

(2018) 08 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.2321 of 2005

Birendra Kumar Singh

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 31-08-2018

Acts Referred:

Citation : (2018) 08 PAT CK 0064

Hon'ble Judges : MOHIT KUMAR SHAH, J

Bench : Single Bench

Advocate : Dronacharya, Shruti, Anuradha Singh, Kumar Samarjeet Singh

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for quashing the order dated 01.11.2004 issued by the Superintending Engineer (North) whereby and whereunder the services of the petitioner has been terminated inasmuch as upon inquiry, it has been found that the initial appointment of the petitioner

on the post of correspondence clerk is fake. The petitioner has further prayed for quashing of memo dated 03.11.2004 by which the aforesaid order

dated 01.11.2004 has been communicated to him.

2. The brief facts of the case are that the petitioner herein was initially appointed on the post of the correspondence clerk in the office of Minor

Irrigation, Sub-Division at Siwan vide letter dated 24.11.1979 whereafter, the petitioner had immediately joined his duties. Subsequently, the

Superintending Engineer, Minor Irrigation Division, Muzaffarpur by his letter dated 06.02.1982 while endorsing the proposal of the Executive Engineer,

Minor Irrigation Division, Siwan, in light of the letter of the Executive Engineer dated 26.11.1979 and that of the Chief Engineer, Minor Irrigation

Department, Patna dated 18.12.1980, had appointed the petitioner on provisionally on the post of correspondence clerk on temporary basis and in the said letter dated 06.02.1982, it was categorically mentioned that the services of the petitioner can be terminated at any time without notice.

The petitioner is stated to have passed Hindi noting and drafting examination on 07.07.1984 and he was also transferred from one division / sub-

division office to another. The petitioner had filed a writ petition bearing C.W.J.C. No. 3805 of 2003 regarding grant of first time bound promotion as

well as grant of benefit of pay revision etc. and this Court by an order dated 29.04.2003 had remanded the matter to the authorities to consider the

representation of the petitioner and pass a reasoned order, whereafter, suddenly, a show cause notice dated 03.09.2003 was served on the petitioner

asking him to submit his show cause reply regarding his appointment being fake and fraudulent and he having received the appointment letter in an

illegal manner with the connivance of the local officials whereas the fact is that he was never appointed.

In the said show cause, it was further mentioned that the Superintending Engineer is not the proper authority in making temporary appointments. The

petitioner had then filed his reply whereafter, the Chief Engineer (North), Minor Irrigation Department, Muzaffarpur by a notice dated 15.10.2003 had

directed the petitioner to furnish his appointment letter, which he had failed to do so. In pursuance to the earlier show cause dated 03.09.2003, the

petitioner had submitted his reply, pursuance whereof, the Chief Engineer (North), Minor Irrigation Department, Muzaffarpur had issued a second

show cause dated 08.10.2004 to the petitioner herein to submit his reply as to why his services should not be terminated. After receiving the reply, the

impugned order dated 01.11.2004 has been passed whereby and whereunder the services of the petitioner has been terminated.

3. The learned counsel for the petitioner has submitted that the petitioner was appointed vide letter dated 24.11.1979 and thereafter, his appointment

was approved by the Superintending Engineer vide letter dated 06.02.1982, hence, the petitioner has been wrongly terminated in the year 2004 without

initiation or conduct of any departmental proceeding. The learned counsel for the petitioner has relied upon a judgment rendered by the Honâ??ble

Apex Court, reported in 2010 (9) SCC 247 (State of Karnataka and Others Vs. M.L. Keshri and Others) as also the judgment rendered by the

Honâble Division Bench of this Court, reported in 2009 (3) P.L.J.R. 483.

4. The learned counsel for the Respondents has submitted that Annexure-2 to the writ petition i.e. the so-called appointment letter dated 24.11.1979,

would show that the same is not an appointment letter and the same merely states that since no assistant has been posted in the Minor Irrigation Sub-

Division, Siwan till date, the petitioner is being permitted to work as correspondence clerk and salary would be payable to him upon endorsement by

the Executive Engineer, Minor Irrigation Department, Siwan. It is further submitted that even the letter of the Superintending Engineer dated

06.02.1982, endorsing the letter of the Executive Engineer dated 26.11.1979 and that of the Chief Engineer dated 18.12.1980 merely states that the

petitioner is being provisionally appointed on a temporary basis and he would be liable to be removed from service without notice.

5. I have heard the learned counsel for the parties and gone through the materials on record and I find that the appointment of the petitioner has not

been made against a sanctioned post and the so-called appointment letter dated 24.11.1979 is also of no worth and appears to have been fraudulently

prepared with the connivance of the local officials, hence, the so-called appointment of the petitioner is an illegal appointment, thus, the case of the

petitioner is not a fit case for regularization as has been held by the Honâble Apex Court in the case of M.L. Keshri and Others (supra).

6. The two judgments referred by the leaned counsel for the petitioner i.e. the one reported in 2009 (3) P.L.J.R. 483 and the one reported in 2009 (4)

P.L.J.R. 929 are also of no use to the petitioner since the said judgments have been passed in the facts and circumstances of the respective cases

which is distinguishable from the facts and circumstances of the present case, especially, on account of the assertion made by the respondents in their

counter affidavit that upon correspondence with the various offices where the petitioner has claimed to be posted, the Executive Engineer, Minor

Irrigation Division, Siwan by his letter dated 11.08.1981 as also the Superintending Engineer, Minor Irrigation Division, Chhapra vide letter dated

17.10.1985 have stated that the petitioner had not worked and the issue of the appointment of the petitioner is a mystery and his pay has been held up

since long.

7. In any view of the matter, even if, the so-called appointment letter dated

24.11.1979 and the letter of approval issued by the Superintending

Engineer dated 06.02.1982 are considered to be of any worth then also, the petitioner cannot get any relief inasmuch as firstly, the said letters are not,

in the strict sense, letter of appointment, the said letters do not provide for any appointment to the petitioner against a sanctioned post and lastly, the

letter dated 06.02.1982 clearly specifies that the appointment of the petitioner is provisional and temporary and subject to termination without notice.

8. For the reasons mentioned hereinabove, I do not find any reason to interfere with the impugned order dated 01.11.2004 as well as I find that there is

no merit in the present writ petition, hence, the same is dismissed.