

(2011) 09 JH CK 0043

Jharkhand High Court

Case No: I.A. No. 2573 of 2011 with W.P. (S) No. 2154 of 2010

Murari Goswami

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision: Sept. 12, 2011

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.N. Patel

1. Having heard counsel for both the sides and looking to the facts and circumstances of the case, especially that the petitioner was appointed as Assistant Teacher on 11th September, 1988. He was B.Sc. pass, but, he had not taken Teacher's Training and therefore, he was entitled to B.Sc. Untrained Scale, but, he was given, for any reason whatsoever, Matric Untrained Scale. This error was rectified later on by the respondents vide letter dated 5th September, 1989 (Annexure-7 to the memo of the petition) and the petitioner was made entitle to B.Sc. Untrained Scale.

2. The wisdom, which was prevailed later on i.e. on 5th September, 1989 was evaporated and again B.Sc. Untrained Scale was withdrawn vide order dated 6th February, 1990, This action was challenged by the petitioner in C.W.J.C. No. 1990 of 1990 (R), which was allowed by this Court vide order dated 14th January, 1991 (Annexure-9 to the memo of the petition). Thus, the order of cancellation of the B.Sc. Untrained Scale dated 6th February, 1990 was quashed and set aside by this Court vide order dated 14th January, 1991.

3. It further appears that again B.Sc. Untrained Scale order dated 5th September; 1989 was cancelled by another order dated 12th April, 1991.

4. Again this petitioner had to file a writ petition bearing C.W.J.C. No. 331 of 1992(R). This petition was allowed vide order dated 11th February, 1992. Thus, the petitioner was entitled to B.Sc. Untrained Scale as per corrected order dated 5th September, 1989 and cancellation order dated 12th April, 1991 was quashed and set aside.

5. Thereafter, the Government preferred a Civil Review Application No. 14 of 1992(R). This Civil Review Application was also dismissed vide order dated 29th January, 1993. Thus, the Review application, preferred by the Government, has no substance at all. This decision was rendered by the Division Bench of this Court. Thus, the order granting B.Sc. Untrained Scale dated 5th September, 1989 was continued and the order, passed by this Court in C.W.J.C. No. 331 of 1992 (R) dated 11th February, 1992 was maintained as it is.

6. Once again, the same Government has cancelled the B.Sc. Untrained Scale granted to the petitioner in 1994. This is the third time cancellation of grant of B.Sc. Untrained Scale to the petitioner.

7. Again, the petitioner had to file writ petition bearing C.W.J.C. No. 1061 of 1994 (R). This writ petition was allowed by this Court vide order dated 15th February, 1995 with cost of Rs. 2000/-. Thus, the cancellation order of 1994 was quashed and set aside and again, the petitioner was entitled to get B.Sc. Untrained Scale as corrected on 5th September, 1989 (Annexure-7 to the memo of the petition).

8. Meanwhile, a Contempt Application bearing Miscellaneous Jurisdiction Case No. 137 of 1992 (R) was preferred by the petitioner in which the Government replied that they have complied the order, passed by this Court in C.W.J.C. No. 331 of 1992(R) dated 11th February, 1992. Thus, every time, this Court has to quash the withdrawal of the B.Sc. Untrained Scale orders and every time, the Government again and again is granting the B.Sc. Untrained Scale to the petitioner.

9. A compliance report was also filed by the Government before this Court on 23rd March, 1995 stating that they have complied the order, passed in C.W.J.C. No. 1061 of 1994 dated 15th February, 1995. This compliance report also shows that again the petitioner was given B.Sc. Untrained Scale by the order of this Court.

10. Again the respondents have cancelled the grant of B.Sc. Untrained Scale to the petitioner. This is 4th time cancellation, which is dated 18th August, 2006. Again, this order was challenged before the Jharkhand High Court at Ranchi in W.P.(S) No. 924 of 2008. This writ petition was also allowed by this Court vide order dated 27th January, 2010 (Annexure-16 to the memo of the petition) and the withdrawal of the B.Sc. Untrained Scale order (which, was 4th attempt by the Government dated 18th August, 2006) was quashed and set aside. Thus, again the petitioner was entitled for B.Sc. Untrained Scale, which was given vide letter dated 5th September, 1989 (Annexure-7).

11. Thus, it appears that Annexure-7 is cancelled 4th time and again, the same has been revived.

12. Again the respondents have passed an order dated 17th April, 2010 (Annexure-17 to the memo of the petition) and B.Sc. Untrained Scale has been again withdrawn, which is 5th attempt and therefore, the present writ petition bearing W.P. (S) No. 2154 of 2010 has been instituted. Thus, there is prima facie a case in favour of the present petitioner looking to the Circular, which is annexed with the memo of the petition as well as memo of the counter affidavit.

13. Annexure-H is a Circular dated 18th December, 1989, which is annexed with the counter affidavit, filed by respondent nos. 4 and 6 and as per Clause 20 thereof, this Circular is not applicable to the Teachers of the Government Schools. Clause 20 has been read and re-read in the open Court again and again, which is at Annexure-H to the counter affidavit. As per this Circular dated 18th December, 1989, the whole case of the respondents is based upon. Moreover, some clarification has also been issued in the year, 1995, which is dated 7th June, 1995 (annexed at Annexure-I to the counter affidavit, filed by the aforesaid respondents). The clarificatory Circular is applicable to those Teachers to whom the main Circular dated 18th December, 1989 was applicable. Moreover, Clause 20 has not been omitted in clarificatory Circular. If Clause 20 is not omitted in the main Circular dated 18th December, 1989 then neither the original Circular dated 18th December, 1989. nor the clarificatory Circular dated 7th June, 1995 is applicable to the petitioner because the petitioner is a Teacher in a Government School. Clause 20 speaks that this original Circular is not applicable to the Teachers of the Government School and the whole case of the respondents is based upon. This main Circular as well as clarificatory Circular are at Annexure-H and at Annexure-I to the counter affidavit, filed by the respondents. Prima facie, these Circulars have no applicability to the petitioner and therefore, balance of convenience is in favour of the petitioner and irreparably loss will be caused to the petitioner if the stay, as prayed for, is not granted against the alleged recovery, which is mentioned in letter dated 10th August, 2011. The recovery order at this stage, is required to be Stayed.

14. I, therefore, stay the operation, implementation and execution of an order, passed by the respondents dated 10th August, 2011, which is at Annexure-22 to the interlocutory application as well as I hereby, also stay the operation, implementation and execution of an order dated 17th April, 2010 (Annexure-17 of the memo of the present writ petition) on the condition that the petitioner shall file an undertaking before this Court that in case, he losses the present petition, the amount, which is legally payable to the respondents, shall be paid forthwith. As the writ petition is admitted, the stay shall remain in operation during pendency and final hearing of the writ petition. This undertaking shall be filed before this Court within a period of four weeks from the date of receipt of a copy of an order of this Court. A copy of the undertaking will also be supplied to the respondents so that in case, the petition is

dismissed, the amount shall be deposited by the petitioner forthwith.

15. Accordingly I.A. No. 2573 of 2011 is allowed and disposed of.

16. At the request made by the counsels for both the parties, W.P.(S) No. 2154 of 2010 is fixed for final hearing on 22nd September, 2011.