

Ajay Kumar Srivastava Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-03-2006

Judge : Ramesh Kr. Datta, J.

Appeal No. : C.W.J.C. No. 13963 of 2003

Appellant : Ajay Kumar Srivastava

Respondent : The State of Bihar and ors.

Disposition : Appeal allowed

Prior history : Ramesh Kr. Datta, J. 1. Heard Dr. Sadanand Jha, learned Senior counsel for the petitioner and learned Government Advocate No. 10 for the State. 2. The petitioner has approached this Court for being granted similar benefits as were given to two other similar situated persons by order dated 14.3.2000 passed in C.W.J.C. No. 569 of 1999 and for a further direction to the respondents to put the petitioner back in service with all consequential benefits like other similarly situated persons. 3. Du

Judgement :

Ramesh Kr. Datta, J.

1. Heard Dr. Sadanand Jha, learned Senior counsel for the petitioner and learned Government Advocate No. 10 for the State.

2. The petitioner has approached this Court for being granted similar benefits as were given to two other similar situated persons by order dated 14.3.2000 passed in C.W.J.C. No. 569 of 1999 and for a further direction to the respondents to put the petitioner back in service with all consequential benefits like other similarly situated persons.

3. During 1980 under the National Education Policy of the Government of India, Vocational Education Scheme was introduced. Under the said Scheme 40 posts of the Laboratory Assistants were created by the State Government by order dated 8.11.1988 and the said posts were kept on being extended on year to year basis. It is stated by the petitioner's counsel that on the direction of the then Minister of Education to the respondent No. 2, the Director (Secondary Education), Bihar, to make appointments on the said 40 posts immediately, since respondent No. 2 was competent authority to make appointment and no service conditions or rule were framed, he forwarded the application of the petitioner alongwith others to the District Education Officer, West Champaran, respondent No. 3 for appointment on the post of Laboratory Assistant and accordingly by order dated 6.1.92 of the D.E.O. the petitioner was appointed and on 31.1.92 he joined the post as Laboratory Assistant. Similarly appointment letters were issued in the various districts of the State with respect to the other posts among 40 posts that were created. Thereafter in 1993 further 108 posts of the Laboratory Assistants were again sanctioned on year to year basis and a decision was taken to fill up the said posts on the recommendation of Vidyalaya Seva Board. Accordingly advertisements were issued and the petitioner and the other similarly situated Laboratory Assistants out of 40 appointed in the first phase also applied for the same. However, the petitioner and such other persons were not called for interview on the ground that they were already working on the said posts, On 12.12.93 the Director (Secondary Education) confirmed the appointment on the said 40 posts in the first phase and 108 in second phase including that of the petitioner. The petitioner and others continued to receive payment of their salaries.

4. Suddenly by order contained in Memo No. 03-12 dated 2.1.99 contained in Annexure-6 the District Education Officer referring to the letter No. 305 dated 28.12.98 of the Director, Secondary Education, terminated the services of five

Laboratory Assistants including the petitioner. Although the said letter states that show cause was sought from the five Laboratory Assistants and on receipt of the same was sent to the Director, Secondary Education by dated 6.10.98 and on consideration by him their appointment was found to be illegal and the order of termination of their services has been passed, but according to the petitioner no such show cause notice was served upon him. In this regard reference is made to the said letter dated 6.10.98 (Annexure-15) of the District Education Officer from which it is evident that show cause was not served upon the petitioner.

5. Against the aforesaid order of termination dated 2.1.99, 2 of the 5 affected persons filed C.W.J.C. No. 569/99. The said writ petition was disposed of by order dated 14.3.2000 (Annexure-9) in which on a consideration of the entire facts of this case this Court directed the respondents to allow the petitioners to continue in service by ad hoc arrangement till regular appointments are made and also directed them to fill up the 40 posts in first phase on regular basis on consideration of cases of petitioners and other similarly situated persons on an early date giving them preference over the outsider, if necessary, on relaxation of their age. It was further directed that till regular appointment is made, the impugned order dated 2.1.99 shall remain in abeyance. The said order was taken to appeal by the State by filing L.P.A. No. 1536 of 2000 which was dismissed by order dated 1.12.2000 not only on the ground of unexplained delay in filing the appeal but also on a consideration of the merit of the case. Thereafter the respondents filed Special Leave to Appeal (Civil) No. 8316 of 2002 which was also dismissed on 5.12.02 by the Supreme Court. Having lost before all the Courts the State respondents issued Memo No. 177 dated 8.11.03 (Annexure-12) canceling the Memo No. 03-12 dated 2.1.99 and directed that Sudhir Kumar and Arun Kumar Srivastava, Laboratory Assistants should be allowed to work on their previous posts.

6. Learned Counsel for the petitioner assails the actions of the State authorities relying upon the direction of this Court whereby the entire order dated 2.1.99, which relates to this petitioner also, had been put in abeyance by the order dated 14.3.2000 of this Court and thus, the benefit of that order should be given to the petitioner also as there was no justification for the State authorities to not reinstate the petitioner in terms of the said order although he was not a party to the said writ

petition. In this regard learned Counsel has referred to a large number of decisions of the Supreme Court wherein it has been laid down that where relief is granted by the Court in writ proceedings to certain persons then the authority must grant the same benefits to similarly situated persons even if such persons had not approached the Court and not a party to the said litigation. There is no need to refer to the said judgments as proposition of law is well established. The order dated 14.3.2000 was not passed by the Court on any fact which was related to the petitioners of those cases and do not apply to the case of the present petitioner. The petitioner is identically situated to the petitioners of C.W.J.C. No. 569/99 and, thus, the benefit of the said order should have been granted to him also by the state authorities. In fact, by the order dated 14.3.2000 this Court clearly directed that till regular appointment is made, the impugned order dated 2.1.1999 shall remain in abeyance. In view of the said order the State authorities were obliged to reinstate the petitioner in service also and their not doing so borders upon contempt of the order of this Court, which has been upheld by the Supreme Court.

7. In the counter affidavit filed on behalf of the respondent No. 3 the stand taken is on the merit of the case and the same stand has been taken in the case of two petitioners of C.W.J.C. No. 569/99. There is nothing in the said counter affidavit which distinguishes the case of the petitioner from the petitioners of the earlier writ petition.

8. In the aforesaid circumstances, the authorities are directed to forthwith reinstate the petitioner and grant him the same benefit as has been granted to the petitioners of C.W.J.C. No. 569/99. However, since it is requested in the letter dated 6.10.98 that the petitioner had stopped going to school from July, 1997 itself, it would be open to the authorities to take such action in this regard as is permitted by law after reinstating him.

9. The writ petition is accordingly allowed with costs of Rs. 1000/- to be paid by the State respondents to the petitioner.