

Ashok Kumar Singh and ors. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Oct-10-2002

Reported in : [2003(1)JCR392(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 2692 of 1995 (R)

Appellant : Ashok Kumar Singh and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Pradeep Modi, G.P. 1

Advocate for Pet/Ap. : Sumir Prasad and; R. Krishna, Advs.

Judgement :

Tapen Sen, J.

1. Heard. The facts Involved in this case are similar to C.W.J.C. No. 2952 of 1995 (R), C.W.J.C No. 3074 of 1995 (R), C.W.J.C. and No. 2820 of 1995 (R).

2. The petitioners are aggrieved by the order dated 8.9.1995 (Annexure 3) by reason whereof it was inter alia intimate that those who had been promoted to the I.A. Trained Scale and B.A. Trained Scale as well as those persons who had been

transferred will be reverted to their earlier posts. According to the petitioners, the order dated 8.9.1995 was initially challenged by some of the aggrieved teachers in C.W.J.C. No. 2637 of 1995 (R) and by order dated 14.9.1995 the operation of the said order dated 8.9.1995 so far as the petitioners of that case was concerned, was ordered to be stayed.

3. According to the petitioners they were all appointed after following legal procedure through the Commission and were appointed on 21.9.1994 except the petitioner No. 1 and petitioner No. 8 who were already working as teachers for pretty long period of time. Although they joined their respective places of posting, they were subsequently transferred on various dates for purposes of joining in the new places as stated in paragraph 5 of the writ application. All of a sudden on 8.9.1995 all the teachers who had been transferred after 26.4.1995 were shocked to learn that an order had been passed on 8.9.1995 cancelling their orders of transfer and promotion. A writ petition bearing No. 1637 of 1998 (R) was filed and it was disposed off on 2.11.1998 directing that transfer of teachers cannot be deemed to have been cancelled and accordingly, a direction was passed upon the respondents to scrutinize and the case of each of the petitioners and an order was passed that there would be no order of retransfer who was found to have been transferred by the Establishment Committee or by the competent authority unless fresh order was passed by the competent authority.

4. A counter affidavit has been filed in which it has been stated that all orders of promotion/transfer were cancelled because the said orders were passed without approval and consent of the Establishment Committee which is the only empowered committee to pass orders of promotion and transfer of teachers. Since reference was not made to the Establishment Committee, the order was wholly without jurisdiction and therefore these orders were cancelled. It is further stated that in the meeting of the District Establishment Committee held on 7.9.1995, it was unanimously decided to cancel all such illegal orders of promotion/ transfer and it was further decided that even cases of transfers made after 26.4.1995 would stand cancelled and the transferees would be reverted to their original posts.

5. In reply to the aforesaid counter affidavit, it has been stated that the orders of transfer was passed by one Celestine Hansda and that there was nothing wrong in the said orders of transfer. They have also said that the District Establishment Committee, in fact, did not meet during the period of 5.12.1995 to 7.9.1995 and the order of Celestine Hansda was a proper order as he was a Secretary of the Establishment Committee. In the second supplementary affidavit, reference has been made to C.W.J.C. No. 2637 of 1995 (R) and C.W.J.C. No. 2733 of 1995 (R) and the petitioners have stated that the order dated 8.9.1995 was initially challenged by the aggrieved teachers in the aforementioned C.W.J.C No. 2637 of 1995 (R) and the Patna High Court stayed that order so far as those petitioners are concerned, but, inspite thereof, the respondents have not honoured the stay granted by the Court and the petitioner Nos. 1, 3, 4, 5, 6 and 7 were compelled to join on their old places of posting although, the petitioner Nos. 2 and 8 were allowed to work at the new places of posting as per the stay order passed by the Court. Similarly, the petitioners have stated that on 21.11.1995, the respondent No. 3 allowed the petitioner No. 2 to join, but only after two days another arbitrary order was passed by the Regional Education Officer, Jamshedpur, and the joining of the petitioner No. 2 was considered/allowed w.e.f. the afternoon of the 22.11.1995, thereby depriving him salary for the period 16.9.1995 to 22.11.1995.

6. The learned counsel for the petitioner has stated that the impugned orders were passed without any notice or any opportunity of hearing. The learned counsel for the petitioner has further stated that the petitioners were all promoted on a permanent capacity and therefore, by reason of cancellation of their promotion, the same amounted to reversion and that too without any opportunity of hearing. In support of the aforesaid contention, the learned counsel for the petitioners has relied upon a judgment in the case of Union of India v. Jagdish Prasad, reported in AIR 1982 SC 773. He has also relied upon a judgment of this Court in the case of Baleshwar Prasad Singh and Ors. v. Ranchi University, reported in 2001 (2) JCR 182 in support of the contention that if an order has been passed reverting the petitioners without any show cause notice or any opportunity of hearing the same is liable to be quashed.

7. In view of the stand taken by the respondents in their counter affidavit and also from a perusal of the pleadings made, it is obvious that the impugned orders were all passed without notice and without any opportunity of hearing. It is also to be taken note of that the respondents have also not taken any action in so far as finalization of the gradation list is concerned nor have they come forward with any adequate explanation as to what steps they took in relation to such finalization and/or decision which could have been taken in relation to promotion of the petitioners.

8. This Court also cannot lose sight of the fact that these petitioners have been working since such a long period and they definitely have a legitimate expectation of rising up in their career. Such a legitimate expectation cannot be frustrated by the inaction on the part of the respondents. The impugned orders were passed in the year 1995 and we are in the year 2002 when this case has been taken up finally. In that view of the matter, this Court considers it proper and also expedient in the interest of justice to direct the respondents to consider the cases of each of the petitioners individually and to pass appropriate orders strictly in accordance with law. The petitioners are therefore, now given liberty to individually file a representation giving details with respect to his/her service career and pray for necessary consequential reliefs in accordance with the prevalent rules. Such a representation must be filed within six weeks from today. Upon receipt of such representation, the concerned authorities shall give opportunity of hearing to the petitioners individually and shall pass orders in accordance with law within a period of six months from the date of receipt of such representations. If such representation is filed within the said period and till disposal of the said representation, status quo as existing today shall be maintained. This order should not be construed to mean that the petitioner has been allowed to continue on a higher post. It will depend on the result of the representation.

9. It goes without saying that if the petitioner has worked during the relevant period and if his salary has been withheld, then that aspect shall also be taken into consideration by the respondents while passing the final order as directed in the manner stated above.

10. With the aforementioned observations and directions this writ petition is disposed off. No order as to costs.

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