

A THE STATE OF JHARKHAND & ORS.

v.

BIJAY KUMAR & ORS.
(Civil Appeal No. 1270 of 2008)

FEBRUARY 14, 2008

B (S.B. SINHA AND V.S. SIRPURKAR, JJ.)

Service Law:

C *Termination of services of ad-hoc employees – Claims in subsequent appointments – Review jurisdiction of High Court – Held: Respondent-employees did not question order terminating their ad-hoc services – Employees other than respondents questioning order of termination of services approached upto Supreme Court, when Supreme Court in exercise of its power u/A. 142 of the Constitution of India directed the State authorities to provide certain relaxation to the incumbents in future appointments – Order of the Supreme Court kept confined to appellants thereof – High Court, in the petition filed later, could not grant such benefit to others –*

E *Constitution confers special jurisdiction on Supreme Court in terms of Article 142 of the Constitution – No such power specifically conferred on High Court – Order of Supreme Court providing relaxation attained finality – Hence High Court could not issue the impugned direction – Constitution of India, 1950*

F *– Article 142 – Power of Judicial Review.*

Equality in terms of Articles 14 and 16 of the Constitution – Duty of the Courts in protecting rights of citizens in the matter of public appointments – Discussed.

G *Judicial Review – Scope of in the context of Article 142 of the Constitution of India, 1950.*

Respondents were appointed as Technical Assistants on ad hoc basis in a project of Animal Husbandry of the Government of Bihar. In the year 1996,

when 'Fodder Scam' came to light, the State Government had declared all unauthorized appointments as illegal. Pursuant thereto, the services of the respondents were terminated. They filed writ petitions before the High Court, which were dismissed by the High Court. Letters Patent Appeals preferred thereagainst were also dismissed by the High Court directing that relaxation in respect of age and weightage of incumbents could be considered in the future appointment. Hence the present appeal.

Earlier, some of the aggrieved employees approached this Court, when this Court directed that ad hoc appointees have no right to claim regularization; that the State Government to fill up the vacancies of Technical Assistants in the project; to constitute a Selection Committee; and that the Committee shall consider the case of eligible aggrieved employees for relaxation of age, weightage over outsiders in terms of High Court's direction.

Appellant contended that the direction of the High Court, if implemented, would run contrary to and inconsistent with the directions contained in earlier orders of this Court; that since this Court having directed not to treat the relaxation as directed to be given to incumbents as one time exercise and not to be followed as precedent, the directions issued by the High Court are clearly violative thereof.

Respondents submitted that one time exercise directed to be carried out by this Court had not been fully complied with and, thus, the High Court was entitled to pass the impugned order; that this Court, in any event, in exercise of its jurisdiction under Article 142 of the Constitution of India, can issue necessary directions so as to extend the benefits also to those who had not approached this Court earlier; and that advertisement having been issued in July 2006 and the impugned order

A having been passed by the High Court in June 2006 and furthermore in view of the fact that the respondents have appeared in the examination, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

B Allowing the appeals, the Court

C HELD: 1.1 Respondents were appointed in 1992. They were removed from service in 1997. They did not question the said orders of termination. However, they had questioned the orders of their termination from service before the High Court. This Court in its order dated 23.7.2003, in that matter, although opined that they had no right to continue in service, issued some directions evidently in exercise of its power under Article 142 of the Constitution of India. The said order was to be kept confined only to the appellants thereof, was reiterated by this Court in its subsequent order. Indisputably, Respondents were not parties to the said orders. No benefit thereof, thus, could be extended in their favour. The High Court, therefore, could not have issued such directions. (Paras – 8, 9 & 10) [896-D, E & F; 897-B]

F 1.2 Although power of judicial review has been conferred on the High Courts, it had not been given any special jurisdiction as has been done on the Supreme Court in terms of Article 142 of the Constitution of India. It is, therefore, very difficult to comprehend that the High Court could issue the impugned direction which, in effect and substance, would be violative thereof. Moreover, this Court intended to pass a final order. The said order should have been allowed to attain finality. If a third order can be issued, others who are waiting on the fence may be held to be entitled to file a fourth application. The process, thus, would go on unendingly and relaxation given for a limited purpose would become a rule and not the exception. (Paras – 11 & 12) [897-C & D; 898-A & B]

