

(1999) 08 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 699 of 1998

Abhay Kumar Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 2 PLJR 626 : (2000) 2 PLJR 115

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Pramod Mishra, for the Appellant; J.C. to G.P. No. 1, for the Respondent

Judgement

Narayan Roy, J.—Heard learned Counsel for the Petitioner and J.C. to Government Pleader No. 1 for the Respondents.

2. By this writ application, the Petitioner has prayed for quashing the order as in Memo No. 274 dated 12.12.1997 as contained in Annexure-17 whereby and where under the services of the Petitioner have been terminated. Learned Counsel has also prayed for quashing of the general direction issued by the Secretary of the Department concerned as contained in Annexure-12 dated 3.1.1997 whereby and where under direction was issued to terminate the services of the employees of the Public Health Engineering Department who were appointed after 1.1.1988 either on class III or class IV post.

3. Learned Counsel for the Petitioner submitted that the Petitioner was appointed on the post of Correspondence Clerk which is a class III post against a scale vide Memo No. 5 dated 15.2.1988 as contained in Annexure-1 and the same was subsequently approved by the Chief Engineer (Mechanical) vide Memo No. 698 dated 20.6.1988 as contained in Annexure-2. Thereafter the Petitioner continued in service till the order as contained in Annexure-17 was passed. Learned Counsel for the Petitioner further submitted that admittedly, the Petitioner continued in service for about ten years and all of a sudden pursuant to the

general direction as contained in Annexure-12, his services have been terminated. It is also submitted on behalf of the Petitioner that the Petitioner at no point of time had misrepresented the fact for obtaining the appointment letter nor he played fraud upon the Respondents in doing so and he was appointed by the then Executive Engineer who was the competent authority.

4. A counter affidavit has been filed on behalf of the Respondents wherein it is stated that the Petitioner was not appointed after following the provisions of Articles 14 and 16 of the Constitution of India inasmuch as that the post was not advertised and, therefore, the services of the Petitioner were liable to be terminated.

5. It is not in dispute that the Petitioner was appointed by the Executive Engineer and his appointment on the post of Correspondence Clerk was approved by the Chief Engineer who is said to be the competent authority. It is also not in dispute that the Petitioner continued in service till the order as contained in Annexure-17 was passed. The order as contained in Annexure-17 is dated 12.12.1997 whereas the Petitioner was appointed on 15.2.1988. Since the Petitioner continued on the post as such for more than nine years, equity demands that his services could not have been terminated on the ground that his appointment was not made after observing the provisions of Articles 14 and 16 of the Constitution.

6. It is settled by judgments of this Court as well as of the Apex Court that if an employee continued on a post for several years, his services should not be terminated. In this connection, reference can be made to the case of Roshni Devi and Others Vs. State of Haryana and Others, and also the case of Union of India and Others Vs. Kishorilal Bablani, .

7. Considering the facts and circumstances of the case and also noticing the legal propositions aforesaid, I allow his application and quash the order as contained in Annexure-17 and the Petitioner is reinstated on his substantive post with all consequential benefits. There will be no order as to costs.