
(2008) 07 PAT CK 0034
In the Patna High Court
Case No : MJC No. 1347 of 2005

Ashok Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Citation : (2008) 07 PAT CK 0034

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Rajeev Kr. Singh, for the Appellant;

Judgement

1. We heard the counsel for the parties. The grievance of the petitioners is with regard to non-compliance of the order dated 4th August, 2004. The relevant portion of the order dated 4th August, 2004 is thus:-

"Considering the facts and circumstances of the case, respondent No. 4 the Home Secretary, Government of Bihar, Patna is directed to consider the case of the petitioners for their regularization keeping in view the observations made above and pass necessary orders in accordance with law within a period of three months from the date of receipt/ production of a copy of this order."

2. In response, the opposite parties have shown cause. In the show cause, the following statements have been made:-

"2. That, it is submitted that after coming into force Bihar Reorganization Act, 2000 the sanctioned strength of peons was reported to be 71 for Bihar and 35 for Jharkhand. This was on the basis of sanction made prior to 1986. Finance Department vide circular No. 3110 dated 10.4.1986 fixed the criteria for the sanction of maximum number of posts of peons in Government Department. As per para No. 2 of this circular the peons remaining surplus after determining the final strength of peons on the basis of criteria fixed in para 1 was to be kept in service. True copy of circular No. 3110 dated 10.4.1986 is being annexed herewith and marked as Annexure-A to this show cause. That it is submitted that

in the light of criteria fixed in para (i) of the Finance Department aforesaid circular No. 3110 dated 10.4.1986 the sanctioned strength of Home (Special) Department was 22 only. At present there are 64 peons working and 42 peons are remaining surplus.

That it is submitted that it is a fact that the petitioners were engaged on different occasions and work was taken from them for which they were paid.

That it is also a fact that some leave chain peons have been appointed regular peons after 10.4.1986 on subsequent scrutiny these appointments have been found to be in contravention of prescribed rules and procedures and in the light of Hon''ble C.M.'s order the matter is being examined for fixing the responsibility. Therefore, according to the Finance Department circular there is no vacancy in the depatt. It is stated that there is no sanctioned post of leave chain peons. According to the exigencies they were engaged for few days for which they were paid.

That, it is submitted that in the appointment of the petitioners due process of appointment has not been adopted in the matter of appointment such as advertisement, calling for application, constitution of selection committee, following of reservation etc. hence the appointment of the petitioners are not valid. In this regard the deponent has passed a reasoned order vide memo No. 10051 dated 9.11.2005. True copy of memo No. 10051 dated 9.11.2005 is being annexed herewith and marked as AnnexureR to this show cause."

3. A copy of the reasoned order (memo No. 10051 dated 9.11.2005) has been placed on record as Annexure-B alongwith the show cause. It, thus, appears that the direction of this Court for consideration of the case of the petitioners for their regularization has been done. If the petitioners have any grievance about the legality and correctness of the order dated 9th November, 2005, they should pursue the appropriate remedy available in law for the purpose. This court in exercise of contempt jurisdiction, will not examine the legality and correctness of the order dated 9th November, 2005. With the aforesaid observations, M.J.C. stands disposed of.