumar Singh and

Another Vs. State of Uttar Pradesh and Others reported in (2010) 3 SCC 119.

11. In this backdrop, we have proceeded to examine the legality and propriety of the impugned order.

It is the admitted fact herein that the same issue fell for consideration in two intra-court appeals being L.P.A. No.186 of 2017 and L.P.A. No. 199 of

2017 as has been referred in the impugned order at paragraph 7 whereby and whereunder the arguments and the grounds raised by the State

respondents in dispensing with the services of such category of the appointees, who although were working under the para teacher category but have

been appointed on non-para teacher category, have been held to be unjustified. The learned Single Judge, by putting reliance upon the order passed by

the Division Bench of this Court has held the petitioners entitled for reinstatement in service forthwith.

12. So far as the finding about holding the petitioners entitled for their reinstatement is concerned, this Court is of the view that direction pertaining to

reinstatement cannot be faulted with for the reason that the Division Bench of this Court has already considered this aspect of the matter in L.P.A.

No. 186 of 2017 and held the decision of the State respondents as unjustified in dispensing of services of teachers appointed against the vacancy

earmarked for the non-para teacher category. Further also for the reason that even in the advertisement there is no embargo for a candidate, merely

working as para teacher cannot be considered for appointment under non-para

teacher category if such candidate got the marks at par with the candidates belonging to non-para teacher category, which is the sole ground raised by the State while dispensing with the services of the petitioners.

Therefore, this Court is of the conscious view that the decision of the learned Single Judge in holding the petitioners entitled to be reinstated in service, cannot be faulted with, hence no interference is required on such finding and decision.

13. So far as the arrears of salary which has been directed to be paid in favour of the petitioners holding them entitled for salary between 12.05.2018

till their actual reinstatement in service is concerned, it has been argued by the respondent State of Jharkhand that the petitioners have only made

claim of disbursement of at least 25% of back wages but the learned Single Judge has held the petitioners entitled for salary between 12.05.2018 till

they are actually reinstated in service which according to the appellant-State is not justified. Since according to the learned counsel representing the

appellant, the writ petitioners are not entitled for any back wages as the principle of no work no pay and even if the direction has been passed by the

learned Single Judge it should only to the limit of 25% of back wages, as prayed in course of argument. Hence, the learned Single Judge has exceeded

his jurisdiction in passing the order/direction for disbursement of full salary for the said period.

14. This Court, before appreciating the aforesaid argument, considered it proper to go across the prayer made in the writ petition.

The first prayer is for quashing of the order dated 02.08.2017 as contained in Memo No. 1003 issued under the signature of the District

Superintendent of Education-cum-Sub-Divisional Education Officer, Chatra whereby and whereunder the petitioners have been dismissed while

working as Assistant Teachers.

The second prayer i.e. prayer No.(b) is a for a direction upon the respondents to reinstate the petitioners in service on the post of Assistant Teachers

along with all the back wages and consequential benefits thereupon payable to them for which they are found to be entitled to in the facts and

circumstances of the case.

The aforesaid two prayers are being quoted hereunder as :-

â??(a) For issuance of an appropriate writ(s), order(s) and/or direction (s) for

quashing of the order dated 02.08.2017 as contained in

memo no. 1003 (Annexure-10) issued under the signature of the District Superintendent of Education cum Sub Divisional Education Officer,

Chatra, (respondent no.3), whereby and whereunder the petitioners have been dismissed, the petitioners from their services while working

on the post of Assistant Teachers.

(b) For issuance of an appropriate writ(s), order(s) and/or direction(s) commanding upon the respondents to re-instate the petitioners in

their services on the post of Assistant Teachers along with all the back wages and consequential benefits thereupon payable to them for

which they are found to be entitled to in the facts and circumstances of the case.â??

Now the question is that merely on the basis of the contention raised by the learned counsel for the petitioners in course of argument for making

payment of at least 25% of back wages and contrary to that if the learned Single Judge has passed the order of full salary, can it be said to be illegal?

