

Anil Kumar George and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-24-2004

Judge : Shiva Kirti Singh, J.

Acts : Service Law

Appeal No. : CWJC Nos. 6854 and 7564 of 1999

Appellant : Anil Kumar George and anr.

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Judgement :

Shiva Kirti Singh, J.

1. Both these writ petitions have been heard for admission in detail because termination order under challenge in both the cases are same and common questions of fact and law arise for determination. In general relevant facts have been noticed from records of CWJC No. 6854 of 1999 and where necessary peculiar facts of CWJC No. 7564 of 1999 shall be mentioned separately. Petitioners have prayed for quashing of order dated 22.6.1999 issued under the signature of Registrar, Veer Kuer Singh University Arrah whereby services of 11 persons including that of Anil Kumar George and Kamlesh Kumar Singh

petitioners of CWJC No. 6854 of 1999 and of Shesh Nath Singh, petitioner of CWJC No. 7564 of 1999 have been terminated on the ground that a direction to that effect has been received from Hon'ble Chancellor of the University. The impugned order has been annexed as annexure-1 to CWJC No. 68/99 and annexure-9 to CWJC No. 7564 of 1999.

2. On behalf of petitioners it has been submitted that no doubt they were appointed initially on daily wage basis on Class-III posts by the Principal of their respective Colleges but subsequently on the ground that posts vacant and sanctioned were available on considering the length of services rendered by them and the requirement of the college, the University by order dated 7-6-93 allowed for regularisation of services of Anil Kumar George and Kamlesh Kumar Singh. Petitioner Shesh Nath Singh continued on daily wage basis till services of a large number of employees were terminated in the light of order of the State Government dated 7th September, 1996 (Annexure-12). That letter refers to names of all the petitioners as well as of one Md. Shahid and one Parash Nath Sinha. Against termination of their services in the year 1996, pursuant to annexure-12, the petitioners preferred representations before the Vice-Chancellor. Petitioner Shesh Nath Singh appears to have preferred a representation also before the Chancellor. The University constituted a committee of three members of syndicate to consider the cases of the petitioners and some others probably in view of their representations. The recommendation of the three man committee has been annexed as annexure-18 dated 26-5-98. The names of the petitioners Anil Kumar George, Kamlesh Kumar Singh and Shesh Nath Singh find mention at serial Nos. 4, 5 and 2 of the said report which shows that they were occupying posts of store-keeper in M.M. Mahila College, Arrah and JJ, College, Arrah. Because of recommendation made by the said committee in favour of the petitioners and others, the petitioners were reinstated by order dated 10-11-98 issued under the signature, of Registrar of the University and contained in annexure-19. The said order is also in respect of one Parash Nath Sinha.

3. On behalf of petitioners it has been submitted that soon-after their reinstatement the impugned order dated 22.6.1999 was passed without affording any opportunity of hearing to them and the only reason mentioned for terminating their services is

an alleged directive of the Chancellor of the University.

4. A perusal of the material on record shows that even the date of Chancellor's directive is not mentioned in the impugned order nor it has been brought on record by the University. However, learned counsel for the petitioners have placed reliance upon a judgment of this Court in the case of Paras Nath Sinha v. Veer Kuer Singh University bearing CWJC No. 6048 of 1999 which was allowed against the University on 25th July, 2000. They have also produced before this Court a copy of un-reported judgment in the case of Md. Shahid passed in CWJC No. 1.029 of 1999 to show that in the case of Md. Shahid full relief was granted following the judgment in the case of Paras Nath Sinha. Thus, the main submission advanced on behalf of the petitioners is that in similar circumstances this Court quashed the said order of termination dated 22.6.1999 at the instance of similarly situated employees of the University Shri Paras Nath Sinha on a finding that the letter of the Chancellor which was found to be dated 19.6.99 was illegal having been issued without hearing the parties to be affected.

