

(2016) 09 JH CK 0113
In the Jharkhand High Court
Case No : L.P.A. No. 71 of 2015.

The State of Jharkhand, through the Secretary, Human Resources Development Department (Directorate of Secondary Education), Govt. of Jharkhand, At Project Building, P.O. and P.S.-Dhurwa, Dist.-Ranchi - Appellant @HASH Kafil Ahmed, son of Late Wasi Ahmed,

Date of Decision : 20-09-2016

Acts Referred:

Citation : (2016) 4 AIRJharR 800 : (2016) 4 JBCJ 243 : (2017) 1 JCR 503 : (2016) 4 JLJR 683

Hon'ble Judges : Virender Singh, CJ. and Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Rajesh Kumar and G.P.-V Mr. Abhijeet Kr. Singh, JC to GP -V, for the Appellants (LPA No. 71 of 2015); Mr. M.S. Anwar, Sr. Advocate and Mr. Afaque Ahmed, Advocate, for the Appellants (C.O. No. 3 of 2016); Mr. M.S. Anwar, Sr. Advocate and Mr. Afaque Ahm

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J. - Appellant-State of Jharkhand and the respondent-writ petitioner, both are aggrieved of order dated 19.09.2014 passed in W.P.(S) No. 6555 of 2012. L.P.A. No. 71 of 2015 has been filed by the appellant-State of Jharkhand and C.O. No. 3 of 2016 has been filed by the respondent.

2. The writ petition was filed challenging order dated 24.09.2012 passed by the Director, Secondary Education-cum-Joint Secretary, whereby respondent's appointment to the post of clerk has been held illegal.

3. Heard.

4. Mr. Rajesh Kumar, the leaned G.P.-V, appearing for the State of Jharkhand, contends that once appointment of the respondent on the post of clerk has been found illegal the matter does not require any further enquiry and while so, order dated 24.09.2012 did not warrant interference of the Writ Court. It is further contended that grant of 25% back-wages for the period between 24.09.2012 to 19.09.2014 to the respondent, who was appointed illegally, is illegal.

5. Per contra, Mr. M. Sohail Anwer, the learned senior counsel appearing for the respondent who has also filed C.O. No. 3 of 2016, submits that the respondent was appointed on a sanctioned vacant post of clerk by the competent authority, i.e., the Director, Secondary Education and thus, his appointment at best can be termed as irregular and not illegal. Raising a grievance to the direction of the Writ Court remanding the matter for a fresh decision on the question of legality and validity of the respondent's appointment, the learned senior counsel submits that the respondent who has been litigating since 1995 cannot be made to suffer another enquiry and once order dated 24.09.2012 was quashed, the matter should have rested there. The learned senior counsel further submits that the respondent, who remained out of service on account of an illegal order passed by the Director, Secondary Education, is entitled for grant of full back-wages.

6. The facts narrated in the present proceeding disclose that, the respondent-writ petitioner, who possessed a degree in B.A.(Hons.) in Psychology with principle-Urdu as one of the subjects and also a B.Ed. degree, was appointed on the post of Assistant Teacher(Urdu) on ad-hoc basis in the matric-trained scale by the Regional Deputy Director of Education vide memo dated 12.02.1983. The respondent has asserted that pursuant to a direction issued on 20.10.1982 by the Director, Secondary Education, as no candidate from the panel prepared for filling up vacancy of Lower Secondary Teacher in Government school, Motihari was available, he was appointed on ad-hoc basis on the aforesaid post. It appears that about 5 years thereafter, one Iftekar Ahmad joined the post of Urdu Teacher in the Government High School, Motihari and consequently, the respondent was relieved from the said post on 14.03.1988. Subsequently, in view of 5 years' service rendered by the respondent he was appointed on a sanctioned post of clerk in the Government Girls High School, Ranchi vide memo dated 13.12.1988 and the period between 14.03.1988 and 17.12.1988 was regularized, however without salary, for calculation of pension. The respondent who had worked on the post of Assistant Teacher, however, joined the post of clerk under protest on 17.12.1988 and submitted a representation on 03.02.1989 for his absorption on the post of Assistant Teacher, in response thereof, he was directed to furnish educational certificates, which were forwarded to the Deputy Director, Secondary Education. When no decision was taken on his representation, the respondent submitted another representation on 08.09.1994, and thereafter he moved this Court in C.W.J.C. No. 730/ 1995(R). The writ petition was disposed of on 19.08.1995, directing the State-respondent to dispose of the representation submitted by him. In the proceeding of M.J.C. No. 379/1996(R), which was initiated by him for non-compliance of order dated 19.08.1995 passed in C.W.J.C. No. 730/ 1995(R), the State took a stand that the representation of the writ-petitioner has been disposed of on 12.10.1996. Accordingly, the contempt petition stood disposed of on 21.01.1997. About 12 years after the respondent was appointed on the post of clerk, a show-cause notice dated 22.05.2000 was issued to him on the ground that his appointment to the post of clerk was "irregular and illegal". The respondent submitted his

