
(2005) 05 PAT CK 0006
In the Patna High Court
Case No : CWJC No. 8281 of 2003

Abhay Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Citation : (2005) 3 PLJR 122

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, for the Appellant; P.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—This writ application was initially filed for quashing the order as contained in memo dated 18th of July, 2003 (Annexure 1) whereby petitioner was restrained from functioning as the Assistant Teacher. However, during the pendency of the writ application, petitioner has been appointed as a Clerk and the prayer of the petitioner is for payment of salary for the period he had worked as Assistant Teacher. Short facts giving rise to the present application are that the petitioner's father was an Assistant Teacher, who died while in service on 2.8.2001. Petitioner filed application for his appointment on compassionate ground and the same was considered by the District Compassionate Committee in its meeting held on 29.8.2002 and it recommended for appointment of the petitioner as Assistant Teacher. The decision of the District Compassionate Committee was communicated to the District Superintendent of Education by memo dated 17.9.2002 (Annexure 6). In the light of the recommendation of the District Compassionate Committee by order dated 11.10.2002 (Annexure 7) petitioner was appointed as Assistant Teacher and posted in Primary School, Jamuawan, Khijar Sarai, in the District of Gaya. In pursuance thereof, he joined on 12.10.2002.

2. Petitioner is Intermediate pass and he had passed the Matriculation

Examination in 3rd division. Taking note of the fact that the person, who passed the Matriculation Examination in third division, is not eligible to be appointed as the Assistant Teacher, by the impugned order, petitioner was restrained from functioning as such. Petitioner aggrieved by the same filed this writ application on 14.8.2003. During the pendency of the application, the case of the petitioner was again considered by the District Compassionate Committee in its meeting held on 26.8.2003 and on its recommendation, by order dated 1.10.2003 (Annexure 9), petitioner has been appointed as a Clerk. Petitioner's claim is that he is entitled to get the salary of the Assistant Teacher till his appointment as a Clerk.

3. Mr. Tej Bahadur Singh appearing on behalf of the petitioner contends that the fault lay with the respondents in appointing the petitioner as Assistant teacher and as such petitioner is entitled for payment of salary till his appointment as Clerk.

4. JC to SC III, however, contends that petitioner was not eligible to be appointed as Assistant Teacher and as such he shall not be entitled for payment of salary of the post of Assistant Teacher till his appointment as Clerk.

5. It is common ground that the petitioner did not possess qualification for appointment as Assistant Teacher and he was wrongly appointed as such.

6. In that view of the matter the question which falls for determination is as to whether petitioner lacking basic qualification for appointment, shall be entitled for the salary. I am of the opinion that the matter stands concluded by the judgment of a full Bench of this Court in the case of Rita Mishra vs. Director, Primary Education, Bihar & Ors. (1987 PLJR 1090) in which in paragraph 41, the Full Bench has held as follows:

"Reliance was lastly placed on Gokaraju Rangaraju Vs. State of Andhra Pradesh, which case pertains to the de facto theory of holding a post and held that even where the appointment of a Sessions Judge was not sustainable de jure, the work done and the judgments rendered by him would nevertheless not be vitiated owing to the reason of his having held such post in a de facto capacity. This Judgment can possibly be no authority for the proposition that a person having a forged, fraudulent or illegal letter of appointment holds the post de facto and is consequently entitled to salary".

(Underlining mine)

7. The judgment of the Full Bench of this Court in the case of Rita Mishra (supra) has been quoted with approval by the Supreme Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, in which it has been observed as follows:

"17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra and Others Vs. Director, Primary Education, Bihar and Others etc., . The question posed before the Full Bench was whether a public servant was

entitled to payment salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

18. We agree with the view taken by the Patna High Court in the aforesaid cases."

8. I am of the considered opinion that right to salary springs from a valid and legal appointment and a person illegally appointed lacking basic qualification or illegality of such nature which goes to the root of the matter shall not be entitled for salary. I would hasten to add that in case the defect in appointment is of trivial nature that may not defeat the right of salary.

9. Accordingly, I am of the opinion that the petitioner shall not be entitled for the salary claimed by him. In the result, I do not find any merit in the application and it is dismissed accordingly, but without any order as to cost.