
(2020) 11 JH CK 0053
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1281 Of 2019

Subodh Kant

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Specific Relief Act, 1963 — Section 14
Constitution Of India, 1950 — Article 14, 16, 226, 309, 311

Citation : (2020) 11 JH CK 0053

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Bhanu Kumar, Piyushita Tudu, Krishna Murari

Final Decision : Dismissed

Judgement

1. Heard Mr. Bhanu Kumar, learned counsel for the petitioner, Ms. Piyushita Tudu, learned counsel for the respondents-State and Mr. Krishna Murari, learned counsel for the respondent-J.E.P.C.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has preferred this writ petition for quashing of letter dated 24.12.2018 contained in Annexure-4 issued by the District Education Officer-cum-District Programme Officer, Giridih whereby service of the petitioner has been terminated from the post of para teacher.

4. The petitioner has passed the matriculation examination in the year, 1994 and obtained first division from K.S.S. High School, Koiridih. The petitioner has undergone for teachers training from Indira Gandhi National Open University (IGNOU) in the year, 2011. The petitioner was appointed as Para Teacher on 11.04.2005 in Upgraded Primary School, Chitarna. The petitioner joined on

11.04.2005 itself. A complaint was filed by one Dasrath Vishwakarma of Birni before the Lokayukt , Jharkhand against the petitioner and the same was recommended to the Deputy Commissioner, Giridih. An enquiry was conducted into the matter by the Block Supply Officer, Birni who gave a clear-cut finding that educational qualification of the petitioner at the time of appointment was wholly valid and correct that has been brought on record by way of annexure-3 series to the writ petition. Pursuant to direction of the District Education Officer-cum -District Planning Officer, Giridih, Chairman, School Managing Committee, Middle School, Chitaran terminated the service of the petitioner vide order dated 24.12.2018.

5. Mr. Bhanu Kumar, learned counsel appearing for the petitioner assailed the impugned order on the ground that due to complaint of one Dashrath Vishwakarma, certain manipulation was done in the minutes of meeting of the appointment of the petitioner pursuant to which an F.I.R. was lodged which is annexed with the rejoinder filed by the petitioner. He further submits that the petitioner was appointed having matriculation certificate and in new course in the year, 2006 the petitioner obtained intermediate degree. He submits that in view of letter dated 19.05.2010 contained as Annexure-10 to the rejoinder it has been decided that the persons who have obtained intermediate degree up to the year, 2008 they will be entitled for the honorarium. He further submits that at the time of appointment there was relaxation as the persons having higher qualification were not available that is why the petitioner was appointed having matriculation certificate. He further relied on letter dated 01.11.2008 and submits that cut-off date for the intermediate qualification was fixed as 30.06.2008 before that petitioner has obtained intermediate certificate. In that view of the matter, termination order is illegal. He relied on judgment in the case of " Sita Ram Manjhi Vs. State of Jharkhand & Others " (L.P.A. No. 117 of 2012) and submits that the case of the petitioner is fully covered with the said judgment. He also relied on judgment in the case of "Saral Pandit Vs. the State of Jharkhand" (W.P. (S) No. 666 of 2013 decided on 07.09.2020 and submits that a Co-ordinate Bench of this Court passed the order in favour of the petitioner of that case considering the judgment passed in L.P.A. No. 117 of 2012. Mr. Bhanu Kumar, learned counsel for the petitioner submits that the case of the petitioner is fully covered with this judgment and the impugned order is liable to be interfered by this Court.

6. Per contra, Mr. Krishna Murari, learned counsel for the respondent- JEPC submits that the petitioner was appointed on 11.04.2005 on the contractual basis. He submits that in view of letter dated 30.01.2004, Jharkhand Education Project Council has published advertisement vide Memo dated 22.10.2004 for selection of para teachers in upgraded Primary School of the District in which it has been specifically mentioned that requisite qualification for selection of para teacher will be intermediate /trained. He submits that the Village Education Committee Upgraded Primary School, Chitarna Birni convened an Aam Sabha on 11.04.2005 and in terms of resolution no. 3 to 5 that in the earlier Aam Sabha

dated 10.12.2004 the selection of one Para Teacher namely, Dasrath Vishwakarma resigned to his post and the petitioner was selected. He submits that at the time of selection, the petitioner mentioned his education qualification as Intermediate in terms of Annexure-A to the counter-affidavit. He submits that the petitioner was not selected on the basis of matriculation basis as at the time of selection he mentioned his educational qualification Intermediate passed which is apparent from the proceeding of Aam Sabha. The petitioner himself admitted that he has got Intermediate degree on 27.05.2006. He submits that in that view of the matter, the petitioner was not appointed on the basis of matriculation certificate. He further submits that in view of appointment letter, the appointment of the petitioner is contractual and the contractual employee has no right to be reinstated and only damage can be claimed by the employee in view of judgment in the case of " State Bank of India & Others Vs. S.N. Goyal" reported in (2008) 8 SCC 92 in which it has been held as under:-

