
(2009) 04 PAT CK 0114
In the Patna High Court

Amiri Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0114

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and learned Counsel for the State.

2. The petitioner states that he was an applicant in pursuance of an advertisement published in a vernacular and an Urdu Newspaper on 14th and 17th of September, 1989, for the post of non-medical assistant. After suffering a process of selection, he was given a regular pay-scale and joined as such on 23.12.1989. On 21.2.1994 he was asked to show cause why his appointment be not cancelled as not having been made by the appropriate authority. He filed his reply to the show cause notice on 22.3.1985, appended at annexure-5. He specifically stated that he came to be appointed in pursuance of an advertisement by the competent authority after suffering all procedures for a regular appointment. More show cause notices followed which were all replied to as would be evident from annexures-9 and 10 to the present writ application. While this exercise of repeated show cause notices and repeated replies continued, the petitioner was not disturbed in discharge of his duties and he continued to work uninterruptedly from the date of his appointment in December, 1989. His salary was then stopped in May, 2000 on the plea of an enquiry into the genuineness of the appointment. Unfortunately, this time he did not appear to be that lucky when a fresh show cause notice was issued on 3.9.2002. The petitioner again filed his reply reiterating his stand taken by him when order of termination dated 23.9.2000 followed as appended at annexure-14. It states that

his appointment was illegal/irregular. That the cause shown by him was not acceptable. No reasons have been assigned as to why the cause shown was not acceptable and that the plea of the petitioner of an advertisement and regular selection with details thereof was not acceptable to the respondents.

3. The petitioner then came to this Court in C.W.J.C. No. 13967/02. The writ application was heard and disposed by a common order dated 8.9.2003 along with C.W.J.C. No. 4702/03.

4. It is submitted that this Court noticed that persons like the petitioners had been appointed by the authorities committing procedural wrongs. They had continued in service for more than a decade. Those who were appointed irregularly stood at a different level than those who had secured appointment on forged documents. The petitioner is in the former category. The Court then directed equitable consideration of such persons appointed irregularly to invoke equity when the writ applications were allowed and they were reinstated.

5. L.P.A. No. 509/03 was preferred in context of the writ petition preferred by the petitioner. The Letters Patent Appeal was disposed by a common order with analogous cases reported in State of Gujarat and Others Vs. Vali Mohamed Dosabhai Sindhi, . The Division Bench did not set aside the order of the writ court. It noticed paragraph-44 of the judgement in the case of State of Karnataka and Ors. v. Uma Devi reported in 2006 (2) P.L.J.R. 363 S.C. and the directions therein with regard to irregular appointments as distinct from illegal appointments, of duly qualified persons on sanctioned vacant posts working for over 10 years to be considered for regularization as a one-time measure. The Division Bench then disposed of the appeals on consent by a direction to reconsider the cases of the affected employees on the basis of relevant facts for applicability of the guidelines laid down by the Supreme Court as above. Status quo was directed to be maintained.

6. Learned Counsel for the State submits that in accordance with the directions of the Division Bench, the authorities have examined the case of the petitioner and have found that he was appointed by an authority not competent to do so and, therefore, he was not entitled to the benefit of the judgement of the Supreme Court in the case of Uma Devi (supra). The impugned order declining to grant him that benefit, therefore, requires no interference. The directions of the Division Bench has been complied with.

7. In C.W.J.C. No. 4702/03 and analogous cases (C.W.J.C. No. 13967/2000 being filed by the petitioner) the writ court at page-11 of the order noticed as follows:

In the given facts and circumstances of the case, the beneficiaries and the authorities, who conferred such benefits are equally accountable for the irregular and invalid appointments, if any, found to be invalid after lapse of a decade, such appointments, in my opinion, should be saved on equitable consideration.

8. It has been noticed above that the Division Bench did not set aside the order

of the writ court for reconsideration of the cases on individual facts. Therefore, while making this examination the observation of the writ court that "those who made such wrong appointments were equally accountable and answerable for it" forms part of the direction of the Division Bench. The respondents cannot be permitted to read the judgement in a manner that suits them and ignore that part of the order which does not suit to them. Both the judgements have to be read together as a whole. If the respondents proceeded to re-consider individual cases, such reconsideration was bound to include within its ambit those who made those illegal/irregular appointments. That admittedly has not been done by the respondents.

9. The Division Bench next directed consideration of the cases of those appointed irregularly as distinct from those appointed illegally. It has been noticed above that the issue of an advertisement and consequent selection of the petitioner, a stand taken by him in the earlier show-cause notices also, has not been denied by the respondents or refuted in either of the termination orders. The position, therefore, stands admitted that the petitioner fell in the category of an irregularly appointed employee. The directions in the case of Uma Devi (Supra) fully apply to the petitioner. This view of the Court is further confirmed by the fresh impugned order of termination at annexure-1 of the writ petition where the recital in the impugned order is that the petitioner was not appointed by the competent authority. What logically follows from this is that the contention of the petitioner that he came to be appointed after an advertisement and process of selection stands admitted by the respondents also. If it is an irregular appointment and the respondents did not wish to regularize him, they were bound to proceed against those who appointed the petitioner irregularly simultaneously. If the petitioner has to go, such persons must also go. This Court holds as such because this Court finds that the petitioner is not an illegal appointee, but an irregular appointee in terms of the stand of the respondents themselves. He was, therefore, fully entitled to the benefit of the observations of the Division Bench.

10. The impugned order at annexure-1, insofar as the present petitioner is concerned, is set aside. The petitioner stands reinstated. The writ application is allowed.

11. The respondents shall be at liberty to re-examine the issues, if they so wish, but they shall proceed strictly with the directions of this Court as contained herein.