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Kendriya Vidyalaya Sangathan & Ors. v. Sajal Kumar Roy & Ors. (2006) 8 SCC 671 – referred to. A

Amrit Lal Berry v. Collector of Central Excise, New Delhi & Ors. (1975) 3 SCR 960 and *B.N. Nagarajan & Ors. v. State of Mysore & Ors. (1966) 3 SCR 682* – held inapplicable. B

2.1 There is a sea change in the situation in the field of public employment. Ten years have passed. A new State has come into being. Thousands of persons have acquired similar or higher qualifications. They have got their names registered in the employment exchanges. The job opportunities in a specialized field being limited, those who are now entitled to be considered, may not be considered at all, if the order of the High Court is allowed to operate. (Para – 13) [898-F & G] C

2.2 Constitutional guarantee of equality as envisaged under Articles 14 and 16 of the Constitution of India must be protected. While passing one order or the other, the interest of those who are not before the Court, should not be forgotten. Citizens have human right of development and offer of appointment on such posts should be directed to be made only on merit. Only because some persons had approached this Court and obtained an order, the same should not be extended to others to which they are not otherwise entitled to, namely, weightage in service over the new applicants. Hence, the impugned judgment cannot be sustained and is set aside accordingly. (Para – 14 & 15) [898-H; 899-A, B & C] D E F

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1270 of 2008.

From the Judgment and Order dated 30.06.2006 of the High Court of Jharkhand at Ranchi, in W.P.(S) No. 1599 of 2005. G

B.B. Singh, Kumar Rajesh and Rajesh Kr. Pathak for the Appellants. H

A P.P. Rao, Guntur Prabhakar for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

B 1. Respondents herein were appointed on ad hoc basis in Frozen Semen Bank Project as Technical Assistants in the Department of Animal Husbandry of the Government of Bihar. The said appointments were made by the Regional Director, Animal Husbandry, Ranchi.

C 2. In the year 1996, a scam known as 'Fodder Scam' came to light and all unauthorized appointments were declared illegal by the State, inter alia, on the premise :

- D "1. The Regional Director, Animal Husbandry, Ranchi was not competent to make any such appointment.
- E 2. No advertisement was issued before making such appointment.
3. No reservation policy was followed.
4. The number of persons appointed, were much more than the sanctioned post and
5. Besides these many other rules and norms of appointment were also flouted."

F Pursuant thereto or in furtherance thereof, the services of the respondents were terminated in 1997. Services of some other employees were also terminated on 23.10.1998. They filed writ petitions before the then Ranchi Bench of the Patna High Court, which were dismissed.

G Letters Patent Appeals preferred thereagainst were also dismissed observing that in the event their cases are considered for appointment, relaxation in respect of age and weightage in the future appointment should be given.

H 3. One Umakant Sinha and others approached this Court.

By a judgment and order dated 23.7.2003, this Court while opining that ad hoc appointees have no right to claim regularization in the service, directed :

"In this view of the matter, we direct the State of Jharkhand to consider at the earliest for recruiting Technical Assistant for the Semen Bank Project and to fill up the existing vacancies within a period of three months from today. For that purpose the Respondent-State is directed to constitute a Selection Committee as per the existing Rules within a period of three months from today.

(ii) The appellants whose services are terminated may apply to the Secretary of the Animal Husbandry Department within a period of one month for being re-appointed or for regularization of their services. The Committee shall consider the eligibility, suitability, past record as well as the educational qualifications of the appellants as per the rules as on today.

(iii) The Committee shall give relaxation of age and weightage over outsiders as directed by the High Court. However, if the appellants are found unsuitable for some reasons, it would be open to the Committee to reject their applications.

Appropriate authority shall issue orders for appointment after considering the roster and the merit list, on available vacancies.

