

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1028 of 2007
IN
Civil Writ Jurisdiction Case No. 7493 of 2000

Amresh Kumar Singh, son of Sri Radha Prasad Singh, resident of village and Post Office- Sadanandpur, P.S. Ballia, District- Begusarai

.... Appellant/s

Versus

- 1. The State of Bihar
- 2. The Director (Secondary Education), Bihar, Patna

.... Respondent/s

with

Letters Patent Appeal No. 1509 of 2009
IN
Civil Writ Jurisdiction Case No. 3112 of 2001

- 1. The State Of Bihar
- 2. The Director (Secondary Education) Bihar, Patna
- 3. The Deputy Director (Secondary Education), Bihar Secondary Education Office, Budha Marg, Patna
- 4. The District Education Officer Patna
- 5. The District Education Officer Begusarai
- 6. The Principal R.S.S.M. Railway Aided High School, Mokama Ghat, Patna

.... Appellant/s

Versus

- 1. Surendra Prasad Mahto @ Surendra Pd. Mahto S/O Sri Ram Sagar Mahto Vill- Banbaripur, P.S. Bhagwanpur, Distt. Begusarai

.... Respondent/s

with

Miscellaneous Jurisdiction Case No. 6050 of 2012

- 1. Amresh Kumar Singh S/O Shri Radha Prasad Singh Resident Of Village & Post Office- Sadanandpur, P.S- Balia, District- Begusarai.

.... Petitioner/s

Versus

- 1. The State Of Bihar
- 2. The Director, (Secondary Education), Bihar, Patna.

.... Respondent/s

Appearance :
(In LPA No.1028 of 2007)



For the Appellant/s : Mr. Mr. Amresh Kr. Singh (in person)
Mr. Sushil Kumar Ray, Advocate
Mr. Onkar Kumar, Advocate
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-3
Mr. Arjun Prasad, AC to SC-3
Neelam Kumari, AC to SC-3
Smt. Nutan Kumari, Advocate (SC15)
(In LPA No.1509 of 2009)
For the Appellant/s : Mr. Bipin Kr.(Ac To Sc15)
For the Respondent/s : Mr. Sushil Kumar Manick, Advocate
Mr. Upendra Pratap Singh, Advocate
(In MJC No.6050 of 2012)
For the Petitioner/s : Mr. Amresh Kr. Singh (in person)
Mr. Sushil Kumar Ray, Advocate
Mr. Onkar Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 29-08-2017

The matter has been placed before this Full Bench in view of an order passed on 22.2.2008 by a Division Bench of this Court in L.P.A. No.1028 of 2007. Before advertng to take note of the reference made and before considering the question involved in the matter, we may take note of certain factual aspects which have relevancy with regard to the issue in question.

In the District in question, namely, Begusarai, the Education Department through the District Education Officer, conducted certain recruitment process based on a Circular issued by the State Government on 3.12.1980. Names were called for from the



Employment Exchange and for filling up certain vacancies that were available in the District in question on the post of Clerk, the District Education Officer conducted the process of recruitment after requisitioning names from the Employment Exchange and in the year 1990 i.e. on 9.3.1990 made appointments to the post in question. In L.P.A. No.1028 of 2007, the appellant therein Shri Amarish Kumar Singh was appointed on 9.3.1990 and in L.P.A. No.1509 of 2009 the respondent Surendra Prasad Mahto was appointed on 29th of August, 1989. Apart from these two persons, 28 other persons were also appointed in similar fashion on various dates. After these appointments were effected, in the year 2001 the State Government issued instructions to the departmental authorities that these appointments are not in accordance with the requirement of law and, therefore, all these appointments should be cancelled. Consequently thereof, in the year 2000 and 2001, all the thirty persons were terminated, as instructed by the State Government. However, it may be taken note of that much before such termination was brought into effect, the services of all the 30 persons were regularized by the competent authority. Resultantly, writ petitions were filed before this Court by all the thirty employees and records indicate that after hearing all concerned, the different Benches of this Court allowed the writ petitions and directed for reinstatement



of the employees with consequential benefits. The following writ petitions were allowed by this Court namely, C.W.J.C. Nos.1986/2001, 7206/2000, 7511/2000, 11081/2000, 11120/2000, 11399/2000, 11407/2000, 11489/2000, 11511/2000, 11529/2000, 11650/2000, 11853/2000, 11908/2000, 11930/2000, 11933/2000, 11962/2000, 12129/2000, 12369/2000, 12940/2000, 13180/2000, 2045/2001, 2289/2001, 4628/2008 and 6125/2007.

