

CASE NO.:
Appeal (civil) 4215-16 of 2002

PETITIONER:
STATE OF BIHAR & ANOTHER ETC. ETC., DR. RADHA KRISHNA JHA & ORS.

Vs.

RESPONDENT:
RADHA K. JHA & ORS. ETC, THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 22/07/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

Brijesh Kumar, J.
Leave granted.

The above noted two appeals arise out of the judgment and order dated 9.12.1998 passed in LPA No.274 of 1997 by a Division Bench of the Patna High Court. The dispute pertains to the question as to whether or not the Lab Assistants, could be re-designated and treated as Demonstrators and be entitled to all such benefits, pecuniary and otherwise in the matter of promotion etc.

The Lab Assistants/Technicians/Incharges/Instructors in different Colleges under Ranchi University filed a writ petition CWJC No.387/95 in Patna High Court with a prayer that a direction be issued to re-designate them as Demonstrators with all benefits and promotional avenues as well. The learned Single Judge by judgment dated 7.9.1995 allowed the writ petition in the following terms:

"The writ application must succeed. Accordingly, mandamus is issued to the respondents 1 to 2 to pass appropriate orders on the representation of the Ranchi University in the light of the decision of the Supreme Court and the decision of this Court referred to above. They are given three months time to pass final orders. There will be no order as to costs."

The learned Single Judge while issuing the above direction, apart from other facts relied upon, a decision of the Division Bench of the Patna High Court in CWJC No.522/79 - Sindeshwari Prasad Singh & Ors. versus State of Bihar & Ors. decided on 2.7.1980. The graduate Laboratory Assistants in Musaffarpur Institute of Technology were directed to be paid UGC Scales for the post of Demonstrator. The learned Single Judge has also relied upon and elaborately quoted from the judgment of the Supreme Court in Civil Appeal No.2530/93 by which Laboratory Instructors were accorded status of the Demonstrators and that of the teaching staff. The

learned Single Judge held that the decision of the Supreme Court and that of the Division Bench in the case of Sindeshwari Prasad Singh (supra) are fully applicable to the facts of the present case. As noted, earlier, ultimately a direction was given to State to decide the representation in the light of the aforesaid decisions. The learned Single Judge had also observed about the qualifications of the appellants-Lab Assistants, most of whom are Ph. D. in different subjects. It was also noted that the State Government had failed to file any counter-affidavit. The Ranchi University had filed its counter-affidavit indicating that it had recommended the cases of appellants to the State Government for taking a decision in the matter vide letter dated 1.10.1994.

It appears that the State Government by order dated 18.11.1995 rejected the representation of the appellants-Lab Assistants which according to the appellants was not in accordance with the direction given by the learned Single Judge. The appellants therefore filed a Contempt Petition No. MJC 508/95, it was allowed by order dated 25.3.1996 and the order rejecting the representation was set aside. The Government was required to take a decision afresh. The State Government, however again rejected the representation by order dated 4.5.1996. This gave rise to filing of the second writ petition namely CWJC No.2176/96. The learned Single Judge allowed the writ petition by order dated 3.4.1997 quashing the order dated 4.5.1996 passed by the State Government. The operative part of the order reads as under:

"Thus, the writ petition is allowed.
Annexure-13 is hereby quashed and the State Government is hereby asked by issuance of mandamus to treat the petitioners as teachers and give them all consequential benefits including promotional avenues, if there remains any technical difficulty in designating the petitioners as 'Demonstrators' "

The State Government preferred LPA No.274/97 against the judgment and order dated 3.4.1997 passed by the learned Single Judge in CWJC No.2176/96. The Division Bench partly allowed the appeal and while upholding the judgment of the learned Single judge in so far as it quashed the order of the State Government rejecting the representation of the Lab-Assistants-Appellants, set aside the other part of the order of the learned Single Judge directing the State Government to treat the Lab-Assistants as teachers with all consequential benefits since it was found that no such prayer was made by the appellants in the writ petition to the effect that a direction be issued to the State Government to treat them as teachers and for the reason that the cases were also to be examined individually. The Division Bench directed the State to decide the representation afresh in accordance with law in the light of the judgment of the Patna High Court dated 7.9.1995 rendered in CWJC No. 387/95. Against the said order passed by the Division Bench, both parties have preferred appeals. The State of Bihar has preferred an appeal against the part of the judgment of the

Division Bench by which it has directed that the matter be considered afresh in the light of the judgment dated 7.9.1995 passed in CWJC No.387/95 whereas the Lab-Assistants-Appellants preferred an appeal against the part of the order setting aside the direction given to the State Government to treat them as teachers.

The main question raised on behalf of the State of Bihar is that point in dispute had already been decided by a learned a Single Judge by order dated 13.8.1996 passed in CWJC No.9485/96

Bhubneshwar Prasad Gupta versus State of Bihar holding that Lab-Assistants cannot be upgraded as Demonstrators. The LPA preferred against the said order was also dismissed. The other point which has been pressed on behalf of the State is that the Government had already taken a decision on 18.9.1975 that only those Lab Assistants who were appointed prior to 1.1.1973 would be designated as Demonstrators and on their retirement the posts shall stand abolished and no further appointment was to be made on the post of 'Demonstrator'. Hence, there is no occasion to designate Lab Assistants as Demonstrators.