The appeals stand disposed of accordingly. There shall be no order as to costs. *We, however, make it clear that this case shall not be treated as precedent as we have decided it purely on the facts and in the peculiar circumstances of this case.*

(Emphasis supplied)

4. An interlocutory application was filed for extension of time to comply with the said order and by an order dated

A 2.12.2003, three months' time was granted for constitution of the Committee. It was clarified that directions by this Court were in relation to the appellants in the said appeals.

B Another writ petition, however, was filed in the High Court of Jharkhand which came into being in November 2000 by Bijay Kumar and others. The said writ petition was also dismissed by an order dated 6.2.2004. Special Leave Petitions were also filed thereagainst and by a judgment and order dated 10.4.2006, a Bench of this Court directed :

C "We are of the view that the issue should be resolved finally and should not be kept pending. The earlier order of this Court was passed on 23.7.2003. The right to be selected thereunder cannot continue indefinitely. Therefore, we direct : (1) that the Respondent-Authority shall advertise in the local newspapers having wide circulation of the holding of selections for the purpose of filling of those vacancies which according to the Rules, are to be filled by direct appointment. (2) Applications should be asked for from these ad hoc employees who were appointed in the Frozen Semen Bank Project between 1988 to 1992 and whose services were terminated in 1998. No such employee who has already been considered by the Selection Committee under the order dated 23.7.2003 shall apply. (3) No appointment already made either in the normal course or pursuant to the earlier order of this Court shall be disturbed. (4) The advertisement shall specify the last date with which the candidate concerned shall apply for consideration including thereon proof that the candidate had served with the Respondents. (5) The selection shall be made by the Selection Committee only against the available vacancies. Preference shall be given to those who have longer tenure of service over those who have shorter tenure of service, other things being equal. (6) All other conditions in the order dated 23.7.2003 shall be operative as far as the procedure to be followed by the Selection Committee to be set up pursuant to this order

H

is concerned. (7) *This shall be a one time exercise. No further application shall be entertained by such ad hoc employees. This fact should also be mentioned in the advertisement.* A

(Emphasis supplied) B

5. An advertisement by the appellant was issued. Questioning the legality of the said advertisement, a writ petition was filed before the Jharkhand High Court which was marked as Writ Petition (S) No.156 of 2005. A direction was issued therein that the process of selection should be completed within four months. C

Respondents, however, filed another writ petition before the High Court which by reason of the impugned judgment dated 30.6.2006 was disposed of, directing : D

“In view of the judgment rendered by the Division Bench on 23rd June, 2006 in W.P.(S) No.156 of 2005 (Chandra Kant and ors. vs. State of Jharkhand and ors.) Supreme Court decision dated 10th April, 2006 and earlier decision dated 23rd July, 2003 passed in Civil Appeal no.5342-5343 of 2003 and analogous cases, this application is disposed of with liberty to the petitioners to apply (those who have not applied in pursuance of the advertisement to the post of Technical Assistant), if any advertisement is issued in future.” E

6. Mr. B.B. Singh, learned counsel appearing on behalf of the appellant, would submit that the aforementioned direction of the High Court, if implemented, would run contrary to and inconsistent with the directions contained in this Court's orders dated 23.7.2003, 2.122003 and 10.4.2006. It was urged that this Court, in the aforementioned orders, having directed not to treat the same as precedent as also one time exercise, the directions issued by the High Court are clearly violative thereof. F G

7. Mr. P.P. Rao, learned senior counsel appearing on behalf of the respondents, on the other hand, urged that one time H

A exercise directed to be carried out by this Court had not been
fully complied with and, thus, the High Court was entitled to pass
the impugned order. It was submitted that this Court, in any event,
in exercise of its jurisdiction under Article 142 of the Constitution
of India, can issue necessary directions so as to extend the
B benefits also to those who had not approached this Court earlier.
Strong reliance in this behalf has been placed on *Amrit Lal Berry
v. Collector of Central Excise, New Delh & Ors.* [(1975) 3 SCR
960] and *B.N. Nagarajan & Ors. v. State of Mysore & Ors.*
C [(1966) 3 SCR 682]. It was contended that advertisement having
been issued in July 2006 and the impugned order having been
passed by the High Court in June 2006 and furthermore in view
of the fact that the respondents have appeared in the
examination, this Court should not exercise its discretionary
jurisdiction under Article 136 of the Constitution of India.

