

Gupteshwar Sah and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jan-24-2008

Judge : Sudhir Kumar Katriar and Kishore K. Mandal, JJ.

Appellant : Gupteshwar Sah and ors.

Respondent : The State of Bihar and ors.

Disposition : Appeal dismissed

Judgement :

Sudhir Kumar Katriar and Kishore K. Mandal, JJ.

1. Eleven persons, namely, Gupteshwar Sah, Ramesh Prasad Singh, Krishna Prabhakar, Anand Mohan, Ramjee Singh, Chandra Mohan Singh, Rajeshwar Prasad Singh, Harendra Singh, Raghunath Singh, Kanhaiya Prasad and Rajendra Prasad Singh, have joined this appeal, preferred in terms of Clause 10 of the Letters Patent of the Patna High Court. They are aggrieved by the order dated 18.5.1999, passed by a learned Single Judge of this Court in CWJC. No. 2101 of 1998 Gupteshwar Sah and Ors. v. State of Bihar and Ors. whereby the writ petition has not been entertained on the ground that it raises a stale claim.

2. The facts essential for disposal of the appeal may be indicated briefly. The same shall be drawn from the paper-book of the writ proceedings excepting specifically indicated. We shall go by the description of the parties occurring in the

writ proceedings.

3. The respondent authorities had issued an advertisement on 10.4.1981, inviting applications for appointment of school teachers. Posts were also reserved for handicapped persons. The petitioners (the appellants herein) were appointed in the reserved category of handicapped persons, vide general order of appointment dated 28.3.1982 (Annexure -1). Separate order of appointment was issued to every petitioner, which are dated 12.4.1982, and copies whereof are marked Annexure -2 series. The petitioners joined and started functioning as such.

3.1 Validity of their appointments came up for consideration of this Court in CWJC. No. 3503 of 1982, which was disposed of by order dated 20.8.1985, with the direction to the respondent authorities to examine the validity of their appointments including the question whether or not they were handicapped persons and really qualified for the reserved category. This was followed by their medical test. A photo copy of the report dated 1.3.1988 of the Medical Board is marked Annexure -6. The Medical Board found that none of the petitioners was a handicapped person. This was followed by letters of termination of their services on different dates in March 1988.

4. Aggrieved by the same, the petitioners had preferred appropriate application(s) before the Bihar Administrative Tribunal (hereinafter referred to as the Tribunal), which was disposed of by order dated 26.5.1988. The relevant portion of the order of the Tribunal is reproduced here-in-below for the facility of quick reference:

i) Let the Secretary, Commissioner of Education Department, Government of Bihar, Patna, constitute a Medical Board, consisting of Heads of Department of Eye, Patna Medical College & Hospital, Head of Department of Orthopedic, Patna Medical College and Hospital and Civil Surgeon, Patna.

ii) The Medical Board constituted shall examine all the petitioners and give findings regarding their being handicapped in light of the definition and criteria of handicapped persons laid down in order bearing No. 516 contained in letter No. 516 contained in letter No. S/Wa/3-0247/38-Education dated 23.3.82 issued by the Special Secretary to all the District Superintendent of Education (Annexure -1) of

the main petition in service case No. 99/88 and will submit its report.

iii) The service of those petitioners who will be found handicapped by the aforesaid Medical Board shall be retained and if their services have been terminated and termination orders have been given effect to they shall be taken in service and there shall not be any break in their services and they shall be given all the emolument and benefits of the services as if they were continuing in services without any break.

iv) The service of such petitioners who will be found not to be disabled, the orders of their termination from handicapped shall remain valid and the Secretary of Education Department will be at liberty cooperate legal and appropriate action Against such persons. If insult of termination of their services they, are continuing in service and are getting the salaries and emoluments, such persons with the amount of which District Superintendent of Education shall issue order.

v) Termination of the Medical Board the District Superintendent of Education, Bhojpur will legal candidate fixed for the examination of the persons by the Medical Board and termination made initiable petitioners by publishing in the News Papers (Daily) one in 'Hindustan Dainik' having vide circulation in Bihar, by issue notices individually on the petitioners against. The other manner so that each of the petitioners may get information.