5. Learned counsel appearing for the University as well as the concerned Colleges have tried to distinguish the case of the petitioners to that of Paras Nath Sinha by stressing the fact that these petitioners have been taken into services on daily wage basis after 10.5.1986 which was a cut off date indicated in the circular of State Government dated 8.5.91. From the judgment passed in the case of Paras Nath Sinha it has been shown by the learned counsel for the University that he was initially appointed on 11th December, 1984 i.e. earlier to the cut off date of 10th May, 1986.

6. A careful perusal of judgment in the case of Paras Nath Sinha discloses that in paragraphs 17, 18, 19 and 20 the Court noticed the letter of the Chancellor dated 19.6.99 which had been produced in that case as annexure-A and held that the letter showed non-application of mind and the order was passed by the Chancellor to cancel the order of reinstatement without hearing the parties. The Court further noticed that the subsequent order i.e. the impugned order dated 22.6.99 was issued merely because the Chancellor had issued letter dated 19.6.1999. It was mainly on account of discussions noticed above that in paragraph- 20 of the

judgment the Court declared the, letter dated 19.6.99 issued by the Chancellor as illegal and set aside the impugned order dated 22.6.99 in so far as that related to the petitioner because it was based on the letter of the Chancellor.

7. On considering all the facts and circumstances and the submissions, this Court finds that the main reasons which led to quashing of the impugned order dated 22nd June, 1999 in the case of Paras Nath Sinha are validly available in the case of these petitioners also. However, it is also found that on facts the case of the petitioners stands on different footing because the petitioners have been engaged on daily wage basis after 10.5.1986 and hence in their cases an enquiry could have been initiated to find out whether they were validly appointed or not. It is further found that two petitioners of CWJC No. 6854 of 1999 were admittedly regularised prior to their termination in 1996 but it is not the case of petitioner Shesh Nath Singh of CWJC No. 7564 of 1999 that his service was regularised by any order of the University.

8. On behalf of the University attempt was made to persuade this Court to enter into facts and give a finding that entry of all the petitioners was illegal against the prescribed procedure and hence no relief should be given to them. This Court is not persuaded to venture into facts because of the nature of order passed against the petitioners, That order does not disclose that petitioners services have been terminated on the ground that they were illegally appointed at the initial stage. The concerned respondents have not produced any material to show that any enquiry was conducted by the University or its authorities giving opportunity of hearing to the petitioners for finding out whether their appointments were initially illegal and their confirmation or absorption at the subsequent stage were bad in law. This Court has noticed that this aspect of the controversy raised by the University was not raised in the case of Paras Nath Sinha probably because his initial appointment was prior to 10.5.1986. Since there is no finding against the petitioners so far that their appointments or regularisation were irregular or illegal, this Court has examined the legality of the impugned order only on the basis of discussions and findings made by another Bench of this Court in the case of Paras Nath Sinha and on the basis it is found that the impugned order in respect of the petitioners is also illegal because it is based solely upon a letter of the Chancellor

which has already been declared illegal and issued without giving opportunity of hearing to the affected persons. Hence the impugned order dated 22.6.99 which is annexure-1 to CWJC No. 6854/99 and annexure-9 to CWJC No. 7564/99 is hereby quashed in so far as it relates to the petitioners of these two writ petitions. However, in view of submissions advanced on behalf of the University suggesting that there are doubts regarding legality of initial appointment of the petitioners or their regularisation, liberty is granted to the University and the competent officials that if so advised they may hold an enquiry in accordance with law and then proceed to take appropriate decision in respect of the petitioners. Since the matter has remained pending in this Court for a number of years hence any enquiry if proposed against the appointment of the petitioners should be held and concluded within six months. The consequential relief of full back wages have not been allowed in favour of the petitioners for the present because it may depend upon the out-come of the enquiry for which liberty has been given to the University. However, since the impugned order terminating the services of the petitioners have been quashed they shall be allowed to join and work and payments may be made to the petitioners only to the extent of current salary.

9. These writ petitions are-allowed to the aforesaid extent.

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