17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well- recognised exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief--damages or reinstatement with consequential reliefs--is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide S.B. Dutt (Dr.) v. University of Delhi, U.P. Warehousing Corpn. v. Chandra Kiran Tyagi, Sirsi Municipality v. Cecilia Kom Francis Tellis³, Vaish Degree College

v. Lakshmi Narain, J. Tiwari v. Jwala Devi Vidya Mandir and Dipak Kumar Biswas v. Director of Public Instruction."

7. Learned counsel for the respondent-J.E.P.C. further submits that the employee who is having appointed on the contractual basis, then the contract is terminated prematurely, the remedy available with the appellant is to get the damages and not the employment. He relied on judgment in the case of "Bijay Kumar Pandey Vs. Ranchi University" reported in 2019 (3) JBCJ 199 in which it has been held as under:

"12. So far as the prayer for reinstatement is concerned, it cannot be granted by this Court mainly for the following facts and reasons: 5 (i) This appellant (original petitioner) was never employed upon a sanctioned post. (ii) The regular process of the employment was never followed. (iii) It was a contractual employment for a limited period. No sooner did, the contractual period is over his services can be terminated.

(iv) Even if the contract is terminated prematurely, the remedy available with this appellant is to get the damages and not the employment, especially looking to Annexure-6 to the memo of this Letters Patent Appeal and condition no. 2 thereof.

13. It has been held by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka And Others v. Umadevi (3) And Others reported in (2006) 4 SCC 1 especially in paragraph nos. 43 and 47 as under: "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature

of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in 6 the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. 47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." (Emphasis supplied). In view of these facts, the prayer for reinstatement is hereby, rejected."

8. Learned counsel for the respondent-J.E.P.C. further relied on judgment in the case of "Chandrasekhar Vs. State of Jharkhand & Others" (W.P.(S) No. 1832 of 2020 decided on 06.10.2020 and submits that this Court has not interfered with the termination order of the contractual employee and the said writ petition was dismissed.

9. Learned counsel for the respondent-State adopted the submission of the learned counsel for the respondent-JEPC.

10. In view of the submissions of the learned counsel for the parties, the Court has to examine whether the appointment of the petitioner was in the light of advertisement or not. It is an admitted fact that the advertisement was published on 22.10.2004 where in the educational qualification for such

appointment was intermediate. On perusal of proceeding of Aam Sabha contained in Annexure-A series, it transpires that the petitioner's qualification has been mentioned as intermediate studying. The said entry is also interpolated. The letter dated 19.05.2010 speaks that the persons who have obtained the intermediate degree upto 2008 will be entitled for honorarium. This letter also suggests that persons who were earlier appointed on the basis of matriculation certificate, they were required to obtain intermediate degree upto 2008. The petitioner has obtained intermediate degree in the year, 2006 whereas in the Aam Sabha proceeding the appointment of the petitioner was made on the basis of intermediate degree. The appointment in question was of 11.04.2005. In this regard, the petitioner was served show-cause and second show-cause. The petitioner filed second show-cause reply. After taking into consideration of this aspect of the matter, impugned order has been passed. The judgment relied by Mr. Bhanu Kumar, learned counsel for the petitioner in L.P.A. No. 117 of 2012, the dispute with regard to advertisement and qualification was not there and herein this case, the advertisement was particularly stating that the qualification is required to be intermediate. The petitioner obtained the said qualification in the year, 2006 whereas the appointment was made in the year, 2005 and thus at that time, the petitioner was not having intermediate certificate as disclosed in the minutes of meeting of Aam Sabha. It also suggests that the appointment was already made on the basis of intermediate degree that too has been interpolated in view of the minutes of meeting of Aam Sabha. So far the judgments relied by Mr. Krishna Murari, learned counsel for the respondent-JEPC are well settled proposition of law. Further the Courts are lenient in such cases where particular person is working on scheme and if the scheme is still going on and the Courts are liberal in allowing the persons to continue at least till the scheme continues. But the Court in this case is compelled not to pass any order in view of the fact that prima facie it transpires that the appointment was obtained by certain manipulation and in that view of the matter, no lenient view can be taken with regard to the argument of the learned counsel for the petitioner. The judgments relied by the learned counsel for the petitioner, the manipulation part was not there.

11. In view of the cumulative effects of the discussions made above, no interference is required by this Court. Accordingly, the writ petition is dismissed. Pending I.A., if any, stands disposed of.