

(2005) 04 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 4333 of 2000

Bharat Ram and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2005) 2 BLJR 1096 : (2005) 2 PLJR 690

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the learned counsel for the State.

2. The relief sought for in the present application is for quashing the order dated 15.4.2000 bearing memo No. 452 by which the services of the petitioners have been terminated.

3. The petitioners were appointed on the post of clerk pursuant to the recommendation of the Divisional Establishment Committee vide memo No. 6546-48 dated 25.7.1989 issued under the signature of the then R.D.D.E. Tirhut Division, Muzaffarpur along with one Sri Prakash Kumar Verma. It would be the case of the petitioners that their names were duly registered with the Employment Exchange. Their appointments came to be made in pursuance of their names having been requisitioned for and forwarded by, the Employment Exchange. The services of the aforesaid Sri Prakash Kumar Verma appointed like the petitioners came to be terminated for alleged irregularities in the appointment leading to the institution of the CWJC No. 4958 of 1992 by him. By an order dated 21.7.1992 this Court while setting aside the order of termination directed the authorities to hold enquiry in to the legality of the appointment and then arrive at a fresh conclusion. By order dated 8.4.1994 at Annexure 7 the

appointment of the said Sri Prakash Verma was then restored by the respondents.

4. Learned Counsel for the petitioner made two specific submissions. The first would be that the appointment made in pursuance of names having been called for from the Employment Exchange would not be illegal. Secondly the State Government had framed rules under Article 309 of the Constitution of India for appointment on ministerial posts in the Education Department of the State Government and its subordinate offices. Such appointments were to be made by the Selection Committees to be constituted in accordance with Rule 7 and the procedures prescribed under Rule 8. The petitioner having been appointed in accordance with the aforesaid statutory procedures, the alleged non-compliance of certain circular allegedly issued by the Administrative and Personal Reforms Department including the circular dated 3.12.1980 would be of no consequence in so far as the petitioners be concerned and would not invalidate their appointment.

5. Counsel for the petitioners would further place reliance on an order of this Court in CWJC No. 5003/99 where a similar issue fell for consideration. The Court arrived at the conclusion that calling of names from the Employment Exchange is also one of the proper modes for appointment and no fault could be found with the same. In so far as non-compliance with roster clearance etc. be concerned, that would remain an administrative deficiency and lapses on the part of the appointing authorities for which the persons appointed cannot be faulted with. It is submitted that the judgment aforesaid in CWJC No. 5003/99 came to be affirmed by the Supreme Court in SLP No. 6077/2000 by an order dated 14.9.2001.

6. Learned Counsel for the state submitted that notwithstanding the rules framed under Article 309 of the Constitution item 8 of the Rules would require applicability of conditions for appointment in terms of standards and guidelines issued by the Government from time to time and would include the aforesaid circular dated 3.12.1980. Thus the impugned order of termination of the petitioners having been passed after due opportunity to them for reasons that they did not possess the knowledge of typing, a compulsory requisite in the Circular of 3.12.1980 for appointment of Clerks in the Muffasil offices and non-compliance of Roster Clearance etc. made the appointment illegal. In support of the impugned order it was additionally submitted that the circular of 3.12.1980 did not contemplate appointment to be made by calling of names from the Employment Exchange. The failure to make such appointment only after regular advertisement was contrary to the mandate of Articles 14 and 16 of the Constitution.

7. After considering the submissions on behalf of the parties and pleadings as available on the record this Court would arrive at the finding that it is well settled law that making of appointments by calling of names from the Employment Exchange and considering the persons registered therein could also be one of the prescribed methods for appointment. It may not be ultimately desirable method

but at the same time no fault could be found with such appointment so as to declare them as illegal. This Court would conveniently refer to the law as laid down in the judgment of the Supreme Court with regard to appointments made by calling names from the EmploymAIR 1998 SC 331 ent Exchange as reported in (Arun Tewari and Ors. v. Zila Man Savi Shikshak Sangh and Ors.).

8. The second issue which would arise for consideration is whether the administrative circulars issued by the respondent with regard to the appointment on the posts of Clerk etc. in the Muffasil offices would impinge or override upon the statutory orders issued in exercise of powers under Article 309 of the Constitution as would be the case with the petitioners. This Court would arrive at the conclusion that the statutory rules so framed under Article 309 of the Constitution regulating appointment of persons like the petitioners would prescribe complete procedure and modalities. It would not be case of the State that the petitioners were not appointed by committee as prescribed in the aforesaid rules. It is settled law that rules framed in exercise of powers under Article 309 of the Constitution would have statutory force and cannot be diluted or interfered with merely by administrative circulars. In that view of the matter, the question of applicability of any administrative circulars including the circular dated 3.12.1980 would not have any application in the facts of the present case. If that be so there would be no illegality in the appointment of the petitioners specially in absence of any assertion with regard to non-compliance of rules framed under Article 309 of the Constitution.

9. Before parting with the case, this Court would take note of the submissions made on behalf of the petitioners with reference to the aforesaid Sri Prakash Kumar Verma, similarly situated as the petitioners, with regard to whom the respondents themselves have arrived at the conclusion that there was no illegality in the appointment. There would be no justification for the respondents to accord different treatment to the petitioners or to judge their appointment on a different yardstick in the aforesaid background.

10. In the result this writ application is allowed. Annexure 12 in so far as the present petitioners are concerned, is quashed. The respondents would be obliged to give effect to the order of this Court within a period of two months from the date of receipt/production of a copy of this order and reinstate the petitioners. In the given facts of the case, the petitioners would be entitled to back wages also.