
(1978) 02 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 1157 of 1975

Amir Hassan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1978) 26 BLJR 309

Hon'ble Judges : S.K. Choudhary, J;S. Sarwar Ali, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sarwar ALi and S.K. Choudhary, J.—In this writ application the petitioner prays for quashing of the order contained in Annexure 1 terminating the services of the petitioner as Godown Guard in Bihar State Food and Civil Supply Corporation Limited (hereinafter referred to as "the Corporation").

2. The case of the petitioner is that he was appointed on the 6th January, 1S66 as Palladar in the Government Godown on a temporary basis by the Block Development Officer, Hayaghat. Later, on the 1st May, 1967 the petitioner was duly appointed by the Sub-divisional Officer Archangel to the said post. The services of the petitioner were transferred to the Bihar State Food and Civil Supply Corporation under Annexure "2"and "3". He accordingly joined his new post and submitted a joining report, a copy whereof is Annexure "4" to this application. On the allegation that the petitioner had been on unauthorized absence, certain, show cause notices were issued to the petitioner. Before, however, concluding the enquiry, the services of the petitioner were terminated under Annexure-1. The petitioner challenges the aforesaid termination order.

3. A counter affidavit has been filed on behalf of respondent No. 3. In the counter affidavit it is asserted that the petitioner was an employee of the Corporation meaning thereby that he was not an employee of the State and he

was on deputation with the Corporation. It is further averred that the petitioner's termination of service is legal and there is no infirmity in the aforesaid termination. It is also asserted in the affidavit that the post which the petitioner held under the Sub-divisional Officer, Darbhanga, is no longer in existence.

4. The first contention as has been raised is that the order under Annexure 1 is illegal, as the petitioner was on the relevant date in the service of the state and the termination by the corporation or its officers was not legal or valid. No material, however, has been adduced to show that the petitioner was on deputation with the corporation and that he continued to be in Government service while he was on such a deputation. In the circumstances it is not possible to hold that the petitioner was in service of the State Government so as to require compliance of Article 311 of the Constitution.

5. The second contention that has been raised is that since an enquiry was instituted against the petitioner the termination of his service under Annexure "1" is not legal and valid and is not a bonafide act on the part of the Corporation. The counter affidavit states that the service of the petitioner was of a temporary nature and as such a termination simpliciter was legal and valid. In this case the petitioner has not been able to show that in terminating the service of the petitioner, any statutory violation had taken place. Whether the termination was right or wrong, cannot be examined within the scope of the writ jurisdiction. The petitioner would only have been entitled to the relief provided he had shown that the order in question was in violation of some statutory provision which governed the relationship between the petitioner and the corporation. In absence of any material to the aforesaid effect it is not possible to hold that Annexure "1" suffers from illegality of the nature which requires interference in the exercise of writ jurisdiction of this court. We are, however not expressing any opinion whether the petitioner can ventilate his grievance in other ways, and before other legal forums. Learned counsel for the respondents contended that no writ could be issued against the corporation. In the view that we are taking, it is not necessary to decide this question.

6. We, accordingly, dismiss this application subject to the observations made above but in the circumstances without costs.