

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1387 of 2014
IN
Civil Writ Jurisdiction Case No. 9549 of 2008

- =====
1. The State of Bihar
 2. The Commissioner-cum-Secretary, Department of Higher Education, Government of Bihar, Patna.
 3. The Deputy Secretary, Department of Higher Education, Govt. of Bihar, Patna.

.... Appellants

Versus

1. Smt. Saraswati Kumari, Wife of Late Dr. Suresh Chandra, Lecturer, Government Women's College, Gulzarbagh, Patna.
2. Smt. Meenakshi Roy, Daughter of S.C. Roy, at present Lecturer at Government Women's College, Gulzarbagh, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
For the Respondent/s : Mr. Siyaram Sahi, Advocate
Mr. Sharad Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT
(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)
Date: 25-05-2017

Heard learned counsel for the appellant State of Bihar and learned counsel appearing for the private respondents.

2. State of Bihar has assailed the order dated 24.04.2013, passed by the learned Single Judge whereby letters dated 06.06.2008, 08.08.2008 and 08.10.2009 issued by the Higher Education Department, Government of Bihar by which the writ petitioners were reverted to the post of Laboratory Assistant and were not found to be entitled to the salary and emoluments of the



post of either Demonstrator or Lecturer was quashed and writ allowed.

3. The respondents had challenged Memo No. 1247 dated 06.06.2008 issued by the Deputy Secretary, Department of Human Resources Development (Higher Education), Government of Bihar, Patna by which re-designation as Demonstrators and subsequently promotion to the post of Lecturer to the two private respondents, who were the writ petitioners, had been cancelled. They also challenged letter No. 342 dated 08.08.2008 issued by the Accountant General, Bihar, Patna directing the Treasury Officer, Patna to stop the salary and allowances on the post of Lecturer and to recover the amount paid in the light of order dated 06.06.2008. They further challenged office order No. 395 dated 08.10.2009 issued by the Principal of Government Women's College, Gulzarbagh, Patna by which the salary of the respondents was reduced to the basic minimum in the scale of Laboratory Assistant w.e.f. August, 2009.

4. The facts of the case is that in pursuance to an advertisement applications were invited by the Principal, Government Women's College, Gulzarbagh, Patna from eligible female candidates possessing qualification of B.Sc. for appointment to the post of Laboratory Assistants in Science



subject. Respondents had applied, were found fit and eligible for the said post and were issued appointment letters on 04.07.1975 appointing respondent No. 1 Saraswati Kumari as Laboratory Assistant for Chemistry subject and respondent no. 2 Minakshi Rai as Laboratory Assistant for Botany subject. The Government of Bihar i.e. the Department of Human Resources Development (Higher Education) vide letter No. 50 dated 18.01.1990 re-designated both the respondents as Demonstrator with effect from the date of joining as Laboratory Assistant i.e. 14.07.1975 and were promoted to the post of Lecturer w.e.f. 14.07.1982 in the Department of Botany by one order on the same date. The respondents discharged their duties of Lecturer since 08.09.1982 as per office order dated 08.09.1982 issued by the Director, Higher Education, Bihar and pay-slip was issued by the Department to the Accountant General, Bihar and since then they received their salary as Lecturer continuously. Subsequently, a show cause was issued on 11.05.2002 by the Joint Secretary, Education Department as to why promotion be not cancelled. Their reply having not been found satisfactory, the order dated 06.06.2008 was issued reverting the respondents back to the post of Laboratory Assistant, holding their re-designation/ promotion not to be legal. By order dated 06.06.2008, the Deputy Secretary, Human Resources Development



Department (Higher Education), Government of Bihar, held that the post of Demonstrator is existent only in the Universities, whereas the private respondents were appointed as Laboratory Assistants in Colleges run by the State Government, hence, re-designation of the respondents from Laboratory Assistant to that of Demonstrator was *per se* illegal and the further promotion on the post of Lecturer given to the respondents was also illegal as no due process or rule was in place permitting so. The order dated 06.06.2008 was passed in pursuance to the order passed in earlier round of litigation by which the respondents had claimed arrears of salary as Demonstrator/ Lecturer.

5. However, the very re-designation of the respondents from the post of Laboratory Assistant to that of Demonstrator and subsequent promotion to the post of Lecturer was vehemently opposed by the counsel for the State of Bihar during course of hearing of the writ petition stating therein that the University statute has no role to play in the service conditions under the Colleges run by the State Government as the services of the respondents fell under Bihar Education Service Class-II and are governed by the Bihar Service Code and not by the University statute. The re-designation of the post of Laboratory Assistant to that of Demonstrator is applicable in case of University and not the



Colleges run by the State Government.

6. The learned Single Judge, however, considering the fact that the post of Demonstrator was superseded from Laboratory Assistant for the purpose of UGC scale and since 01.10.1982 the respondents have worked on the post of Lecturer till retirement in the year 2010 having requisite B.Sc. degree and having worked satisfactorily the said re-designation as Demonstrator and promotion as Lecturer could not be cancelled at the *fag end* of the career of the respondents.

