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Court : Patna

Decided On : Oct-20-2000

Judge : Nagendra Roy and D.P.S. Choudhary, JJ.

Appeal No. : L.P.A. No. 145 of 2000

Appellant : Ranjeet Kumar Singh and ors.

Respondent : State of Bihar and ors.

Disposition : Appeal Dismissed

Judgement :

Nagendra Rai, J.

1. This appeal is directed against the judgment dated 17.12.1999 passed by a learned Single Judge in C.W.J.C. No. 10202 of 1997, whereby the Writ application filed by the appellants and one Triloki Nath Singh for a direction to the respondents to regularise their services against Class III and Class IV posts in Y.N. College, Dighwara in the district of Saran, has been dismissed.

2. According to the appellants, the said College was established in 1967 and it was affiliated up to I.A. & I.Sc. standard by the then Bihar University. In 1971, the College got affiliation up to B.A. standard and in 1979, it got affiliation up to B.Sc. standard. Appellants No. 4 to 17 were appointed by the Governing Body of the

College on different non-teaching Class III and Class IV posts after completing all the formalities on 22.2.1978 against the posts created before 1973. Appellants Nos. 1 and 2 were appointed on 24.2.1980 against the posts of Laboratory Incharge and appellant No. 3 was promoted to the posts of Laboratory Incharge on 24.2.1980 against the post created on 27.1.1980 by the Governing Body on the basis of a letter of the State Government dated 17.8.1978, whereby the Government had permitted to create one post of Laboratory Incharge on every 30 Science students. On 10.10.1980, the College became a constituent unit of the then Bihar University and after creation of Jay Prakash University at Chapra, now it is one of the constituent units of the said University, They have asserted that the State Government by letter dated 28.10.1980 (Annexure 10 to the Writ application) informed the Registrar of the Bihar University that according to the staffing pattern, only 30 employees (Class III and Class IV) were permissible and their appointments were within the staffing pattern and as such their services were to be regularised. They have also asserted that the respondents authorities are acting in most arbitrary manner in not regularising their services as well as in not giving salary to them though they are working within the sanctioned strength since 1980. They have been provided only occasional payment on the eve of Dashera and Holi festivals. They represented the authorities times without number but no decision has been taken.

3. The stand of the University, on the other hand, is that the appointments of the appellants were made, without any advertisement, without following the rules of recruitment and without observing the roster and reservation policy. Neither any advertisement was published for appointment nor was any interview conducted. No selection committee was constituted nor was any panel of the candidates prepared on the basis of such Interview. The fact that from the date of appointment till the College became constituent unit and, thereafter, also the appellants have not been paid any salary, as admitted by them, itself shows that they were never appointed on the said posts. It was further stated that their appointments were against the non-sanctioned posts. The documents filed by the appellants themselves show that 43 persons were appointed along with the appellants, which, on the face of it, appears to be not permissible even if their case is accepted that according to the staffing pattern 30 persons were to be appointed

on the non-teaching posts. It is further stated that the appointments of appellants Nos. 1 and 2 on the post of Laboratory Incharge have also been made de hors the rule of recruitment and the so-called appointment and promotion of appellant No. 3 on the post of Laboratory Incharge have also been done without following the process of selection.

4. The State has also filed a counter-affidavit stating that the appointments of the appellants were in violation of the provisions of Articles 14 and 16 of the Constitution of India. The appointments were made in the month of February 1978, when the Bihar State Universities Act, 1976, (here in after referred to as 'the Act') had already come into force and their appointments are in clear breach of provisions contained in Section 35 of the Act, which provides that no post of appointment shall be created without the prior sanction of the State Government and no college will appoint any person on any post without the prior approval of the State Government. Thus, their appointments are void ab initio.

5. The appellants have filed a reply to the counter-affidavit filed by the University, in which they have reiterated the same facts as stated in the Writ application. They have further brought on record certain documents to show that the local advertisement was issued for their appointments and they have been paid some amount occasionally as asserted in the Writ application.

6. The learned Single Judge having noticed that the appointments of the appellants were void ab initio rejected the prayer for regularisation of their services. Hence, the present appeal.