Challenging the aforesaid orders passed in the writ petitions, L.P.A's. were filed by the State Government and a Division Bench of this Court on 21.4.2011, dismissed the following L.P.A's. namely L.P.A. Nos.1471/2009, 1248/2009, 1486/2009, 1493/2009, 1495/2009, 1515/2009, 134/2010, 1308/2009, 1338/2009, 1437/2009, 1455/2009, 1460/2009, 1463/2009, 1456/2009, 1354/2009 and 1360/2009, filed by the State Government and it is an admitted position that after the L.P.A's. were dismissed by the Division Bench on 21.4.2011, as a consequence thereof all these persons have been taken back in service and are still working.

We are informed today that out of thirty persons who were so dealt with in identical fashion, twenty-eight have been taken back in service and are working and orders with regard to some of them have been produced before us which is dated 19.8.2011 issued



by the Directorate of Secondary Education, Government of Bihar, which goes to show that twenty-eight persons, as detailed in the said letter and order, have been taken back in service by virtue of the orders passed by this Court in the writ petitions and L.P.A's. as are indicated hereinabove.

However, in L.P.A. No.1509 of 2009, the State Government again challenges the order passed by the learned Writ Court even though L.P.A's. filed by the State Government being L.P.A. No.1471 of 2009 (State of Bihar vs. Md. Sham Shad) and various other appeals have already been dismissed as indicated hereinabove on 21.4.2011. Likewise, in C.W.J.C. No.7493 of 2000, fortunately or unfortunately for the employees therein, the writ petition was dismissed and by filing the present appeal i.e. L.P.A. No.1028 of 2007 claiming similar benefit after dismissal of the L.P.A. in view of the order dated 21.4.2011 passed in L.P.A. No.1471 of 2009 and various other cases, i.e. L.P.A. No.779 of 2007 etc., however a Division Bench of this Court found that in the L.P.A's. decided on 21.4.2011, the principle of law laid down in the case of Secretary, State of Karnataka vs. Uma Devi & Ors., 2006(2) P.L.J.R. S.C. 363, and certain other judgments of the Hon'ble Supreme Court including in the case of Madhya Pradesh vs. Lali Kumar Verma, (2007) 1 SCC 575, has not been considered and,



therefore, holding that the order passed on 20th of January, 2008 in L.P.A. No.799 of 2007 and thereafter on 21.4.2011 in L.P.A. No.1471 of 2009 do not lay down the correct precedent, the matter has been referred to us.

When we were dealing with the issues in the matter and were in the process of adjudicating the legal question, learned counsel appearing for the appellant in L.P.A. No.1028 of 2007 brought to our notice the fact as are indicated hereinabove by filing M.J.C. No.6050 of 2012 and brought on record the State's Litigation Policy and made the submission by contending that when thirty employees were appointed together and when the services of all the 30 such persons were dispensed with in identical situation and when after contesting the matter in 28 cases the employees have been granted benefit, there is no reason as to why benefit should not be granted to the appellant in L.P.A. No.1028 of 2007. He invited our attention to Clause 4, Annexure C1, of the Bihar State Litigation Policy, 2011 and asserts that in similarly covered matters, all identically situated persons should be granted similar benefit. He also pointed out that after orders were passed by the Division Bench on 21.4.2011, the State Government, as indicated hereinabove, vide order passed on 19th of August, 2011 has reinstated twenty-eight persons.



Faced with the aforesaid situation, on the last date of hearing, we deemed it appropriate to direct the learned counsel representing the State Government to seek instruction and inform this Court as to whether the State Government has anything to say in the matter as a model employer why the State's Litigation Policy should not be implemented in this case now, at least in the cases of these two employees, when twenty-eight such employees have already been granted the benefit. We have been communicated today by the learned counsel appearing for the State Government that the facts, as are narrated hereinabove, are correct. Thirty persons were dealt with in identical fashion and after the orders passed in the writ petitions, 28 persons have been reinstated and are still working and in the case of these two persons, matter has to be decided by this Court. As far as L.P.A. No.1509 of 2009 is concerned, in that case, the writ petition of the respondent employee Surendra Prasad Mahto @ Surendra Pd. Mahto has been allowed and decided and it is an appeal filed by the State Government whereas in L.P.A. No.1028 of 2007, the writ petition filed by the employee Amarish Kumar Singh has been dismissed by the learned Writ Court by recording a finding that his appointment falls in the category of 'illegal appointment' and, therefore, he cannot be extended any benefit.