The learned counsel appearing for the State of Bihar has also tried to submit that the decision of the Supreme Court relied upon by the learned Single Judge in the first writ petition No.387/95 pertained to Technical Institute of West Bengal and that case has no application to the present case. But we find that the matter was examined and the learned Single Judge in Writ Petition CWJC No.387/95 had categorically held that the Division Bench decision of the Patna High Court in the case of Sindheshwari Prasad Singh (supra) and that of the Supreme Court applied to the case in hand and a direction was issued to decide the representation in the light of those decisions. So far the decision in CWJC No. 387 of 1995 is concerned, it does not appear to have been challenged and therefore had attained finality. We find force in the submission made on behalf of the Lab Assistants that in case the State wanted to take a stand that the decisions of the Supreme Court and that of the Patna High Court in the case of Sindheshwari Prasad Singh (supra) did not apply to the facts of the present case, they could not say so by means of an administrative order passed on their representation in the teeth of the judicial finding in the judgment of the learned Single Judge dated 7.9.1995 in CWJC No. 387/95 that the said two decisions had full application to the present case. But only way open to the State was to challenge the above said order before an appropriate forum. We also find that the Contempt Petition filed by the Lab-Assistants also seems to have been decided taking a view that the order passed by the State Government on the representation was not in keeping with the direction issued by the learned Single Judge in the first writ petition. That order also does not seem to have been challenged. Another opportunity provided to the State to decide the representation culminated into repetition of the same exercise in rejecting the representation without following the two judgments in the light of which representation was directed to be decided. The plea raised by the State of Bihar on the

basis of the judgment in CWJC No. 9485/95 decided on 13.8.1996 saying that Lab-Assistants could not be upgraded as Demonstrators will make no difference so far as the present case is concerned. As a matter of fact, the latter decision dated 13.8.1996 should have followed the earlier decision dated 7.9.1995 which on the other hand was distinguished saying that the Government had to take a decision in the matter. In case the earlier case namely CWJC No.387/95 decided on 7.9.1995 stood distinguished, it would not be open to the State to argue that it would come in the way of implementing the order passed by the High Court dated 7.9.1995 in CWJC No.387/95. The latter order does not in any manner affect the finality of the order passed on 7.9.1995. The State was thus left with no option but to decide the representation following the two decisions referred to in the order dated 7.9.1995.

So far the question of abolition of post of 'Demonstrator' is concerned, admittedly no counter-affidavit had been filed on behalf of the State bringing this fact to the notice of the Court deciding CWJC No. 387/95.

That judgment was allowed to have attained finality. It was only in reply to the contempt proceedings initiated by the Lab Assistants that the Notification of 1975 was pressed into service to say that only those Lab Assistants who were appointed prior to 1.1.1973 alone could be designated as Demonstrators and not those appointed thereafter whose services were to be terminated. On behalf of the Lab Assistants, it has been vehemently urged that even after issuance of the order of 1975 a number of Lab Assistants had been re-designated as Demonstrators in different years. Some documents are on the record to indicate such re-designations in the year 1981, 1983 and in 1988 with certain conditions about non admissibility of emoluments. On the basis of these specific orders re-designating Lab Assistants as Demonstrators, it is submitted that the order of 1975 was never acted upon and in different Colleges Lab Assistants were designated as Demonstrators. It is also submitted that there is nothing to indicate that in pursuance of the aforesaid order of 1975 services of any one may have ever been terminated. The State could not deny the aforesaid facts, however, the stand is that the orders issued from time to time designating Lab Assistants as Demonstrators were wrongly issued. But, surprisingly, it is to be found that no step was ever taken to set the wrong right except at a very late stage same orders are now said to have been issued which according to the other side have not been implemented. Learned Single Judge in the second writ petition namely CWJC No. 2176/96 (R) has noticed that in CWJC No. 522/79 (R) a similar question had arisen and ultimately an order was passed for re-designating Laboratory Assistants as Demonstrators in the scale of pay as per U.G.C. norms. The case related to Graduate Laboratory Assistants of Muzaffarpur Institute of Technology and the case was duly contested on behalf of the State Government. It could not be indicated on behalf of the State as to what material difference it would make by reason of the fact that in the case in hand they are Lab

Assistants/Lab Instructors etc. under the Ranchi University and not in the labs of Technical Institutes. Both are governed by the norms of U.G.C. It would have been only appropriate if all these pleas had been raised, if at all, including one about abolition of posts of Demonstrators in the Writ Petition No. 387/95 as they involve disputed facts as to whether order of 1975 was ever acted upon or not etc. That was not done nor any appeal was preferred. Presently dispute is confined to compliance of the order passed in Writ Petition No.387/95 and thereafter in contempt proceedings.

In so far the Appeal preferred by the Lab Assistants is concerned against the order by which the Division Bench set aside the direction of the Single Judge to treat the Lab Assistants as Teachers we find that the order of the Division Bench cannot be faulted with. Apart from the fact that no such specific prayer was made, the Bench rightly observed that such a general direction could not be issued as the qualifications and other relevant facts in respect of each Lab Assistants may have to be examined by the State Government while considering their representation. We, therefore, find no merit in the challenge made against that part of the order of the Division Bench. In the result both appeals lack merit and they are dismissed. Parties to bear their own cost.