7. learned Counsel for the appellants submitted that the case of the appellant is covered by a Full Bench judgment of this Court in the case of Braj Kishore Singh v. State of Bihar reported in 1997 (1) P.L.J.R. 509 as well as by a judgment of the learned Single Judge in C.W.J.C. No. 882 of 1998 and C.W.J.C. No. 834 of 1999, which has been upheld in L.P.A. No. 855 of 2000 and L.P.A. No. 856 of 2000. According to the learned Counsel, the appellants were appointed on the posts falling within the staffing pattern and they have been continuously working for more than 20 years and as such a direction should be issued for regularisation of their services in the light of the direction issued by the said Full Bench judgment.

8. learned Counsel appearing for the University and the State, on the other hand, submitted that the laws laid down in the aforesaid two decisions are not applicable to the case of the appellants. It was also submitted that their appointments were invalid from the very inception as the same were made without any advertisement, without following the procedure and without determining as to whether those posts fell within the staffing pattern or not. Their appointments were also in total breach of the mandatory provision contained in Section 35 of the Act.

9. The appointment to any public office is to be made consistent with Articles 14 and 16 of the Constitution of India. If the appointment has been made without any advertisement and by adopting back-door method or it is in violation of the rules of the constitutional mandate, in that case the services cannot be regularised only on the ground that the person has remained in service for a long period. In this connection, reference may be had of a decision of the Apex Court in the case of R.N. Nanjundappa v. T. Thimmaiah reported in : (1972)ILLJ565SC , wherein it has been held as follows:

If the appointment itself is information of the rules or if it is in violation of the provisions of the constitution illegality cannot be regularised. Ratification or regularisation is possible of an Act which is within the power and province of the authority but there has been some non-compliance with procedure of manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

10. In the case of E. Ramakrishnan v. State of Kerala reported in : (1997)ILLJ 1215 SC , the Apex Court has held that if an appointment has been made de hors the rules then in that case even if the person appointed continued for a longer period (14 years in that case), no direction for regularisation can be given.

11. In the case of Ashwani Kumar v. State of Bihar reported in : (1997)ILLJ856SC the question for consideration was as to whether where initial entry is itself illegal or void, the services of such employees can be regularised or not. In paragraph 14 of the said judgment, it was held as follows:

In the instant case neither the initial appointments nor the confirmations were done by following the prescribed procedure. On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution of India both at the initial stage as well as at the stage of so, called regularisations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which the 6000 initial entrants were drafted in the Scheme by Dr. Mallick. Therefore, it is not possible to agree with the contention of the appellants that in any case the confirmations given to the employees gave them sufficient protection against future termination from services.

12. Thus, the law is settled that when the appointment has been made against the non-sanctioned post or made de hors the rules and in violation of Articles 14 and 16 of the Constitution of India, in that case regularisation cannot be ordered only on the ground that the person has managed to remain in service for a longer period.

13. As stated above, the appellant have relied upon a Full Bench judgment as well as upon that of a learned Single Judge of this Court. The said judgments do not help the case of the appellants. In the Full Bench case, the matter related to the regularisation of services of Class III and Class IV employees of Jagdam College, Chapra. The said College was affiliated to the Bihar University and it became a constituent College in 1975. Prior to the College having become a constituent unit of the said University, there were vacant sanctioned posts of Class III and Class IV employees. The University itself took steps for filling up the said posts and constituted a Selection Committee consisting of the Principal and others of the said College. An advertisement was published and, thereafter, the appointments were made, which were approved by the University and, thereafter, the same were sent to the State Government for approval. The employees were also paid their salary regularly. The State Government did not approve their appointments on the ground that the appointments were beyond the staffing pattern. Dealing with the said matter, the Full Bench in paragraph 22 held as follows:

The above discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board, non-teaching class III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointments can be made against these posts in accordance with the staffing pattern without seeking further approval regarding post(s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done with the prior approval of the State Government. In exceptional cases, in exigency of service or situation, provisional appointment can be made subject to approval of the State Government within the stipulated time-framed. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern.