4.1 It is thus evident that the respondent authorities were directed to constitute a Medical Board in the manner indicated therein which shall consider the extent of handicap as per the norms laid down in order bearing No. 516, dated 23.3.1982, issued by the Education Department. It was further observed therein that the services of those candidates who would be found handicapped, shall be retained, and the services of those who would not be found handicapped, shall stand terminated.

5. In due observance of the direction of the Tribunal, the State government constituted a Medical, Board -which submitted its report, a photocopy of which is marked Annexure - 13. The Board found that none of the petitioners was a handicapped person. It further appears that, in 'violation of the direction of the

Tribunal read with the report of the Medical Board (Annexure -13), one Mrs. Farhat Jahanara Begam, the Superintendent of Education, Bhojpur at Ara, reinstated the petitioners in service by her orders dated 9.9.1992 (Annexure 8 series). As soon as the illegality came to the notice of the authorities, salary of the petitioners was stopped and a First Information Report against the said Superintendent of Education and the petitioners was lodged leading to CWJC. No. 4994 of 1994 *Gupteshwar Sah and Ors. v. The State of Bihar and Ors.* which was disposed of by the judgment dated 29.6.1995, a copy of which is marked as Annexure -3 to the memorandum of appeal. It was directed therein that the Director of Primary Education would examine the records whether or not the petitioners were handicapped persons. If he found that they were not handicapped persons, then the said order of termination from service of March 1988, shall continue to operate. In due observance of the directions in the said judgment, the Director of Primary Education has passed the order dated 13.1.1998, impugned in the writ petition, wherein it has been found that the petitioners are not handicapped persons.

6. While assailing the validity of the order of the learned writ court as well as the Director of the Primary Education, learned Counsel for the appellants submits that the learned writ court has erred in refusing to entertain the writ petition on the ground of delay. He next submits that similarly circumstanced persons have been reinstated and, therefore, the impugned order is violative of Article 14 & 16 of the Constitution of India. The appellants of SLP (Civil) No. 10007 of 1992, and the petitioners of CWJC. No. 10488 of 1993, and CWJC. No. 10306 of 1993, were similarly circumstanced persons and they have been reinstated in pursuance of the orders of this court. It is, therefore, submitted that the petitioners have been subjected to hostile discrimination. He next submits that the advertisement did not indicate the yardstick to determine the extent of disability which would qualify the candidates for appointment in the reserved category. He also submits that the Director of Primary Education has erred in relying upon the Medical Board's report dated 26.5.1989 (Annexure -13), which does not indicate the extent of disability.

7. Learned Counsel for the respondents has supported the impugned order. He submits that these petitioners wrongly allege discrimination because they were not parties to the proceedings on which reliance is being placed. He next submits that

the order dated 26.5.1980 of the Tribunal, as well as the order dated 29.6.1995, passed in CWJC. No. 4994 of 1994, bind the petitioners and the same alone will govern the present case. These two orders have attained finality. He next submits that the order of reinstatement of 9.9.1992 (Annexure 8 series) was an act of fraud, and the First Information Report was lodged against the Superintendent of Education, who had issued the orders, as well as the petitioners.

8. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It is doubtful whether the petitioners raise a stale claim. It may be a protracted matter but not a stale claim because the respondent authorities had to carry out the order dated 29.6.1995, passed in CWJC. No. 4994 of 1994, and the impugned order was passed on 13.1.1998, followed by institution of the writ petition on 5.3.1998. The petitioners promptly challenged the order. We have, therefore, heard the learned Counsel for the parties at length and chosen to dispose of the matter on merits.

