
(2001) 07 PAT CK 0122
In the Patna High Court
Case No : L.P.A. No. 595 of 2001

Arun Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Citation : (2001) 3 PLJR 817

Hon'ble Judges : S.N. Jha, J; P.N. Yadav, J

Bench : Division Bench

Advocate : Narendra Prasad, for the Appellant; Ram Chander Prasad Bharti, Sadan and Paswan for BSSCCDC (Ajavini), for the Respondent

Final Decision : Dismissed

Judgement

1. This letters patent appeal is directed against an order by which the learned Single Judge has dismissed the writ petition so far as the Appellant is concerned summarily on the ground that he had suppressed the fact that he had earlier moved this Court.

2. The Appellant figured as Petitioner No. 4 in the connected case, viz., CWJC No. 5557/2001 which was taken up along with CWJC Nos. 4548/2001 and 5989/2001. The writ petitions except on behalf of the Appellant were disposed of with liberty to the concerned Petitioners to file representation, if so advised.

3. Shri Narendra Prasad, learned Counsel for the Appellant, submitted that it is true that the Appellant had moved this Court earlier in CWJC No. 8850/93 and CWJC No. 3898/99 which fact was not mentioned in the relevant paragraphs of the connected writ petition but this was a bonafide mistake on the part of the Appellant. He stated that the writ petition (CWJC No. 5557/2001) was filed, on behalf of seven Petitioners, the affidavit in support of contents of which was affirmed by Petitioner No. 1 Unkar Singh, the fact that the Appellant had filed writ petitions earlier could not be stated by him (Unkar Singh) in the petition. Counsel pointed out in this connection that the earlier writ petitions i.e. CWJC

Nos. 8850/93 and 3898/99 were filed by the Appellant alone. No sooner the mistake came to notice, it was stated, the Appellant filed application for amendment (LA. No. 2330/2001) on 9.5.2001 but unfortunately this was not brought to the notice of the learned Judge at the time of hearing of the case.

4. Regarding, the last submission counsel for the Respondents submitted that the application for amendment relating to Appellant's filing writ petitions earlier on two occasions was filed only after the Respondents objected to the maintainability of the petition.

In the facts of the case, we are inclined to think that the omission to state facts relating to filing of writ petitions earlier by the Appellant was not deliberate. The writ petition having been filed on behalf of seven Petitioners it may be that full instructions were not furnished to the advocate by Unkar Singh due to ignorance or slip of mind. In that view of the matter, we have considered the merit of the case to find out if some other order could be passed in the case of the Appellant.

5. From the records it appears that the appointment of the Appellant on the post of Junior Engineer under the Respondent-Corporation (Bihar State Scheduled Castes Co-operative Development Corporation Ltd.) was cancelled on 1.10.92 against which the Appellant moved this Court in CWJC No. 8850/93. In the said writ petition, by amendment he sought additional relief for payment of "equal pay for equal work" for the period he had worked on the post. By a reasoned order on 20.4.95 this Court held that the petition was not entitled to the relief so far as appointment was concerned. As regards the additional relief for payment of equal pay he was, however, permitted to make representation before the Administrator of the Corporation. The Appellant, however, moved this Court again in the matter of his appointment in CWJC No. 3898/99. The writ petition was dismissed, as withdrawn on 8.5.2000. The Court observed that the order dismissing the petition as withdrawn will not prevent the Corporation from considering the case of the Petitioner for fresh appointment if there are vacancies in the Corporation. CWJC No. 5557/2001 was the third attempt to get into employment of the Corporation.

6. On behalf of the Corporation; it was stated that the engineering cell has been abolished in the Corporation with effect from 25.7.2000 pursuant to the policy decision of the State Government dated. 17.5.95 to the effect that the work being done by the engineering cells in different Departments/Corporations be assigned to the Building Construction Department and the engineering cells be abolished. Pursuant to the said decision the Welfare Department which is the Administrative Department vis-a-vis the Respondent-Corporation, stopped allotting any work to the engineering cells of the Corporation vide. memo No. 2/C01 2039/90 Ka-4042 dated 3.8.96. While finally abolishing the Engineering Cell in the Respondent-Corporation it was noted that in the above background there was no justification to keep the engineering-cell which was only adding to the financial burden on the Corporation.

7. Counsel for the Appellant relied on a decision of this Court in *Nirmal Kumar and Ors. v. The State of Bihar and Ors.* 2001 (1) BLJ 541 : 2001 (2) PUR 340. That was a case of termination of Field Organisers working on daily wages in the Respondent Corporation. The Court held that termination of employment after lapse of more than 10 years by a stroke of pen in the absence of any rule governing such termination was illegal. The decision, we are afraid, is of no help to the Appellant, who seeks appointment/regularisation on the post of Junior Engineer. The engineering cells in the Corporation having been abolished there can be no justification to issue any direction to the Corporation to consider the Appellant's case. It may be recalled that while the first writ petition stood dismissed by speaking order, the second one too was dismissed as withdrawn with an observation that the Corporation may consider the Appellant's case for fresh appointment if there are vacancies in the Corporation. The abolition of the engineering cell impliedly means that there is no vacancy in the Corporation against which the Appellant's case can be considered.

8. In the above premises, we find no merit in the case of the Appellant. The appeal is dismissed.