

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5 of 2019

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Shailendra Kumar Son of Sri Kapildeo Singh Resident of Quarter No.A/21,
MIT Campus,Muzaffarpur,P.S. Brahampura,Distt.-Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary,Department of Science and Technology Govt. of Bihar,Patna
3. The Director,Department of Science and Technology,govt. of Bihar,Patna
4. The Principal,M.I.T. Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakshmi Kant Sharma
For the Respondent/s : Mr. Ajay -Ga5

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 14-03-2024

Heard learned counsel for the petitioner and

learned counsel for the State.

2. The petitioner has prayed for following reliefs:

“This is an application for issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order contained in memo no. 2183 dated 12.10.2018 by the respondent no. 4. The Principal whereby and whereunder representation filed by petitioner pursuant to order dated 09.08.2018 passed in C.W.J.C. No. 18532/2016 by the Hon'ble Court, has been rejected by holding the petitioner has not been covered by the order dated 09.10.2017 passed in C.W.J.C. No. 1721/2014 and distinguishing the case on account of difference of date of retirement as petitioner retired on 31.01.2017 whereas petitioner Surendra Choudhary of C.W.J.C. No. 1721/2014 who has superannuated on 31.01.2016.

A Photo copy of memo no. 2183 dated 12.10.2018 is annexed herewith and marked as Annexure- 1 to this petition.

Petitioner further seeks Hon'ble Court's indulgence commanding the respondent authorities to allow the petitioner to continue on the post of Foreman upto attaining



the age of 62 years by holding him a teaching staff pursuant to order contained in Memo No.. 1342 dated 15.07.1998 whereby Forman has been declared as teaching staff.

Petitioner further seeks for issuance of appropriate writ/writs, order/orders, direction/directions for quashing e letter contained in memo no. 2211 dated 12.09.2014 whereby a decision was taken to cancel/rescind the memo no. 1342 dated 15.07.1998 and further holding the letter contained in memo no. 2211 dated 12.09.2014 is not binding upon the petitioner and said letter amounts to snatching the right which has already been approved to the petitioner after long drawn legal battle.

A Copy of memo no. 2241 dated 12.09.2014 is annexed herewith and marked as Annexure-2 to this petition.

Petitioner further seeks any other, relief/reliefs for which he is found entitled in the eye of law and in the facts and circumstances of the present case.”

3. The petitioner obtained his B.E. (Bachelor of Engineering) in the year 1984 in Mechanical Engineering Branch and, thereafter, joined the Indian College of Engineering, Motihari (now known as Motihari Engineering College) on 02.11.1985 on the post of Foreman. The aforesaid college was taken over by the State Government along with other Engineering Colleges in the State of Bihar vide ordinance dated 09.12.1986 and w.e.f. 31.01.1991. Petitioner started getting salary/allowances and other benefit of the post of Foreman from the State authority. The petitioner was transferred to M.I.T., Muzaffarpur on 04.04.2000 and he continuously discharged the duty of Foreman at M.I.T, Muzaffarpur. The petitioner obtained his Masters Degree in the year 2009, and



that is the additional degree for the post. The petitioner is continuously receiving the salary equivalent to Lecturer/Assistant Professor as the nature of job of the petitioner is equivalent to teaching faculty member and this fact is noticed by the Hon'ble Division Bench in L.P.A. No. 42/2011 (The State of Bihar Vs. Sri Ram Das, vide order dated 27.06.2011). The Hon'ble Apex Court also affirmed the order in SLP (Civil) No. 8282/2012 vide order dated 11.04.2014.

4. Learned counsel for the petitioner submits that whether the post of Foreman and Senior/Junior Instructor is a teaching faculty member or not has come before this Hon'ble Court in C.W.J.C. No. 7160 of 1991 and Hon'ble Court was pleased to adjudicate the issue vide order dated 02.11.1995 and declared that Foreman and Senior/Junior Instructor is a teaching faculty and thus, they are entitled to the benefit of UGC. Aforesaid order was affirmed by the Division Bench in L.P.A. No. 888/1997 and further affirmed by the Hon'ble Apex Court in SLP No. 6091/1998. He further submits that pursuant to the decision of Hon'ble Court affirmed upto Hon'ble Apex Court regarding the status of the post of Foreman and Senior/Junior Instructor, respondent authority issued memo no. 1342 dated 15.07.1995 declaring the petitioner as teaching staff. He further



submits that teaching job either in classroom or workshop are of similar nature while in the classroom, theoretical part of engineering study has been imparted whereas in the workshop classes the practical part of the theory has been brought into the notice of the students. Thus, in such circumstances nature of job in classroom as well as in the workshop are same and similar and this fact is noticed by the Hon'ble Division Bench in L.P.A. No. 52/2011.

