
(2014) 07 JH CK 0052
In the Jharkhand High Court
Case No : L.P.A. No. 527 of 2012

State of Jharkhand

APPELLANT

Vs

Sulochana Kumari

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 07 JH CK 0052

Hon'ble Judges : R. Banumathi, C.J.; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Srijit Choudhary, G.A. and Rakesh Kumar Sahi, Advocate for the Appellant; Rajendra Krishna, Advocate for the Respondent

Judgement

R. Banumathi, C.J.—This Letters Patent Appeal is filed against the order dated 17.7.2012 passed in W.P. (S) No. 5567 of 2004, whereby the writ petition was disposed of with a direction to the authorities to consider the case of the respondents for seniority in the light of the observation made in the decision. Pursuant to an advertisement published in the newspaper dated 7.8.1988 for appointment on the post of Assistant Teachers in the Government Basic Schools, the private respondents applied and they were empanelled by the Establishment Committee, when the respondents were not given appointment they had earlier filed a writ petition being C.W.J.C. No. 4155 of 1996(R) before this Court. The said writ petition was disposed of vide order dated 24.9.1997 with a direction to the respondents-authorities to consider the case of the respondents-writ petitioners in the light of the observations made in C.W.J.C No. 2801 of 1995(R) and if the respondents' grievances are found to be genuine they may be issued appointment letters.

2. Pursuant to the direction passed by the Court in C.W.J.C No. 4155 of 1996(R), respective cases of the respondents were examined and it was found that their names were ignored by mistake and consequently appointment letters were issued to the respondents on 08.05.1999 and they joined in their respective

Schools. The seniority of the respondents has been counted from the date of issuance of the appointment letters and not from 1991 in which they were entitled to get appointment letters.

3. The respondents filed W.P. (S) No. 5567 of 2004 for giving them seniority with effect from August, 1991 and the writ petition was disposed of holding that the respondents were issued appointment letters after detecting the mistake, pursuant to the examination held in 1988 and, therefore the respondents are entitled for the seniority from the date of their batchmates were given seniority, as per the merit list.

4. Being aggrieved by the said direction passed in W.P. (S) No. 5567 of 2004, the State of Jharkhand has preferred this Letters Patent Appeal.

5. Heard Mr. Srijit Choudhary, learned Government Advocate for the appellant-State and learned counsel, Mr. R. Krishna for the private respondents.

6. Learned counsel for the appellant-Mr. Srijit Choudhary appearing along with Mr. Rakesh Kumar Shahi, submitted that the seniority can be counted only from date of appointment in the substantive post and since the respondents were appointed only in the year 1999, their names can only be included in the seniority list only after their dates of the appointment, on which the respondents have joined their services. Learned counsel further submitted that the Writ Court failed to appreciate that the respondents have worked only after joining the post on 8.5.1999 in the respective schools and, therefore, they are not entitled to any benefit, for the period, for which they were not in service. It is further submitted that the writ Court failed to appreciate that since the respondents have joined their duty only in the year 1999 and if any benefit of seniority is granted to the respondents, the seniority of number of other teachers would be affected and that would lead to multiplicity of proceedings. Learned counsel for the respondents placed reliance on a case rendered in the case of Harish Maganlal Baijal Vs. State of Maharashtra and Others, . Learned counsel for the appellant further submitted that if the respondents are to be treated as they are recruited in the year 1991, seniority of the subsequently appointed other Assistant Teachers, would be affected and, therefore, the writ Court was not right in issuing a direction to prepare a fresh list.

7. Learned counsel for the respondents-Mr. R. Krishna, submitted that even though the respondents have secured their required marks, they were not given appointment letters only because of the mistake committed by the authorities and only after filing of the writ petition being C.W.J.C. No. 4155 of 1996 (Annexure-1 to the writ petition), the respective cases of the respondents were examined and it was found that their names were ignored by mistake and only thereafter the appointment letters were issued to the respondents on 8.5.1999. The learned counsel further submitted that since non issuing of the appointment letters in the year 1991 was only due to the mistake of the appellant, the respondents cannot be deprived of their seniority from the year 1991 and other

consequential benefits. In support of his contention, learned counsel placed reliance on a case rendered in the case of Prakash Chandra Agarwal Vs. State of Bihar and Others,

8. We have considered the submissions of learned counsel for the parties and the materials on record and also perused the order of the learned Single Judge.

9. It is not in dispute that the respondents' grievance of non consideration for the post in the year 1991 were found to be genuine. As pointed out by the Writ Court only after the order was passed in C.W.J.C. No. 4155 of 1996(R) dated 24.9.1997, the respective cases of the respondents were examined and it was found that the respondents' names were ignored by mistake and subsequently appointment letters were issued to the respondents on 8.5.1999 and the respondents joined their respective schools. The delay in issuing their appointment letters and the joining of the respondents in respective schools is only due to the mistake of the appellant and not due to any fault of the respondents. Had there not been any mistake on the part of the appellants, the respondents would have joined their post of Assistant Teachers in the year 1991 along with their batch mates.