reply on 02.06.2000, however, vide order dated 4.07.2002 his service was terminated. Aggrieved, the respondent approached this Court in W.P.(S) No. 4321 of 2002, which was allowed on 27.06.2007 and the order of termination dated 04.07.2002 was quashed. The order passed by the Writ Court reveals that it was brought to the notice of the Court that a Committee was constituted to enquire into the legality of the appointment and the respondent had already appeared before the Committee. Considering the said fact, the Writ Court directed the Director, Secondary Education, Bihar to transmit all records to the authority of the State of Jharkhand, if already not sent, and the Committee was to take a decision after hearing the writ-petitioner and submit its report to the Director, Secondary Education, State of Jharkhand. The respondent submitted his reply on 23.07.2007 and 25.07.2007 to the show-cause notice issued by the Committee, however, it appears that the Committee had already submitted a report on 04.07.2007 and on that basis a second show-cause notice was issued to the respondent on 25.10.2007. It further appears that vide memo dated 10.12.2008 a charge-memo was served upon the respondent through letter dated 17.12.2008 issued through the Principal of school, which was pursuant to a decision taken by the Director, Secondary Education to initiate the departmental proceeding against the respondent, however, the said decision was recalled vide order dated 16.02.2010 and the respondent was again asked to submit reply to the second show-cause notice dated 07.08.2007. It is the final order dated 24.09.2012 passed by the Director, Secondary Education-cum-Joint Secretary, Department of Human Resource Development, whereby the respondent was discharged from service, which was challenged before the Writ Court in W.P.(S) No. 6555 of 2012.

7. The above narration of facts reveals that order dated 24.09.2012 was passed purportedly in compliance of the order dated 27.06.2007 passed in W.P.(S) No. 4321 of 2002 and to say that the Director, Secondary Education has complied with the aforesaid order of the Writ Court, is to belie the startling facts noticed by the Writ Court. The Committee which was constituted to examine the legality of respondent's appointment on the post of clerk had already held its meeting on 14.06.2007 and concluded that the respondent's appointment as a clerk was without following the due procedure. The Committee submitted its report on 04.07.2007. Obviously, reply to the show-cause notice issued to the respondent was not considered by the Committee. What we find from a reading of order dated 24.09.2012 is that, the Director, Secondary Education though noticed the operative part of order dated 27.06.2007 passed in W.P.(S) No. 4321 of 2002 where under the Committee was directed to take a decision after hearing the respondent within six weeks from the date of receipt of his reply, the Director, Secondary Education-respondent no.2 proceeded to pass the impugned order on the basis of the report submitted by the Committee in total disregard to the direction of the Writ Court.