14. Thus, according to the Full Bench decision, once a staffing pattern has been fixed by the competent authority, the post will be deemed to have been created. In other words, the posts will be treated to have been sanctioned and the competent authority can make appointment without seeking any approval from the State Government. The College/University authorities are competent to make appointment of eligible and suitable candidates, which should be done with the prior approval of the State Government. However, in exceptional cases, the provisional appointment can be subject to approval of the State Government and the State Government, thereafter, will examine the eligibility and suitability of persons appointed against the sanctioned posts without the prior approval of the State Government. The aforesaid judgment is not an authority on the point that if a person has been appointment without making any advertisement and without following the procedure consistent with Articles 14 and 16 of the Constitution and in breach of the mandatory provisions of Section 35 of the Act, his service is to be regularised. In the facts of that case, direction for regularisation was given taking into consideration that the appointments were made by following all the procedures prescribed for appointment by the competent authority.

15. So far as the judgment of the learned Single Judge as relied upon by the appellants is concerned, that also does not support the case of the appellants. The learned Single Judge has also held in paragraphs 20 and 21 of the judgment that any appointment made in violation of Articles 14 and 16 of the Constitution, without advertisement and following procedure is illegal and the person, whose appointment is void or illegal, has no right to claim regularisation of service nor can he pray for absorption. Taking into consideration the facts of that case, a direction for regularisation was given with regard to that College. The appellants cannot take benefit of the said judgment.

16. Section 35 of the Act runs as follows:

Not with standing anything contained in this Act, no University or any College affiliated to such a University except such

(a) as is established, maintained or governed by the State Government; or

(b) as is established by religious or linguistic minority;

(i) after the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government;

(ii) shall either increase the pay or allowance or attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revised the pay-scale attached to such post or sanction any new allowance.

(iii) shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication of any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Not with standing anything contained in this Act no College other than on mentioned in Clauses (a) and (b) of Sub-section (1), shall, after the commencement of this Act appoint any person on any post without the prior approval of the State Government;

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possession the prescribed qualification.

17. According to the said provision, no College or University can create a post involving financial liability without the prior approval of the State Government after commencement of the Act. It further provides that the Colleges, except those maintained or governed by the State Government or established by the religious or linguistic minority shall make appointment of a person on any post without the prior approval of the State Government. Thus, for creation as well as for appointment of the teaching or non-teaching posts after coming into force of the Act, prior approval of the State Government is necessary. The Full Bench in the aforesaid case has only held that once the staffing pattern has been approved, then that will amount to creation of the posts. So far as the prior approval for appointment is concerned, the Full Bench has clearly said that the mandatory provision has to be followed and only in exceptional cases, the appointment has to be made and thereafter post facto approval is to be taken from the. State Government.

18. In the present case, admittedly, no step for appointment was made consistent with Articles 14 and 16 of the Constitution. The so-called appointment of 46 persons including appellants Nos. 4 to 17 were made in 1978 after coming into force of Section 35 of the Act, 1976, without approval of the State Government. Appellants Nos. 1 and 3 were also appointment later on in the same manner. Thus, the appointment of the appellants were made against the constitutional mandate as well as against the mandatory provision contained in Section 35 of the Act, 1976 and, accordingly, the aforesaid Full Bench judgment as well as that of the learned Single Judge as relied upon by the appellants are of no help to them.

19. This apart, it is to be noticed that the appointments were made in 1978 about: 22 years back and according to own assertion of the appellants, they were not.

paid salary for all these years except some payment on days of festivals. It is difficult to believe that they continued to work continuously without the salary for such a long period. It appears that they have come to this Court for regularisation after such a long time after the judgment of the Full Bench with the hope that some direction might be issued by this Court for regularisation of their services. In view of these facts, coupled with the fact that they were appointed against the constitutional mandate and the mandatory provision and also in view of the settled law as stated above, in my opinion, no direction can be given for regularisation of the services of the appellants.

20. For the aforementioned reasons, I find that the learned Single Judge has rightly dismissed the Writ application and, accordingly, this appeal is dismissed.

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