7. The case of one Kumkum Lata Sinha was also cited before the learned Single Judge, who was also initially appointed as Laboratory Assistant, re-designated as Demonstrator and promoted as Lecturer and was given similar benefits. The State pointed out that the said benefit had been given because of and taking into consideration the case of these respondents. Since learned Single Judge has allowed the claim of the respondents, the State of Bihar through the Department of Higher Education has filed this appeal.

8. This Court had called the entire original records to know the entire history and actual state-of-affairs and directed the appellant to file an affidavit in that regard. In pursuance thereto a supplementary affidavit has been filed by the appellant bringing



the entire notings made in the original records, the extract of which is as follows:

“5. That it is stated that vide note dated 01.09.1983 those Laboratory Assistants who are M.Sc. were granted permission to take classes vide note dated 11.10.1986 by the Hon’ble Court it has been recorded that Smt. Sharswati Kumari Laboratory Assistant Government Girls College, Gulgarbagh, Patna, had met with the Minister In-charge and since there is one vacant post in the department of Commerce on the post of lecturer in the department of commerce and file be produced for such adjustment of Smt. Sharswati Kumari.

6. That although in the different notes dated 15.01.1986 it has been recorded that there is only one post of lecturer in the department of Botany, has been sanctioned, which is not vacant and it would not be advisable that the sanctioned post of lecturer in the department of commerce will be converted into that of department of Botany and vide note dated 27.01.1986 peculiar proposal was given that Smt. Sharswati Kumari can be appointed on Ad-hoc basis after transfer of sanction post of lecturer in the department of commerce to Department of Botany and thereafter the matter progressed and finally vide note dated



01.07.1987 it has been recorded that there is no sanction post and the proposal be kept in abeyance which came to be approved by the minister vide noting in the file dated 01.09.1987.

7. That it is stated that again on the basis of one letter of Minister of Labour Employment Training and Tourism Department Government of Bihar letter was sent for appointment of Smt. Sharswati Kumari Laboratory Assistant on the post of lecturer which would be evident from note dated 17.09.1987, wherein it has further been recorded that request was made that her appointment be made on the post of lecturer in Department of Chemistry and thus the file progressed, and in course of time another name i.e. name of Smt. Minakshi Rai case has been introduced for the first time which would be evident from note dated 10.12.1988 and finally from the note dated 14.12.1989 that Smt. Sharswati Kumari has acquired post-graduate degree in the year 1982 and thereafter vide note dated 26.12.1982 (date not visible) from the note of Mr. N.G. Bandho Upadhyay it appears that the proposal was given that Smt. Sharswati Kumari were declared demonstrator from the retrospective date from 01.07.1975 but for that matter



concurrence of the Finance Department would be required and thereafter Hon'ble Minister vide note dated 07.01.1990 Smt. Sharswati Kumari and Smt. Minakshi Rai holding the post of Laboratory Assistant have been granted promotion on the post of lecturer and salary would be paid according to notification of Finance Department and since it is not a case for payment from retrospective date hence the Finance Department concurrence is not required.

8. That it is stated that thereafter from the note dated 14.12.1999 it appears that Smt. Kumkum Late Sinha Laboratory Assistant has made a request for promotion on the post of lecturer on the ground inter alia that Smt. Sharswati Kumari and Smt. Meenakshi Rai have been promoted to the post of lecturer from the retrospective date as Smt. Sharswati Kumari was promoted and thereafter file progressed and finally opinion of the Law Department has been taken wherein finding was given that illegal promotion has been granted and this led to asking for the show cause as to why not their promotion be cancelled finally leading to cancellation of promotion granted to Smt. Sharswati Kumari and Smt. Minskshi Rai leading issuance of impugned order."



9. From the notings of the original records, which has been explained in the supplementary affidavit as quoted above, it is clear that the respondents vide letter No. 50 dated 18.01.1990 were re-designated as Demonstrator with effect from the date of their appointment as Laboratory Assistant i.e. 14.07.1975 and were promoted on 14.07.1982 to the post of Lecturer by the same order and of the same date. The direct chain of promotion to that of Demonstrator was with regard to the Universities and not the Colleges run by the State Government. The respondents were appointed in the College run by the State Government, which fact is not disputed, and, were promoted to the post of Lecturer without any process or without any procedure for such promotion, completely violating the constitutional provisions of Articles 14 and 16 of the Constitution of India.

10. From the extract of the notings, as culled out from the original records in the supplementary affidavit, it is apparent that simply because the respondents had B.Sc. degree they were re-designated as Demonstrator and having cleared Postgraduate degree during course of service were promoted as Lecturer. Such re-designation as Demonstrator and promotion as Lecturer given to the respondents were without following any procedure, hence, order dated 06.06.2008, 08.08.2008 and



08.09.2009 calls for no interference. Order of the learned Single Judge dated 24.04.2013, passed in C.W.J.C. No. 9549 of 2008 is set aside with modification that since the private respondents have retired, no amount paid as salary till the date of retirement of the respondents will be recovered in view of the law laid down by the Hon’ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** since reported in **(2015) 4 SCC 334**.

11. Appeal is, accordingly, allowed.

(Nilu Agrawal, J)

I agree.
Ajay Kumar Tripathi, J.

(Ajay Kumar Tripathi, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	17.05.2017
Uploading Date	25.05.2017
Transmission Date	NA