We are conscious of the law laid down in the case of



Uma Devi (supra) and various other legal issues that are involved in the matter, but the fact remains that in the cases of thirty employees who were dealt with under similar circumstances, not only similar, but under identical situations, twenty-eight employees, by virtue of the orders passed in the writ petitions and L.P.A's. have been reinstated and it is only two persons who are litigating the matter. The Bihar State Litigation Policy, 2011, as indicated hereinabove, mandates that all similarly situated employees should be granted the benefit of covered matters and if orders of the Court have been implemented in case of certain litigants, it should be implemented in respect of all other identically situated persons. If the State Litigation Policy is to be implemented, we have no hesitation in holding that the present respondents should also be dealt with in identical fashion i.e. respondent Surendra Prasad Mahto @ Surendra Pd. Mahto in L.P.A. No.1509 of 2009 and the appellant Amarish Kumar Singh in L.P.A. No.1028 of 2007 in identical situation and once on 21.4.2011 a Division Bench of this Court in all other cases has granted benefit to the employees, there is no reason to go into the legal questions involved in the matter and answer them when we find that in the cases of twenty-eight employees the benefit has been granted to them by virtue of the orders passed by this Court.

Accordingly, we are of the considered view that the



legal question referred for consideration and the tenability or otherwise of the orders passed on 20th of January, 2008 in L.P.A. No.799 of 2007 and the order passed on 21.4.2011 in L.P.A. No.1470 of 2009 and other cases need not be gone into now in these two cases.

The legal questions are kept open, to be considered in any appropriate case, but taking note of the fact that under identical situations employees, more than twenty-eight in number, have been granted the benefit, we dismiss the L.P.A. filed by the State Government i.e. L.P.A. No.1509 of 2009, allow the L.P.A. filed by the appellant Amarish Kumar Singh, i.e. L.P.A. No.1028 of 2007, in view of the findings recorded on 20th of January, 2008 in L.P.A. No.779 of 2007 and on 21.4.2011 in L.P.A. No.1471 of 2009, quash the order passed by the learned Writ Court in C.W.J.C. No.7493 of 2000 and direct that both Amarish Kumar Singh and Surendra Prasad Mahto @ Surendra Pd. Mahto should be dealt with in identical fashion as has been done in the cases of twenty-eight persons who have been reinstated in service vide order dated 19.8.2011. The issue with regard to applicability of the orders passed on 21.4.2011 in L.P.A. No.1471 of 2009 and on 20th of January, 2008 in L.P.A. No.799 of 2007 to other employees apart from the thirty employees involved in the matter is kept open, to be



considered as and when required in accordance with law and it is made clear that the orders passed by this Court on 21.4.2011 in L.P.A. No.1471 of 2011 and on 20th of January, 2008 in L.P.A. No.779 of 2007 will not be treated as a precedent for the purpose of its applicability to any other employees other than the thirty employees involved in the matter. The State Government will have liberty to challenge the orders passed in these L.P.A's. with respect to any other employee except these thirty employees.

Accordingly, L.P.A. No.1028 of 2007 is allowed. Order passed in C.W.J.C. No.7493 of 2000 quashed and Amarish Kumar Singh is directed to be reinstated and granted the benefit as has been granted to the twenty-eight employees by virtue of the order passed on 19.8.2011 by the State Government. Similarly L.P.A. No.1509 of 2009 is dismissed. The order passed by the learned Writ Court is upheld and the respondent Surendra Prasad Mahto @ Surendra Pd. Mahto is also directed to be granted the benefit of the order dated 19.8.2011 passed by the State Government.

M.J.C. No.6050

In view of the order passed today in L.P.A. No.1028 of 2007 and L.P.A. No.1509 of 2009, no orders are now necessary to be passed in this M.J.C. No.6050 of 2012. The same stands disposed



of.

In view of the aforesaid, we see no reason now to answer the reference and as we are keeping the question involved and referred to us for consideration open, we dispose of the L.P.A's and the M.J.C.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
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