D 8. Respondents herein were appointed in 1992. They were
removed from service in 1997. They did not question the said
orders of termination. We have noticed hereinbefore that Abhay
Kumar, Uma Kant Sinha and others had questioned the orders
of their termination from service before the Patna High Court.

E 9. This Court in its order dated 23.7.2003, although opined
that they had no right to continue in service, issued some
directions evidently in exercise of its power under Article 142 of
the Constitution of India.

F The said order was to be kept confined only to the
appellants thereof, was reiterated by this Court in its order dated
2.12.2003.

G It may be true that while Abhay Kumar and others
approached this Court aggrieved by and dissatisfied with the
judgment and order dated 16.2.2004 of the learned Single
Judge of the High Court, this Court, in its order dated 10.4.2006
intended to resolve the issue finally. It was in that situation opined
that the right to be selected cannot continue indefinitely. This
Court dealt with the grievances of those employees whose
H services have been terminated in the year 1998.

10. The core question, therefore, which arises for our consideration is as to whether the High Court had any jurisdiction to issue a similar direction relying on or on the basis of the orders of this Court which had been passed in terms of Article 142 of the Constitution and confined only to the appellants of those cases.

Indisputably, Respondents were not parties to the said orders. No benefit thereof, thus, could be extended in their favour. The High Court, therefore, in our opinion, could not have issued the aforementioned directions.

11. Constitution of India conferred a special jurisdiction in this Court only. Although power of judicial review has been conferred on the High Courts, it had not been given any special jurisdiction as has been done on the Supreme Court in terms of Article 142 of the Constitution of India. It is, therefore, very difficult to comprehend that the High Court could issue the impugned direction which, in effect and substance, would be violative thereof.

Reliance placed by Mr. Rao on *Amrit Lal Berry* (supra) is not apposite. When a law is declared by this Court, it becomes the law of land in terms of Article 141 of the Constitution of India. Indisputably, therefore, such law would enure to the benefit of the persons similarly situated but it is incomprehensible that when this Court grants some special benefits to the parties who are before it and confined the relief only to them, such a benefit can be extended by the High Court relying on or on the basis thereof. The matter might have been different if this Court had not issued such directions, namely, the said order should be kept confined to the parties before it. When this Court declared that no further application should be entertained at the instance of other ad hoc employees in the name of parity or otherwise, the High Court could not have issued a direction which would run counter to the spirit of the said order.

12. Submission of Mr. Rao that notwithstanding the orders dated 23.7.2003 and 10.4.2006, the High Court have committed

A no mistake in issuing the impugned directions, is stated to be rejected. This Court intended to pass a final order. The said order should have been allowed to attain finality. If a third order can be issued, others who are waiting on the fence may be held to be entitled to file a fourth application. The process, thus, would go on unendingly. Relaxation given for a limited purpose would become a rule and not the exception.

In *Kendriya Vidyalaya Sangathan & Ors. v. Sajal Kumar Roy & Ors.* [(2006) 8 SCC 671], dealing with the question of age relaxation, it was held:

C "The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age-limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As the respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High Court committed a manifest error in issuing the aforementioned directions."

F 13. There is a sea change in the situation in the field of public employment. Ten years have passed. A new State has come into being. Thousands of persons have acquired similar or higher qualifications. They have got their names registered in the employment exchanges. The job opportunities in a specialized field being limited, those who are now entitled to be considered, may not be considered at all, if the order of the High Court is allowed to operate.

H 14. Constitutional guarantee of equality as envisaged under Articles 14 and 16 of the Constitution of India must be protected.

While passing one order or the other, we should not forget the interest of those who are not before us. Citizens have human right of development and offer of appointment on such posts should be directed to be made only on merit. Only because some persons had approached this Court and obtained an order, the same should not be extended to others to which they are not otherwise entitled to, namely, weightage in service over the new applicants.

15. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed with no order as to costs.

S.K.S.

Appeals allowed.