
(2003) 01 JH CK 0147
In the Jharkhand High Court
Case No : C.W.J.C. No. 931 of 2001

Yasoda Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 569

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : V. Shivnath and S. Topno, for the Appellant; Pradeep Modi, G.P.-I, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. V. Shivnath, learned counsel for the petitioner and Mr. Pradeep Modi, learned G.P.-I and with their consent this writ petition is being disposed off at this stage. At the outset, Mr. V. Shivnath prays that he be allowed to implead the Secretary, Primary Education, Government of Jharkhand as respondent. Let him do so.

2. According to the case of the petitioner, an advertisement was caused to be published in the newspaper in the year 1985 calling for applications from male and female teachers for filling up 514 vacant posts of Assistant Teachers. The petitioner applied. Thereafter, interview etc. were held and a panel was prepared and finally on 28.5.1988, the respondent No. 4 (The Deputy Development Commissioner, Dhanbad) appointed the petitioner as an Assistant Teacher in the Rajkiya Middle School, Digwadih vide Annexure-1 to the writ application.

3. Thereafter, the petitioner joined her service on 30.5.1988. On 3.11.1988, the respondent No. 5 (Deputy Development Commissioner, Dhanbad) cancelled the appointment of the petitioner without issuing any show-cause notice and without any opportunity of hearing. In fact, along with the petitioner 175 other teachers also faced the same fate and 69 out of them filed a writ petition before the then Ranchi Bench of Patna High Court vide C.W.J.C. No. 01 of 1992(R). According to

the learned counsel for the petitioner, vide judgment and order dated 8.12.1993, the aforementioned writ petition was allowed and the impugned order of cancellation of service was quashed. Thereafter, the State Government filed a SLP which ultimately was dismissed by the Supreme Court as has been stated in paragraph 19 of the writ application. Subsequently, another writ application was filed by another set of teachers vide C.W.J.C. No. 108 of 1995(R) and that writ application was also allowed and the impugned order of cancellation was also quashed.

4. After the aforementioned judgment was passed in C.W.J.C. No. 108 of 1995(R), the petitioner filed representation vide Annexure-3 and 3/4 requesting the respondents that in view of the judgments, she should also have been given the same benefit, but it was not granted to her and she had requested the District Superintendent of Education, Dhanbad a number of times but he had merely given assurances that in the month of August, 1995, the non petitioners would also be allowed to join but inspite there of nothing happened. The aforementioned statements can be found in Annexure 3/4 of the writ petition. In the same annexure, the petitioner has further stated that thereafter she requested the District Superintendent of Education, Dhanbad on a number of occasions and prayed that she should be allowed, to join, but no orders were passed and on 17.1.2001, he told her that no orders would be given from the office of the District Superintendent of Education and she should meet the Deputy Commissioner. Accordingly, she sent the representation to the Deputy Commissioner, Dhanbad which appears to have been received in his office on 27.1.2000. Even thereafter, when the petitioner was not favoured with equal treatment as was given to the petitioners of the above mentioned writ application, the petitioner finally moved this writ application and filed the same on 7.3.2000.

5. In this writ application, therefore, the petitioner has made a prayer that she should be given similar benefits as has been given to the petitioners of the above mentioned two writ applications together with consequential benefits and an order should be passed to reinstate her in service.

6. Mr. Pradeep Modi, learned G.P-I has raised basically two objections--the first of which being that the petitioner's service having become cancelled in the year 1988 and she having opted to move this Court in the year 2001, should not be granted any relief on the ground of delay and laches. This Court is not inclined to accept the aforementioned objection firstly because the last judgment was delivered on 12.5.1995 in C.W.J.C. No. 108 of 1995(R) and thereafter in the year 2001, the District Superintendent of Education finally informed the petitioner that no order could be passed from his office and the petitioner was told to approach the Deputy Commissioner. Consequently, she filed Annexure 3/4 in the manner indicated above and thereafter, filed the writ application on 7.3.2001. Moreover, from a perusal of the pleadings, it appears that neither any third party rights have been created nor any parallel rights have come into existence. Moreover,