10. On equitable grounds, interest of justice could be met only by notionally treating the appointment of the respondents as being joined in service in the year 1991. In this regard, the judgment relied upon by the respondents, Prakash Chandra Agrawal (Supra) is very much relevant, wherein in identical situation, considering the case of the competitive judicial Service Examination for the recruitment of Munsif when a candidate who has secured higher marks was not considered due to mistake and the candidates who have secured lesser marks were considered for appointment, the Hon'ble Supreme Court directed the State Government to consider the case of the appellant thereon for appointment as Munsif. The relevant portion of the said judgment is quoted herein below:

"Where the Bihar Public Service Commission had held the competitive Judicial Service Examination for the recruitment of Munsiffs and fixed the qualifying marks at 38 per cent for the unreserved class of candidates after taking into consideration the opinion of the High Court and had not subsequently altered it, but the commission while preparing the list of successful candidates had included the names of the candidates securing less than 38 per cent of marks and the name of the appellant, a candidate who had secured 38.8 per cent of marks, was not included in that list by the Commission and in the counter affidavit there was no reference to any fresh fixation of qualifying marks made by the Commission after it had once taken the decision to fix 38 per cent marks as the qualifying marks in regard to the candidates belonging to the unreserved category, it was not open to the Commission to exclude the name of the appellant only because the High Court had earlier recommended that 40 per cent marks should be the qualifying marks when it was consulted by the Commission. The name of the appellant should have, therefore, been included in the list submitted by the Commission to the Government under R. 19 by placing it above the name of the

candidate who had secured less marks than the appellant. By not doing so the Commission had violated the Rules and also Articles 14 and 16 of the Constitution. The Supreme Court directed the State Government to consider the case of the appellant for appointment as Munsiff under rule 21 of the Rules as if his name had been shown above the candidate securing less marks than him."

The ratio of the above decision is squarely applicable to the case on hand.

11. The stand of the appellant is that since the respondents have joined only in the year 1999 as per Rule 6(2) of the Notification No. 2749 dated 11.11.1975, the seniority of the respondents could be reckoned only from the date when they have joined on the substantive post. In this regard, the learned counsel for the appellant has drawn our attention to the Rules as contained in the Notification No. 2749 dated 11.11.1975. It is submitted that as per Rule No. 6(2) of the said notification, the seniority of the teachers will be determined only on the basis of date of assuming their duty.

Rule 6(2) of the said Notification reads as under:--

6(2) Seniority of the appointed teachers shall be determined on the basis of date of assuming of their charge. If more than one teacher assume charge on the same date, their seniority list shall be determined on the basis of their educational qualification. If their educational qualification is also same, their seniority shall be determined on the basis of their respective age.

12. We are of the view that Rule 6(2) of the above Notification is applicable only in normal circumstances. In the case at hand the respondents were not appointed only due to the mistake committed by the appellant and, therefore, even though the respondents were successful in the year 1991, they were given appointment in the year 1999. In such view of the matter, Rule 6(2) of the said Notification is not applicable in the facts and circumstances of the present case.

13. As pointed out earlier, non issuance of the order of the appointment to the respondents was only due to the mistake committed by the authorities, even though, the seniority of the subsequent Assistant Teachers would be affected, it is to be noted that the respondents are only two in number, that will not make much of deviation/alternation in the seniority list and therefore the contention advanced on behalf of the respondents cannot be countenanced.

14. The next point needs to be considered is that what reliefs to be granted to the respondents. In this regard, the learned Single Judge directed the appellant to prepare a fresh seniority list within 60 days from the date of the order positively and consequential benefits to the respondents.

15. The order of the learned Single Judge is clarified as under:- (i) It is ordered that the respondents be notionally treated as if appointed in the year 1991 pursuant to the advertisement published in the news paper dated 7.8.1988. The names of the respondents shall be placed as junior most in the said batch of teachers appointed pursuant to the advertisement dated 7.8.1988.

(ii) The respondents shall not be entitled for actual monetary benefits from 1991 till 1999, that is till their actual date of appointment in the year 1999.

(iii) The respondents shall be entitled for treating the respondents' date of appointment in the year 1991 as junior most in the said batch and shall be entitled to consequential benefits like fixation of pay, benefit of ACP and increments from 1991.

(iv) The period from 1991 to 1999 shall be taken as a period for continuity in service for calculating the pensionary benefits and other retiral benefits.

With the above clarification, this Letters Patent Appeal is disposed of.