
(2001) 11 JH CK 0010

In the Jharkhand High Court

Case No : CWJC No"s. 3414 and 3491 of 1999 (R)

Anjani Kumar Srivastava

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Citation : (2001) 11 JH CK 0010

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

**Advocate : S.B. Gagodia, B.P. Mishra and V.N. Choudhary, for the Appellant;
R.N. Sahay, SC-I, Rajesh Lala, J.P. Sinha and M.K. Roy, JCs to SC-I, for the
Respondent**

Final Decision : Dismissed

Judgement

1. In CWJC No. 3414 of 1999 (R) the petitioner has challenged the orders, contained in Letter No. 2457 dated 27th May, 1998 and Letter No. 365 dated 27th April, 1998, whereby and whereunder, the prayer of the petitioner for his absorption in the Personal" Assistant ("P.A." for short) cadre of Secretariat and attached offices has been rejected. In CWJC No. 3491 of 1999(R) the petitioner has challenged the orders, contained in Letter No. 6236 dated (Nil) and Letter No. 3071 dated 3rd July, 1999, whereby and whereunder, the Principal Chief Conservator of Forest, Bihar, Ranchi, has re-quested the Regional Chief Conservator of Forest, Ranchi to fix the pay scale of the petitioner in the lower scale of pay of Steno-typist, after cancelling his appointment to the post of Personal Assistant.

Further, prayer has been made to quash the Office Order No. 64 dated 6th July, 1999 and Order No. 71 dated 22nd July, 1999. whereby, the Regional Chief Conservator of Forest has cancelled the earlier Office No. 42 dated 16th July, 1991, whereby, the petitioner had been appointed as Personal Assistant; reduced his pay scale from Rs. 5500-9000/-to Rs. 4000-6000/- and has also directed for recovery of the excess amount, paid to the petitioner as Personal Assistant.

2. As both the cases have been preferred by common petitioner Mr. Anjani Kumar Srivastava and common question of law is involved, they have been heard together and are being disposed of by this common order.

3. The case of the petitioner is that he was appointed as Steno-typist in the office of the Conservator of Forest, Ranchi, where he joined on 29th August, 1979. Thereafter, in the year, 1982, the petitioner was transferred in the office of Additional Chief Conservator of Forest, where he was allowed to join against a post of Personal Assistant on 9th February, 1982. A formal order was passed appointing the petitioner against the sanctioned post of Personal Assistant with effect from the date, he was allowed to join in the office of the Additional Chief Conservator of Forest i.e., 9th February, 1982 and was also allowed the scale of pay of Personal Assistant. He was confirmed as Personal Assistant with effect from 9th February, 1985, having completed three years in the office of the Additional Chief Conservator of Forest, Ranchi.

4. According to the petitioner, the State of Bihar took a policy decision in the year, 1987 and decided to absorb the Steno-typist, working in the Secretariat and/or attached offices, in the Joint Secretarial P.A. Cadre on the basis of the recommendation of the Department concerned. Informations were also sought for by the Personal & Administrative Reforms Department, in compliance to which necessary details in respect to the petitioner were sent to the Personnel Department but no formal order of absorption in the Joint Secretarial P.A. Cadre having been made, the petitioner had to move this Court.

5. It will be evident that the petitioner had earlier moved this Court, in CWJC No. 2796 of 1997(R) Anjtni Kumar Srivastava v. State of Bihar and Ors. In the said case, he made prayer for issuance of a writ of mandamus with a direction on the respondents to absorb/merge him in the Secretarial Cadre of P.A. with effect from 9th February, 1982. During the pendency of the writ petition, impugned letters dated 27th May, 1998 and 27th April, 1998 were issued, which were also challenged by the petitioner by filing a petition for amendment. The writ petition (CWJC No. 2796/97(R)) was earlier dismissed for default on 10th May, 1999 but was subsequently restored. On 12th July, 1999 the State was allowed time to obtain instruction and file counter affidavit. The petitioner was also allowed to press the amendment petition at the time of admission by order dated 21st July, 1999. However, when the case was taken up for hearing at the stage of admission on 3rd August, 1999. after some arguments. counsel for the petitioner sought permission (sic) with draw the writ petition in view of the stand taken by the respondents in their counter affidavit, without any liberty to prefer a fresh writ petition or to move before the authorities.

6. After withdrawal of the writ petition, the case was again brought under the heading "to be mentioned" on 12th August, 1999. On the said date i.e. 12th August, 1999. the Court passed the following order :

"The writ petition was argued at length on 3rd August '99 and the respondents

opposed the prayer.

After hearing the parties, when this Court was not inclined to interfere with the matter and order was about to be dictated, the counsel for the petitioner sought permission to withdraw the application.

In view of aforesaid submission made on behalf of the petitioner, it was allowed to be withdrawn and the petition was disposed of on 3rd August '99,

Today, it has been brought, under the heading "to be mentioned", on behalf of the petitioner, to pass a reasoned order dismissing the writ petition.