the scope of judicial review under Article 226 cannot prevent a Court of equity to issue writs for achieving the basic objects of the Constitution. Had it been a case where third party rights had been created, this Court may have declined to interfere but from the pleading made and as has already stated, it is nowhere apparent that any third party rights have come into existence. Mr. Pradeep Modi also could not convince the Court that in fact, third party rights have been created. In that view of the matter, although the order of cancellation was passed on 3.11.1988, this Court notwithstanding thereof, has taken up this matter and consequently, proceeds to reject the aforementioned preliminary objection raised on behalf of Mr. Pradeep Modi, relying upon the case of Mohan Prasad Singh v. The State of Bihar and Ors." and Tara Nand Kumar v. The state of Bihar and Ors." reported in 1999 (2) BBCJ 387 wherein, at paragraphs 38 and 39, a learned Single Judge observed as follows :

"38. Here of course the petitioners have not given any acceptable explanation for the delay. But from the discussions made above, the reasons why this Court is inclined to condone the delay, is that in this case, at the instance of the colleagues of the petitioners, challenge to similar impugned orders on merits has been accepted by the Court finally. Therefore, the impugned order cannot be upheld on merits. This feature of the case disturbs the conscience of this Court to a great extent. This Court has considered this aspect very carefully and comes to the conclusion that in similar case when the colleagues of the petitioners got relief from the Court against the order of their termination of service and when the petitioners challenge the same order, the petitioners cannot possibly be told that the Court will reject their case in limine as they have approached the Court after a considerable lapse of time even though for such delay no third party right or parallel rights have come into existence. In my considered opinion if however, the Court takes this attitude, that would be in violation of the equality clause under Article 14 of the Constitution of India. This Court cannot uphold the impugned orders, when identical orders have been declared illegal, just on the ground of delay even though no one has suffered for the petitioner's belated approach to this Court.

39. Here the question is one of breach of fundamental rights of the petitioners and in the matters of infringement of fundamental rights under Articles 14 and 21 of the Constitution, the Courts have always been liberal in condoning the grounds of delay."

7. The other objection raised on behalf of Mr. Pradeep Modi is that there is dispute with regard to the genuineness of the petitioner and referred to paragraph 22 of the counter affidavit. He has submitted that after proper investigation, if the claim of the petitioner is found genuine then her matter would be put up before the District Education Establishment Committee, Dhanbad for necessary orders as per Rules and that in the light of the orders passed in C.W.J.C. No. 1/1992(R) and C.W.J.C. No. 108 of 1995(R), best effort have already been taken for earliest decision so as to expedite the necessary investigation.

8. Mr. Pradeep Modi has made the aforesaid submissions on the basis of paragraph 22 of the counter affidavit. Let it be recorded that the aforementioned counter affidavit was filed on 11.7.2001 i.e. almost one year and five months ago. However nothing has been brought on record as to the present status of or the finding of the aforesaid investigation.

9. Mr. V. Shivnath, on the other hand, referred to Annexure-5 brought on record by him in the rejoinder to the counter affidavit and stated that after she had joined and started working, the respondent had also opened the Service Book of the petitioner and all entries were made therein. However, in the counter affidavit, at paragraph 5, it has been recorded that one Smt. Yasoda Sharma, D/o Jainath Sharma, was appointed. Learned counsel for the petitioner states that this Yasoda Sharma refers to someone else and this petitioner is the daughter of Jairam Sharma. In view of the pleadings made and in view of the objection made by the State, this Court feels to give any positive direction on this disputed question of fact. However, the ends of justice will be met if the petitioner is given liberty to approach the Secretary, Primary Education, Government of Jharkhand i.e. the newly added respondent who will immediately look into the matter and take stock of the enquiry that has been referred to at paragraph 22 the counter affidavit and apprise him about the result. It goes without saying that if the petitioner is the same person who was in fact appointed on 28.5.1988 as claimed by her vide Annexure-1 (S. No. 18) and if the Service Book corresponds to this petitioner then this Court does not see any reason why she should be deprived of the benefits which have been conferred to her colleagues. The Secretary, Primary Education, Government of Jharkhand shall conclude the entire exercise within a period of four weeks from the date of receipt of a copy of this order.

10. With these observations and directions, writ petition stands disposed off.