9. We would first of all like to deal with the grievance of the petitioners with respect to discrimination. The SLP (Civil) No. 10007 of 1992 was disposed of by the Supreme Court on 18.1.1993 (Annexure -9), CWJC. No. 10488 of 1993 was disposed of by this Court on 11.1.1994 (Annexure 10), and CWJC. No. 10306 of 1993 was also disposed of on 11.1.1994 (Annexure -11). The admitted position is that none of the petitioners were parties to those proceedings. Secondly, except placing the orders, the petitioners have made no attempt to establish parity between their cases and those of the present petitioners. The Tribunal has passed detailed orders on the applications of these petitioners which was fully acted upon. It is evident that CWJC. No. 4994 of 1994, at the instance of the petitioners, was disposed of on 29.6.1995, after disposal of aforesaid matters in which the present petitioners were not parties. The order dated 29.6.1995 will, therefore, be deemed to have considered those orders and/or else will be deemed to have been considered and decided against them. The orders of the Tribunal and of this Court in CWJC. No. 4994 have attained finality and would govern the cases of the petitioners.

10. We are convinced that the petitioners have not been able to make out a case of discrimination. They should, therefore, stand or fall on the strength of their own case in the light of the orders passed on their petitions earlier.

11. Coming to the validity of the report of different Medical Boards, the matter has been thrice considered. By order dated 20.8.1985, passed in CWJC. No. 3503 of 1982, the respondent authorities were directed to examine the petitioners and other aggrieved persons by a Medical Board. They were so subjected to medical test and the report of the Medical Board is of 1.3.1988 (Annexure -6). It appears on a perusal of the same that the reasons and/or the extent of the disability has been indicated therein, and medical opinion' has in unmistakable terms been recorded that not one of the petitioners is a handicapped person. In fact, we are of the view that this report finally sealed the case of the petitioners leading to termination orders in March, 1988. The same was challenged before the Tribunal which was disposed of by order dated 26.5.1980, whereby the respondent authorities were directed to constitute a Medical Board in the manner indicated therein and determine the extent of disability as per the criteria laid down in the order bearing No. 516, contained in the letter No. S/Wa/3-0247/38-Education, dated 23.3.1982. This took care of the grievance of the petitioners that the criteria or the yard-stick to determine the extent of handicap is not known. The Medical Board was duly constituted, which examined the petitioners and submitted its report, a copy of which is marked Annexure 13 to the writ petition. It was found that none of the petitioners was a handicapped person. This doubly sealed the fate of the petitioners.

12. The petitioners now chose the path of fraud and, in collusion with the Superintendent of Education, engineered orders of reinstatement of 9.9.1992. The Tribunal had clearly stated in its order dated 26.5.1988 that in case any one or more than one of the petitioners are not found to be handicapped persons, the order of termination of March 1988 shall remain operative.

It is relevant to state that the earlier action of appointment or termination of service had been taken by the Director of Primary Education, but the collusive orders of reinstatement marked Annexure -8 series, were issued by the Superintendent of

Education, which are invalid for the additional reason. The petitioners joined their duties but the fraud was detected leading to stoppage of salary and the First Information Report against the Superintendent of 7 Education and possibly the petitioners also, which were followed by the order dated 29.6.1995, passed in CWJC. No. 4994 of 1994, whereby this Court directed the authorities to re-examine the records, and if the petitioners are found not to be handicapped persons, then the aforesaid order of termination of March 1988 shall remain operative.

13. The Director of Primary Education re-examined the entire records and has for valid reasons come to the right conclusion that the petitioners are not handicapped persons, had obtained the initial order of appointment as well as the later orders of reinstatement by fraud.

14. Learned Counsel for the petitioners has raised the grievance that the medical report marked Annexure -13 does not indicate the extent of handicap afflicting the petitioners and has, therefore, been erroneously relied upon. The contention is stated to be rejected. The report of the Medical Board of 1.3.1988 (Annexure -6) indicates the details. Secondly, the Tribunal had indicated the appropriate circular which would form the basis of judgment of the Board. Therefore, the Medical Board in its report marked Annexure - 13 applied the yardstick indicated in the said circular. The contention is rejected.

15. In view of the forgoing discussion, we are of the view that the petitioners are needlessly lengthening an old matter and, from this angle, the learned writ court was right in observing that the writ petition raises a stale claim, notwithstanding which we have examined the matter on merits to finally settle the issue.

16. In the result, we do not find any merit in this appeal and is fit to be dismissed with costs. We, however, refrain from imposing any cost because the petitioners are out of employment.