8. There is no gainsaying in repeating that the respondent has been litigating since 1995 and his appointment as Assistant Urdu Teacher as well as on the post

of clerk was made on sanctioned vacant posts. Mr. Sohail Anwar, the learned senior counsel has referred to decision in *State of Karnataka & Ors. v. M.L. Kesri & Ors.* reported in (2010) 9 SCC 247, to contend that the appointment made on sanctioned vacant post by the competent authority is not illegal, may be it was irregular. In the proceeding of C.W.J.C. No. 730 of 1995(R), the State admitted that the break in service consequent upon respondent's discharge from the post of Assistant Urdu Teacher on 14.03.1988 was condoned by the Department and the period between 14.03.1988 to 17.12.1988 was regularised for calculation of pension. We also cannot lose sight of the fact that the grievance projected by the respondent in C.W.J.C. No. 730 of 1995(R) was for "regularization and absorption" on the post of Assistant Urdu Teacher and not on the post of clerk which he had joined on 17.12.1988, however, at no point in time for about 12 years the State challenged the respondent's appointment on the post of clerk as illegal. It is not the case pleaded by the appellant-State that the respondent did not possess requisite qualification at the time of his appointment on the post of clerk nor has it been denied that his appointment was made by the Director, Secondary Education, who is the competent authority. In our considered opinion, appointment of the respondent was merely "irregular".

9. The specific challenge thrown by Mr. Sohail Anwar, the learned Senior counsel appearing for the respondent to the impugned order dated 19.09.2014 is, whether it is in the interest of justice to relegate the respondent once again to suffer the agony of departmental proceeding?

10. At this stage, we may profitably notice the observation of the Supreme Court in *State of A.P. v. N. Radhakishan*, reported in (1998) 4 SCC 154 : "Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceeding. Ultimately, the Court is to balance these two diverse considerations.". There is no explanation for the delay of about 5 years in complying with order dated 27.06.2007 passed in W.P.(S) No. 4321 of 2002, and in fact it was rather a complete non-compliance of the said order. There is no explanation for delay of 12 years in issuing show-cause notice dated 22.05.2000 on the purported allegation that the respondent's appointment was "irregular and illegal". At least 5 years before the show-cause notice dated 22.05.2000 was issued to the respondent, the appellant-State had the knowledge of the alleged illegal appointment of the respondent, when he filed C.W.J.C. No. 730/1995(R) for his absorption and regularisation on the post of Assistant Urdu Teacher. The finding recorded by the Committee which has been reiterated in order dated 24.09.2012 passed by the respondent-Director, Secondary Education, that the respondent's appointment was "illegal", is without noticing the aforesaid facts. On admitted facts, the respondent's appointment on the post of clerk was merely irregular, and in our opinion, his continuance on the said post for about 26 years (now 28 years) should have been considered by the learned Single Judge to put an end to the controversy sought to be raised by the appellant-State. Various judgments of the Supreme Court referred in paragraph no.53 of

"Secy. State of Karnataka v. Umadevi (3)" reported in (2006) 4 SCC 1 and other subsequent decisions clearly come to rescue of the respondent. It would be really against the public policy, if the respondent is permitted to continue for 26 years and still, the State does not regularise his services. The State instead of accepting the appointment of the respondent, which is merely "irregular", proceeded to cause an enquiry which finally terminated in the year, 2012, and now it would again commence by virtue of the Writ Court's order. For the mistake committed by the appellant-State, the respondent has suffered on account of the prolonged litigation for about 16 years, since the first show-cause notice was issued to him. He has already undergone mental agony and continuance of any further proceeding to examine legality of his appointment would only add to his sufferings.

11. In the background of the aforesaid facts, we are of the considered view that the proceeding for enquiring into the alleged validity and legality of the respondent's appointment must stand terminated after the Writ Court quashed order dated 24.09.2012 passed by the Director, Secondary Education. The respondent stands reinstated on his post with 25% back-wages and all other consequential benefits for which he becomes eligible on quashing of the aforesaid order of discharge. To make things more clear, it is ordered that no further proceeding/ enquiry shall be caused on the pretext of enquiring into the legality of the respondent's appointment. The cross-appeal vide C.O. No. 3 of 2016 is allowed and L.P.A. no.71 of 2015 is dismissed, in the aforesaid terms.