The case being disposed of, it is not possible for this Court to pass such order.

The prayer is rejected."

7. The petitioner thereafter, preferred Review Application being Civil Review No. 39 of 1999(R). The case was taken up on 2nd September, 1999. when the following order was passed by the Court :

"The review application has been preferred by writ petitioner of connected CWJC No. 2796/97(R).

When the case was taken up and it was brought to the notice of the counsel for the petitioner that it was withdrawn on 3.8.1999 and was further clarified on 12.8.1999, counsel for the petitioner submitted that certain clarification is required to be made in respect of the case of the petitioner.

According to the petitioner, the original writ petition was preferred for direction on the respondents to merge the petitioner in the Secretariat Cadre of Personal Assistant w.e.f. 9.2.1982. This was heard and not allowed and so the writ petition was withdrawn. However, in the meantime, two amendment petitions were preferred in respect of two other cause of action, on which no specific order was passed.

In the aforesaid circumstances, the grievance as made by petitioner in both the amendment petitions, having not heard, either the matter should be heard at the stage of review or the petitioner should be given liberty in respect of such grievances to move before appropriate forum.

In the facts and circumstances, as this Court made no observation in respect of the petition for amendment no order allowing the amendment was passed in the connected writ petition CWJC No. 2796/97(R). I give liberty to the petitioner to raise grievance in respect of such prayer as made in the amendment petitions before appropriate forum/court of law.

The Civil review application stands disposed of, with the aforesaid liberty."

8. In view of the observations, made in the Civil Review application, the present writ petitions have been preferred, challenging the impugned orders of rejection dated 27th May, 1998 and 27th April, 1998, including other consequential orders.

9. Counsel for the petitioner placed reliance on one or other letter issued by one or other authority to suggest that the petitioner was functioning as Personal Assistant in an office, attached to the Secretariat and thus, he was entitled to be considered for absorption/merger in the Secretarial Cadre of P.A. in pursuance of the Government's policy decision dated 23rd February, 1987.

10. From the relevant records, attached by the petitioner, the following facts emerge :

The petitioner was appointed as "Steno-typist" in the office of Conservator of Forest, South Circle, Ranchi, vide Memo No. 3386 dated 13th September, 1979. It was a lower post than the post of "Stenographer" and "Personal Assistant". Subsequently, he was transferred vide Order No. 27 dated 18th January, 1982 in the office of Additional Chief Conservator of Forest, Ranchi, as Steno-typist, a post lower than the post of Stenographer or P.A. By letter No. 1037 dated 30th August, 1985 the Personnel & Administrative Reforms Department, Government of Bihar, in pursuance of a request made by the Chief Conservator of Forest, Ranchi, intimated that no Personal Assistant can be "deputed" in his office. The Chief Conservator of Forest (Admn.), Ranchi. thereafter, appointed the petitioner as Personal Assistant vide Memo No. 42 dated 16th July, 1991 with effect from 9th February, 1982.

In the present case, as the parties including the respondents have raised the question of legality and propriety of appointment of the petitioner as Personal Assistant made vide Memo No. 42 dated 16th July, 1991, therefore, it is necessary to take into consideration guidelines relating to appointment and to decide whether an appointment could have been made by way of direct recruitment against a higher post of Personal Assistant from a retrospective date i.e. 9th February, 1982 or not.

The other question arises as to whether the petitioner, who was initially appointed as Steno-typist, is also entitled for absorption/merger in the secretariat Cadre of P.A. or not.

11. So far as the Government's policy is concerned, the State of Bihar issued a resolution dated 1st July, 1979 and took policy decision to merge Steno-typist(s) in the Cadre of Personal Assistant(s) by organising limited examination through B.P.S.C. In pursuance of said decision, those Steno-typists who passed the limited examination were taken in the cadre of Personal Assistant. It was provided therein that in future there will be no appointment to the post of Steno-typist in the Secretariat and attached offices.

12. In the year, 1987, Government took further decision to upgrade rest of the posts of Steno-typists of Secretariat and attached offices in the higher cadre of P.A. and, thus, to absorb the candidates, if any working on the basis of suitable records of services and recommendation of the controlling officers, the officers concerned were directed to forward the service book, relevant records etc. of the Steno-typist. On receipt of such service records while one or other order was

issued in favour of others, no order having been issued in favour of the petitioner, the earlier writ petition bearing CWJC No. 2796 of 1997(R) was preferred by the petitioner.

13. From resolution No. 1188 dated 10th July, 1979, it will be evident that the cadre of Stenographer Grade-I and Stenographer Grade II, which were of Secretariat and attached offices, were merged with effect from 1st March, 1977 by Finance Department's Memo No. 3734 dated 7th April, 1977 and redesignated as "Personal Assistant" vide Personnel & Administrative Reforms Department's Memo No. 3734 dated 7th April, 1977 and redesignated as "Personal Assistant" vide Personnel & Administrative Reforms Department's Memo No. 9 dated 6th January, 1978.

