
(2006) 10 PAT CK 0038

In the Patna High Court

Case No : L.P.A. Nos. 997 and 1006 of 2005

Yawar Ali Rizvi @ Yawar Ali Rizivi and Harendra Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Citation : (2006) 10 PAT CK 0038

Judgement

J.N. Bhatt, C.J.—Both these Letter Patent Appeals, by invocation of Clause 10 of the Letters Patent in the Patna High Court Rules, have been directed against a common judgment, dated 27.7.2005, passed in CWJC No. 768 of 2000 and CWJC No. 1863 of 2000. They involve identical points and, therefore, common judgment was written by the learned Single Judge and, upon request, we have also taken up both the matters simultaneously and we propose to dispose them of by this common judgment.

2. The learned Senior Counsel, Dr. Sadanand Jha, has assailed the impugned judgment contending that they are illegal and not supportable, whereas the learned Counsels for the University and the Government have challenged the submissions of the learned Senior Counsel Dr Jha.

3. Since both the appeals and original writ petitions involve identical questions of facts, some of the facts, which are common and material, have been highlighted hereunder:

CHRONOLOGY OF EVENTS

Sl. No. Date

EVENTS

1. 17.2.1981:

The appellant-original petitioner, Yawar Ali Rizvi in L.P.A. No. 1006 of 2005, was initially appointed on the post of Lab Technician in the Department of Botany of L.N. College, Bhagwanpur, Vaishali, on the basis of the approval of the Vice

Chancellor, Bihar University and he joined on 20.2.1981.

2. 9.7.1984:

The appellant-original petitioner Harendra Kumar, in L.P.A. No. 997 of 2005 was appointed as Laboratory Incharge in the same College and he joined on 16.7.1984.

The appellant-petitioner Yawar Ali Rizvi received salary from 20.2.1981 to 30.6.1983 and again from 1.9.1994 till the date of report i.e. 31.7.1999 and appellant-petitioner Harendra Kumar received salary from 16.7.1984 to October, 1985 and again from 1.9.1994 till the date of report (31.7.1999).

Thereafter" payment of their salary was stopped by the Principal of the College.

3. 19.12.1986

25.1.1986

The appellants-petitioners filed representations before the Vice Chancellor of the University through the Principal of the College on 19.12.1985 and 25.1.1986, respectively, against non-payment of salary and the same was forwarded to the Registrar of the University for sanction of fund for payment of salary to the petitioner which were forwarded to the Vice Chancellor.

4. 10.5.1986

was the date fixed as cut-off date by the State Government for the purpose of considering claims of regularization and the appellants-petitioners were appointed prior to this date.

5. 24.4.1987:

The Principal recommended appellants-petitioners" case for regularization before the Coordinator, College Development Council, Bihar, Muzaffarpur and also for sanction for the post of Lab Technician.

6. 24.3.1988:

:CWJC No. 1254 of 1988, filed by appellant-original petitioner Yawar Ali Rizvi, for a direction for payment of salary and regularization of service was permitted to be withdrawn with an observation that this order would not prejudice the case of the petitioner if a post of Lab Technician in Botany Department was created and if the University considered petitioner"s case.

7. 4.1.1994:

Appellant-petitioner Yawar Ali Rizvi again moved this Court in CWJC No. 7676 of 1992 for regularization of his service and sanction of the post of Lab Technician in Botany Department of the College which was disposed of with observation that since the Principal of the college had already requested the Vice Chancellor of the University for considering petitioner"s case, therefore the Vice Chancellor should

request the State Government for sanctioning the post after examining the requirements of the college and if the post was sanctioned, petitioner's case could be considered and it was further observed that final decision in this regard should be taken within three months from the date of the order.

8. 17.6.1994:

Since the post was not sanctioned by the State Government, Bihar University issued an order that the appellants-original petitioners be paid their salary in pay scale of Routine Clerk against the available sanctioned Class III post in the College till the post of Lab Incharge was sanctioned.

9. 30.6.1994

Appellant-Petitioner Yawar Ali Rizvi was communicated the order passed by Secretary, Higher Education by which petitioner's claim for regularization was rejected, which was challenged in CWJC No. 7711 of 1994 but the same was dismissed on 22.1.1996.

10. 19.2.1997

In L.P.A.36 of 1994 reported in Braj Kishore Singh and Others Vs. State of Bihar and Others, it was held that staffing pattern has already been laid down which amounts to creation of posts and, as such, the petitioners claimed that in view of this decision, their appointment be deemed to be sanctioned within the staffing pattern.

11. 31.7.1999:

The University has scrutinized records of the claimants and other relevant records and submitted a report before the Secretary, Higher Education Department, Government of Bihar, in the light of the decision in the case of BrajKishore Singh v. State of Bihar (supra).

12. 16.9.1999

The State Government issued letter stating therein that the claim for regularization of non-teaching staff of L.N. College, Bhagwanpur, including these appellants-original writ petitioners, working under staffing pattern was rejected because of there being no evidence of regularity in service and payment, and their appointment having been made without following the prescribed rules, which has been impugned in the connected writ petitions.

4. We have also examined merits and text and tenor of the impugned common judgment of the learned Single Judge. The following aspects which have emerged from the record, may be highlighted so as to appreciate the merits and challenge against the merits of these Letters Patent Appeals:

(i) Both the appellants-original petitioners challenged the decision of the respondent authority contained in letter No 14/A ? 01/97, 1009 dated 16.9.1999, issued by the Deputy Secretary, Higher education Department, Government of

Bihar, Patna. Letters, Annexure 22 in CWJC No. 768 of 2000, and Annexure 2 in CWJC No. 1863 of 2000, are issued by virtue of the impugned decision of the respondent authorities. The cases of the appellants original writ petitioners and some other non-Teaching employees of the L.N. College, Bhagwanpur, Vaishali, were considered by the State Government for the purpose of regularization of their services on vacancies as per the staffing pattern decided by the State Government.