It is not in dispute that the Court of law is to pass an order in accordance with law irrespective of any contention raised by the learned counsel for the

parties and, therefore, this Court has proceeded to examine the question as to whether the payment of full salary will be said to be unjustified in place

of 25% back wages.

It is also not in dispute that the principle of â??no work no payâ? is the normal rule but the said principle of â??no work no payâ? is not applicable in

a situation where the employees have been deprived from discharging their duty while they were willing to discharge the duty.

The aforesaid aspect of the matter fell for consideration before the larger Bench of the Honâ??ble Apex Court (three Judges) in the case ofU nion

of India and Others Vs. K.V. Jankiraman reported in (1991) 4 SCC 109 wherein it has been held that although no work no pay is the normal rule, but

it has got exception and it will not be applicable in a case where the employee was willing to work but had not been allowed to discharge the duty and

if such a condition would be there, the principle of no work no pay will not be applicable.

In the case of Commissioner, Karnataka Housing Board Vs. C. Muddaiah reported in (2007) 7 SCC 68 9it has been held at paragraph 34 thereof

which reads hereunder as :-

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases,

however, a Court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with

law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The

court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be

contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if

such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the

country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be

rejected.

In the case of Jasmer Singh Vs. State of Haryana and Another reported in (2015) 4 SCC 45 8at paragraph 21 and 22 thereof it has been held which

reads hereunder as :-

21. The said relief in favour of the appellant-workman, particularly the full back wages is supported by the legal principles laid down

by this Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, wherein the Division Bench of this Court to

which one of us was a member, after considering three-Judge Bench decision, has held that if the order of termination is void ab initio, the

workman is entitled to full back wages.

22. The relevant para of the decision is extracted hereunder:-

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that

the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury

suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money.

With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried

up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

Although in the case of Jasmer Singh (supra), the reference of the judgment rendered in the case of Deepali Gundu Surwase v. Kranti Junior

Adhyapak Mahavidyalaya (D.ED) and Others [(2013) 10 SCC 324] has been made, as would appear from para 22 quoted hereinabove, the onus lies

upon the employer who wants to deny back wages to the employee or contest his entitlement to get consequential benefits to specifically plead and

prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an

employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the

employer by relieving him of the obligation to pay back wages including the emoluments.

15. This Court has proceeded to examine in the context of the present factual scenario as to whether the principle of 'no work no pay' will be applicable herein.

The admitted factual aspects herein is that the writ petitioners were appointed to

work under the teaching category and they had also performed their duties for about 19 months but their services have been dispensed with keeping them out of service and consequent thereof, the writ petitioners were disallowed to render their services.

16. In this admitted factual aspect, it cannot be inferred that the writ petitioners were not willing to discharge their duties, rather, they were forcefully deprived from discharge of their duties and hence, as per the ratio laid down by the Honâ??ble Apex Court, as referred hereinabove, the principle of â??no work no payâ?? will not be applicable.

17. The other question is as to whether merely on account of the fact that the contention has been raised by the learned counsel for the petitioners in course of argument for payment of only 25% back wages which is contrary to the original prayer No. (B) to the writ petition, can it deprive the court of law in passing the order of full salary, if law permits.

18. This Court is of the considered view that the contention raised by the either of the parties does not bind the court rather a court has to pass the order in accordance and settled proposition of law. The learned Single Judge, although has recorded in the impugned order about the contention raised by the learned counsel for the petitioners about 25% of back wages but has directed to make payment of full salary holding the petitioners entitled for the same which cannot be said to be an unjustified direction because such direction has been given keeping in mind the position of law that â??no work no payâ?? will not always be applicable as also since the order of termination has been held to be illegal even by a Division Bench of this Court.

Thus, when the order of reinstatement has been passed, there is no reason to deny the salary since the writ petitioners have been deprived from discharging their duties forcefully and wrongfully.

19. On the basis of the elaborate discussions made hereinabove, this Court is of the view that the impugned decision holding the petitioners entitled for salary cannot be faulted with.

20. In the result, the instant appeal being devoid of merit, is dismissed.

21. Consequently, I.A. No. 11066 of 2019 filed for staying the execution and implementation of the order dated 25.07.2018 also stands dismissed.