
(2012) 04 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 18860 of 2011

Uma Chaturvedi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2013) 2 PLJR 21

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Bijay Kumar Pandey and Ajay Kumar Sharma in both, for the Appellant; Sandeep Patil in 18860 and Mr. K. Ravish in 4133, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—In both the writ applications decisions of the Director, Secondary Education, contained in Annexure-1, are the subject matter of challenge. Claim of the petitioners for regularization on their respective posts, which they were holding, has been rejected on the ground that they were over-age at the time of their appointment. Both the petitioners were appointed as Assistant Teachers in the Project Girls High School in question known as Sardar Mangal Singh Project Girls High School, Mainatand, in the district of West Champaran.

2. Petitioners want quashing of the order contained in Annexure-1 with a direction upon the respondents to regularize their services especially when they had rendered their services for more than two decades and the reason for rejection is tenuous especially in view of the observation made by the Full Bench in the case of Project Uchchavidyalaya Siksha, Etc. Etc. Vs. State and Others Etc. Etc. .

3. Attention of the Court has been drawn to paragraphs 21 and 22 of the said decision where the Full Bench while dealing with such dispute relating to the Project Schools at the High Court level had the foresight to express its opinion

that claim of an employee would not be brushed aside or negated on the ground that even if they have had uninterrupted period of service beyond 16-17 years, they ought not to be removed on the simple ground that they had crossed the age of 31 years at the time of initial appointment by the Managing Committee.

4. The Full Bench further has gone to deal with the issue of over-age or under-age, as the case may be, and has also opined that since there was no rule in place at the time when such engagements were made by the Managing Committee, the same cannot be made yardstick for judging such appointments after so many years.

5. The Full Bench decision of the High Court even travelled to the Apex Court but the Apex Court did not express any contrary opinion on the observation of the Full Court. It did lay down certain guidelines based on which verification of the status of the schools were required to be made on the actual head count on the field but rejection of claim for regularization on spacious ground is one of the aspect which has been talked about even by the Apex Court.

6. The stand of the State in the counter affidavit is based on the so-called observation of the Apex Court, which has been quoted in para 9 of the counter affidavit.

7. With due respect to the counsel for the State, such an observation will have to be read in a holistic manner and cannot be ignorance or oversight of the observation made by the Full Bench of the High Court on such issue.

8. This Court and yet another Bench of this Court has had occasion in the past to deal with such matters and give direction upon the respondents to reconsider the claim by setting aside decisions of refusal to recognize or regularize services of employees on the ground of being overage or underage.

9. In the present two writ applications since disputes are identical or similar, therefore, based on the rationale and reasoning and observation of the Full Bench given in the Project Uchcha Vidyalaya Shikshak Sangh (supra), the two impugned orders, contained in Annexure-1, are quashed.

10. Direction is issued upon the respondents to ensure that necessary orders in favour of the petitioners are passed within a reasonable time frame, preferably, within a period of three months from the date of production of a copy of this order. Both the writ applications are allowed.