(ii) The aforesaid order came to be passed, pursuant to the direction to the State Government passed by this Court in the earlier writ petition. By virtue of the impugned order against the original writ petitioners, the State Government declined to accept the proposal of the University for regularization of the services of the appellants-original petitioners and some other non-teaching employees of the Collage.

5. Petitioner Harendra Kumar, at the relevant time, was the Laboratory Incharge in the Department of Chemistry whereas petitioner Yawar Ali Rizvi was Laboratory Incharge in the Department of Botany.

6. Both the persons were sought to be regularized. A request was made. The reason for not accepting or agreeing to the proposal of regularization has been identified and manifested. It was on two material grounds - (i) lack of material to show continuity of service and regularity in payment of salary to the concerned employees and (ii) the appointments being made without following the prescribed procedure.

7. The learned Single Judge, upon consideration of the facts and circumstances and the submissions of the parties, found that in absence of any substantial material to show continuity of service and regularity in payment of salary to the concerned employees and on the ground of appointment of both the appellants - original writ petitioners without following the prescribed procedure, proposal & decision for non-regularization of both the candidates or the appellants-petitioners was quite in order.

8. There is no dispute about the fact that though the College concerned, where the appellants - original writ petitioners were working, considered their cases for confirmation and regularization on the post of Incharge Laboratory Technician and, accordingly, recommended their cases but the University/Vice Chancellor did not pass any order, as required, for their confirmation or regularization.

9. The contention which has been vehemently, advanced by the learned Senior counsel, has been, that the reasons given by the learned Single Judge in reaching the conclusion f or declining the regularization of both the original writ petitioner is quite unjustified and illegal. This is controverted and countered by the learned Advocates appearing for the University and the State. Their contention has been that the College had no authority to appoint or confirm the employees, like the Incharge Laboratory Technician, without there being any approval of the Vice Chancellor and the Government. It is admitted fact that

though the appellants-original petitioners had requested for regularization, as well as, the Registrar of the University had also recommended to the University for regularization but both the proposals were not acceptable and subscribable by the Government. In absence of any substantial material to show the continuity of service and regularity in payment of salary, as well as, on intimation that their appointment could not be shown to be in accordance with law or the procedure prescribed, it was found by the learned Single Judge that their appointments are dehors provisions of recruitment rules and procedure prescribed. In these context, the regularization came to be denied.

10. Upon consideration of the facts and circumstances and the latest proposition of law, lucidly considered, explored and expounded by the Constitution Bench of the Hon"ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , we are of the opinion that the absorption or regularization or permanent continuation of a temporary or contractual daily wager or ad hoc appointee or recruit and his continuity for long in public employment dehors the public employment scheme and the regularization rules and the recruitment provisions, cannot be allowed and there cannot be any regularization of such employees because their entry is not shown to be in terms of the law but is dehors the provisions of law.

11. Learned Counsel for the appellants has, strenuously, in this connection urged that the case of Uma Devi (3) (supra) will not be applicable to the facts of the present case as the cases of the appellants will be governed by the decision of the Full Bench of this Court rendered on 19.2.1997 reported in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, We have gone through threadbare the judgment reported in the case of Braj Kishore Singh (supra), as well as Umadevi (3) (supra) and we find that the Full Bench judgment is not attracted and applicable to the facts of the present case. Our view is reinforced and further supported by the observations made by the Hon"ble Apex Court in paragraph 53 of the report in the case of Umadevi (3) (supra). Paragraph 53 of the said report, which we would like to reproduce, reads hereunder:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are

undertaken to fill those vacant sanctioned posts that required to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

12. It will also be interesting to find in paragraph 54 of the said decision that it has been directed, by clarification, that the decisions which run counter to the principle settled in Uma Devi (3) decision will stand denuded of their status as precedent. It becomes, therefore, very clear that any decision running counter or contrary or which runs diametrical- to the decision expounded in the case of Umadevi (3) (supra) shall not assume any precedential value any longer after the decision in the Uma Devi (3)(supra) . Thus, the engineered submissions made by Dr Jha, learned Senior counsel, that the judgment rendered in the case of Umadevi (3) will not be applicable and decision of the Full Bench of this Court will be applicable, cannot be accepted and we have no option but to raise our hands in helplessness while dismissing these two appeals.

13. Learned Senior Counsel for the appellants, Dr Jha, has also placed reliance on the decisions reported in Mattulal Vs. Radhe Lal, and Union of India (UOI) and Another Vs. K.S. Subramanian, Relying on these decisions, it has been forcefully contended that in view of the precedential propriety, the Division Bench is bound to follow the judgment of the larger Bench of the same Court and in case of any difference or dissent, it has to refer the matter to the larger Bench . In support of such contention, he has placed reliance in the case of Mattulal (supra). It was a Division Bench decision. As we have observed hereinbefore and in view of the directions made in paragraphs 53 and 54 of the decision in the case of Uma Devi (3)(supra), the decisions relied upon by Dr. Jha is of no avail and he has not been able to make any capital out of it. We, therefore, do not accept this contention.

14. In the result, both the appeals shall stand rejected but without costs.