5. Learned counsel for the petitioner further submits that in case of similarly situated persons, namely, Ramanand Sharma, who was working on the post of Foreman, raised the issue alongwith Instructor before the Hon'ble Court in C.W.J.C. No. 7998 of 2009 and Hon'ble Court was pleased to allow the writ petition on 04.08.2011. One Surendra Choudhary, who was holding the post of Foreman and junior to petitioner, also raised the issue of granting the status of teaching member by filing C.W.J.C. No. 1721 of 2014 and writ petition was allowed vide order dated 09.10.2017. Surendra Choudhary was appointed on 04.11.1986, whereas petitioner was appointed on 02.11.1985, though date of retirement of petitioner is 31.01.2017 whereas said Surendra Choudhary retired on 31.01.2016, thus the case of petitioner is squarely covered by



the order dated 09.10.2017 passed in C.W.J.C. No. 1721 of 2014. He further submits that as the same benefit was not given to the petitioner which was given to similar situated Surendra Choudhary, the petitioner filed C.W.J.C. No. 18532/2016 which was disposed off vide order dated 09.08.2018 with a direction to the petitioner to approach respondent no. 4 and, accordingly, respondent no. 4 was directed to pass a reasoned order. Pursuant to the direction of Hon'ble Court, petitioner filed representation by enclosing the order passed in C.W.J.C. No. 1721 of 2014 along with the order passed on 09.08.2018 in C.W.J.C. No. 18532/2016. He further submits that respondent without properly appreciating the case of petitioner, which is exactly similar to the case of Surendra Choudhary (Writ petitioner of C.W.J.C. No. 1721/2014), not granted similar relief to petitioner. However, in the case of Surendra Choudhary, respondent immediately complied the order vide memo no. 126 dated 16.01.2018.

6. Learned counsel for the petitioner further submits that the action of respondent authorities in issuing the Annexure-1 is arbitrary, unreasonable, vague and is an example of utilizing the power in bad faith and thus letter contained in Annexure-2 is *ultra-vires* in the authority and abused his power



by acting in bad faith with gross unreasonableness, and without taking into consideration the relevant facts and adjudication made by the Hon'ble Court and affirmed by the Hon'ble Apex Court. He further submits that since issue of definition of teaching staff has already been settled by the Hon'ble Court as well as Hon'ble Apex Court, but respondent authorities issued Annexure-1 without considering the order passed by this Court. He further submits in view of the above facts impugned order contained in Annexure-1 is fit to be set aside and this Court may hold that Annexure-2 is not binding upon the petitioner as same is within the teeth of Hon'ble Court order and as such respondent may be directed to grant the same relief as given to the similarly situated person, namely, Surendra Choudhary who was also working on the post of Foreman and Junior to the petitioner and thus petitioner is also entitled for similar treatment.

7. A detailed counter affidavit has been filed on behalf of the respondents no. 1 to 4 stating therein that the petitioner has not approached this Hon'ble Court with clean hand as well as he has suppressed the material fact and did not present the correct picture before this Hon'ble Court. Basically, the petitioner had filed two similar nature of writ petition



bearing C.W.J.C. No. 18532/2016 and C.W.J.C. No. 6348/2016 with the same prayer. The C.W.J.C. No. 18532/2016 was disposed off on 09.08.2018 with an observations;

"On behalf of the petitioner, it has submitted that the case of the petitioner is squarely covered by the order dated 09.10.2017 passed in CWJC No. 1721 of 2014.

The Principal, Muzaffarpur Institute of Technology, Muzaffarpur (Respondent No. 5) directed to examine the case of the petitioner in the light of the order referred above and pass an appropriate order in accordance with law within a period of three months from the date of receipt/production of copy of this order."

With the observation/direction aforesaid the present writ application stands disposed of."

8. Learned counsel for the respondents further submits that, in compliance to the order/direction passed by Hon'ble Court in aforesaid case, a well explained reasoned and speaking order has been passed after considering the order dated 09.10.2017 passed in C.W.J.C. No. 1721 of 2014 as well considering the entire service record of the petitioner including the amendment brought by way of Bihar State Universities (Amendment and Validation) Act, 2012 (Bihar Act 22, 2012) and Bihar engineering Education Service Rule-2014. He further submits that Surendra Choudahary superannuated on 31.01.2014, before the said amendments in "Bihar State Universities (amendment and Validation), Act", 2012 as well as



before issuing of memo no. 2211 dated 12.09.2014 issued under the signature respondent no. 4 i.e. the Director, Science and Technology Department, Govt. of Bihar, Patna, whereby and where under decision taken vide memo no. 1342 dated 15.07.1998 with respect to senior/Junior Foreman Instructor and was declared teaching staff has been cancelled. However, the petitioner superannuated on 31.01.2017 after issuance of memo no. 1122 dated 12.09.2014 as after issuance of amendment State Universities (Amendment and Validation) Act, 2012 (Bihar Act 22, 2012) and enforcement of Bihar Engineering Education Service Rule- 2014. He further submits that the respondent no. 4 has rightly upheld it as both the cases are different in the nature and, therefore, present petitioner cannot reap the similar benefits. In another CWJC No. 6384/2016 was disposed of on 08.08.2016 with the observation and direction, "That the writ petitioner is not entitled to get promotion on post of Workshop Superintendent, it is only after the 2012 amendment brought about by the State Govt. that from the year 2014 certain advantages existing in favour of the writ petitioner has been taken away, one of them being he is longer a teacher in term of the definition".

