
(1999) 12 PAT CK 0110
In the Patna High Court
Case No : C.W.J.C. No. 987 of 1990

Suresh Kumar Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Citation : (1999) 3 PLJR 88

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Dilip Kumar Tiwari, for the Appellant; R.N. Mukhopadhaya for R. No. 6, Mr. Sanjay Kumar for R. No. 20, Mr. S.B.N. Singh for state, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—Heard the learned counsel for the petitioners including the counsel for the State and private respondents.

2. This writ petition has been filed by the petitioners with a prayer for quashing Annexure-6 which is an order dated 12.10.88 and also with a prayer for quashing Annexure-8 which has been brought in by amendment. The same is dated 8.6.90 which is a gradation list.

3. The main grievance of the petitioners is that the petitioners are members of Bihar Education Service Class-II recruited to the said service some time in 1976 and 1979. Their claim is that they should rank senior to private respondents no.5 to 22. But according to the petitioners they have been appointed initially in Bihar Subordinate Education Service which is an inferior service. In other words since the aforesaid persons were appointed in Sub-ordinate list of 1987 meant for Bihar Education Service, but their names were included in Gradation List dated 8.6.90. It is not in dispute that those private respondents were appointed as lecturers in Government Sanskrit Colleges.

4. The main dispute is whether the private respondents were appointed in Bihar Education Service Class-II. but it is not in dispute that the private respondents

were appointed earlier time than the petitioners. But the petitioners are asserting that from Annexure-3 it will appear that the private respondents were not appointed in Bihar Education Service Grade-II

5. This Court from perusal of Annexure-3 finds that by the said order appointments were made of the private respondents in the higher scale: Rs. 415-745 in Bihar Subordinate Education Service. But Annexure-3 also makes it clear that the private respondents were appointed against the posts which have fallen vacant in Bihar Education Service Grade-II.

6. From perusal of Annexure thus appears that the private respondent were appointed against Bihar Educ it: Service Class-II but they were given the higher scale of Bihar Sub-ordinate Education Service.

7. Even then relying on the said Annexure-3 learned counsel for the petitioners submits that the post to which private respondents were appointed were downgraded and in support of such submission he relied on the document case 18th August, 1973 (Annexure-B) issued by the Education Department of Bihar Government. But from perusal of the said document this Court cannot come to conclusion that the post of lectures in Government Sanskrit College were ever downgraded.

8. In fact, the private respect filed a writ petition before this Ho"ble Court numbered as CWJC No. 3658 of 1982 and the same was finally decided by a learned Single Judge of this court vide order dated 16.12.87.

9. From perusal of the said Judgment it appears that the grievances of the private respondents were for a direction upon the respondents to pay salary to the private respondents in terms of recommendation of the 3rd Pay Revision Committee and the 4th Pay Revision Committee. In the said Judgment in para 4 it has been found by the learned Judge that the petitioners in that case, who are private respondents in this case, were appointed in Bihar Education Service Class-II.

10. Learned counsel for the private respondents has also drawn attention of this Court to the recommendation of the 3rd Pay Revision Committee and 4th Pay Revision Committee about the said posts of lecturers in Government Sanskrit Colleges. From the recommendation of the 3rd Pay Revision Committee it appears that the said posts belong to Bihar Education Service Class-II. Similarly from the recommendation of 4th Pay Revision Committee also it appears that the said posts belong to Class-II of Bihar Education Service. Therefore, the fact that the posts of lecturer in Government Sanskrit College belong to the Bihar Education Service cannot be disputed by the petitioners" counsel. First of all there is a finding by the Court of law that posts belong to Bihar Education Service Class-II. And there are findings of both 3rd Pay Revision Committee and 4th Pay Revision Committee also to that effect. Apart from that from Annexure-3 also it will appear that the said posts belong to Bihar Education Service Class-II.

11. Controverting this position learned counsel for the petitioners assail the very appointment of the private respondents by saying that the appointment to Bihar Education Service, Class-II can only be made on recommendation of the Bihar Public Service Commission. But from Annexure-3 it will appear that they were appointed not on the recommendation of the Bihar Public Service Commission.

12. Firstly there is no such challenge in the pleading assailing the appointment of the private respondents. Apart from that this Court cannot permit the petitioners to challenge the appointment of the private respondents made in 1973 on the basis of this writ petition filed in 1990. Therefore, challenge on this score cannot be entertained by this Court.

13. Since it has to be held that the private respondents were appointed prior to the petitioners in Bihar Education Service Class-II there is no error in gradation list by which the private respondents were granted seniority to the petitioners. Therefore, the Court is unable to grant any relief to the petitioners.

This writ petition is dismissed. No costs.