14. The posts of "Steno-typist" were in the next below scale of the post of Stenographer Grade-II. The Association of Steno-typist also claimed that they were performing similar duties and, therefore, they should be provided with same scale and designation of Personal Assistant. It was on their demand that the State of Bihar vide resolution No. 1188 dated 10th July, 1979 took the following decisions :

(a) A special test of short-hand and typing be taken in which if any Steno-typist is declared successful, be appointed as Personal Assistant:

(b) Those who will not become successful be allowed to continue as such (Steno-typist) till recommendation as made by the 4th Pay Revision Committee;

(c) In future no appointment be made against the post of Steno-typist in the Secretariat and attached offices and

(d) The Special examination, as mentioned at (a) above, will be conducted by the Bihar Public Service Commission.

15. There was a ban on appointment of Steno-typist in the Secretariat and attached offices made vide resolution No. 1188 dated 10th July, 1979. In such circumstances, there was no occasion to appoint the petitioner as Steno-typist in the Secretariat or attached offices. The order of appointment of the petitioner as Steno-typist was issued subsequently vide Memo No. 3386 dated 13th September, 1979 by the Conservator of Forest, South Circle, Ranchi. There is nothing on the record to suggest that the office of the Conservator of Forest, South Circle, Ranchi, is part of the Secretariat or in its attached office. Further, the power of appointment in the Secretariat & attached offices being vested with the Personnel & Administrative Reforms Department, there was no occasion for the Conservator of Forest, South Circle, Ranchi, to appoint the petitioner.

16. Thus, there being ban on appointment on Steno-typist in the Secretariat & attached offices since 10th July, 1979, the order of appointment of the petitioner having not been issued by the Personnel & Administrative Reforms Department, the petitioner's appointment as steno-typist in the office of Conservator of Forest, South Circle, Ranchi, made vide Memo No. 3386 dated 13th September,

1979 being not in accordance with law, the petitioner can not claim any benefit arising out of resolution No. 1188 dated 10th July, 1979. Further the petitioner having not been declared successful in any special examination as Clause 3(k) of Resolution No. 1188 dated 10th July, 1979. he can not claim to be taken over as P.A. in the Secretariat or attached offices cadre.

17. So far order No.42 dated 16th July, 1991, whereby, the petitioner was appointed as P.A. by the order of the Chief Conservator of Forest (Administration), is concerned, a doubt relating to legality and propriety of such appointment having been raised, it was declared illegal and has been cancelled.

18. Admittedly the petitioner had not competed in any examination conducted by the B.P.S.C. for being appointed as P.A. in pursuance of resolution dated 10th July, 1979. The power was also not vested with the Chief Conservator of Forest to appoint the petitioner in the Secretariat and attached offices cadre of P.A. In such a situation, the order of appointment of the petitioner as P.A., being without jurisdiction and having been passed without any selection/test, if it has been cancelled, it requires no interference.

19. The petitioner earlier claimed for a direction on the respondents to consider his case for absorption/merger in the cadre of P.A. as per the policy decision dated 23rd February, 1987. However, there is no such policy decision on the record. On the other hand, from letter No. 54 dated 23rd February, 1987, it appears that those Steno-typists working in the Secretariat and attached offices were merged in the cadre of P.A.

20. As pointed out. the initial appointment of the petitioner having not been made in any Secretariat or attached offices, he can not derive any advantage of such merger. Further the offices of the Conservator of Forest, South Circle, Ranchi, where the petitioner was initially appointed, and the office of the Additional Chief Conservator of Forest, having not been shown to be the part of the secretariat or attached offices in the Rule, framed for Secretariat Assistants, merely on the basis of letter of one or other officer or the Staff, it can not be held to be a part of the Secretariat or attached offices.

21. Similar case has been dismissed by the Patna High Court in the case of Lal Mohammad v. The State of Bihar and Ors., CWJC No. 3299 of 1998. disposed of on 28th September, 1999 and the case of Md. Waliur Rahman and Anr. v. State of Bihar and Ors., CWJC No. 456 of 1998, disposed of on 2nd November, 1999.

In another case of Md. Sobratl v. State of Bihar and Ors., CWJC No. 262 of 1998, wherein, the petitioner claimed to have been appointed as Steno-typist in 1979 in the office of Principal Chief Conservator of Forest. Ranchi and later on transferred in the office of Regional Chief Conservator of Forest, the Patna High Court rejected the claim that such appointment was made in the Secretariat an attached offices and dismissed the writ petition vide judgment and order dated 2nd November, 1999.

22. In the aforesaid background no relief can be granted, as sought for by the petitioner. Further the petitioner having earlier moved in CWJC No. 2796 of 1997(R) for commanding upon the respondents to merge his services in the Secretariat Cadre and after detailed arguments and on opposition, made by the respondents, he having withdrawn the writ petition on 3rd August, 1999 now can not claim directly or indirectly similar relief, as made in the present writ petitions.

23. For the reasons aforesaid and there being no merit, both the writ petitions are hereby dismissed.

24. Petition dismissed.