9. Learned counsel for the respondents further



submits that, in view of the facts and circumstances, it is crystal clear that the writ petitioner has raised the similar question which has already been decided by Hon'ble High Court in C.W.J.C. No. 6384/2016 and C.W.J.C. No. 18532/2016 both in the matter of Shailndera Kumar Vs. The State of Bihar & Ors. on 08.08.2016 and 09.08.2018. It is therefore, the prayer of the writ petitioner is barred by principal of *Res- Judicata*. He further submits the order under challenge has been passed in light of amendment made in "Bihar State Universities (Amendment and Validation) Act", 2012 (Bihar Act 22, 2012) and "Bihar Engineering Education Service Rule", 2014. It is therefore, entire orders, which are under challenge, are legal, valid and fit to be sustained in eye of law.

10. Learned counsel for the respondents further submits that the definition of the Teacher" has been substituted by the Bihar State (Amendment and Universities Validation) Act, 2012 (Bihar Act 22, 2012). As per substituted definition of "Teacher" foreman does not fall in the category of "Teacher". In light of the said substitution teaching status has been withdrawn from the foreman and instructor vide order bearing memo no. 2211 dated 29.09.2014. He further submits that Instructor and Foreman were given status of Teaching Staff in light of previous



definition of "Teachers" as mentioned in Bihar Universities Act before amendments. He further submits that from the bare perusal "Bihar Engineering Education Service" Rule 2014. it is evident that the post of writ petitioner does not come with the preview of "Teaching Staff" under rule.

11. Learned counsel for the respondents further submits that the cases referred in the sub paragraphs are prior to amendment in Bihar State Universities (Amendment and Validation) 2012 (Bihar Act before enforcement Act, 22, 2012) and of Bihar Engineering Education Service Rule 2014. It is therefore, there is no relevancy of the case referred in the writ petition. He further submits that due to the above said reasons memo no. 2211 dated 12.09.2014, issued under the signature of respondent no.4 i.e. the Director, Science and Technology Department, Govt. of Bihar, Patna whereby and where under decision taken vide memo no. 1342 dated 15.07.1998 with respect to Foreman and senior/Junior Instructor declared earlier as teaching staff has been cancelled. He further submits that the said memo no. 2211 dated 12.09.2014 issued under the signature of respondent no. 4 i.e. Director, Science and Technology Department, Govt. of Bihar, Patna whereby and where under decision taken vide memo no. 1342 dated 15.07.1998 with



respect to Foreman and senior/Junior Instructor was declared teaching staff has been cancelled was general in nature. It was not only for petitioner whereas it was for all concerned, it is therefore, the copy *foramen* was not given to all concerned. The memo was general in nature; it is therefore, no specific communication was made to writ petitioner in this regard.

12. Considering the arguments of the parties and the order of Division Bench of this Court passed in the L.P.A. No. 506 of 2009, it is necessary to reproduce para-12 which reads as under:

“Having given our anxious consideration to all the facts, we are of the view that the respondent/writ petitioner was bound by the provisions in the Bihar Service Code governing his age of superannuation and in absence of any clear and specific order of the State Government enhancing the age of superannuation in respect of Instructors, he was to superannuate at the age of 58 years only. So far as claim for enhanced superannuation age on ground of equality is concerned we find substance in the submission of learned Advocate General that there is no parity between the post of Instructor and that of Teachers and Demonstrators either on facts or in law. These posts are in different pay scales having different qualifications and therefore, benefit of higher superannuation age given to Teachers and Demonstrators will not be, ipso facto, available to the respondent. Thus, we find no good reason to take a different view than what has been decided by the Division Bench in the case of State of Bihar and others vrs. Braj Nandan Roy decided on 21.11.2008. A copy of that judgment is available



as Annexure-6 to the LPAs. “

13. Learned counsel for the petitioner further upon the judgment passed by single Bench of this Court in C.W.J.C. No. 1721 of 2014 and claimed that the petitioner case is similar to one Surendra Choudhary, in my opinion, the Government policy and also the fact that in year 2014 itself Memo No. 1342 dated 15.07.1998 was issued with respect to foreman and senior/Junior Instructor declared earlier as teaching staff has been cancelled was general in nature, was not considered by learned Single Judge passed in C.W.J.C. No. 1721 of 2014, as this fact was also not brought by the State before the Single Bench.

14. Considering the facts and circumstances of the case and perusal of the order impugned challenged by the petitioner, I am of the view that there is no illegality and infirmity in the order passed by respondent no. 4, accordingly, this writ petition is dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NA
CAV DATE	19.02.2024
Uploading Date	14.03.2024
Transmission Date	NA

