
(2008) 02 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 1842 of 2000

Chandra Bhushan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 56 BLJR 1128 : (2008) 117 FLR 307 : (2008) 2 PLJR 491

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and learned Counsel for the State.

2. The petitioner is aggrieved by the order dated 26.11.1999, contained in Annexure-9 terminating his services, issued by the Regional Education Deputy Director, Tirhut Division, Muzaffarpur, pursuant to the direction in respect of the same issued on 9.12.1998 by the Director, Secondary Education.

3. The case of the petitioner is that he was registered with the Employment Exchange bearing registration No. 479 of 1988. A copy of the registration certificate is appended as Annexure-1. In pursuance of calling of names from the Employment Exchange by the Department, his name was also sponsored when he came to be appointed on 12.2.1993 by Respondent No. 2 on the post of Peon in Primary Teachers Training College, Balmiki Nagar, West Champaran. He continued to work as such and he received his salary till February, 1999. He was served with a show cause notice dated 12.12.1998 at Annexure-5 as to why his services be not terminated for having been appointed illegally. He submitted his reply in January, 1999, the impugned order then came to be passed.

4. Learned Counsel for the petitioner submitted that the petitioner being registered with Employment Exchange, his name was forwarded/sponsored by

the Employment Exchange. After compliance of necessary formalities, he came to be so appointed on the post of Peon in 1993. The submission, therefore, was that the appointment of the petitioner was not an illegal, backdoor appointment as suggested by the Respondents in their counter affidavit; that calling for names from the Employment Exchange was also an accepted mode of appointment which also finds reflection in the government policy dated 3.12.1980. He relies upon an order of this Court in C.W.J.C. No. 5003 of 1999 (Ravindra Kumar Tiwary v. The State of Bihar and Ors.) to submit that the appointment made of a person registered with and sponsored by the Employment Exchange was not illegal. It is next submitted that the case of Rabindra Kumar Tiwary (supra) who was terminated in like manner under the order of the Director, Secondary Education dated 9.12.1998 travelled in appeal at the behest of the State when L.P.A. No. 1512 of 2000 came to be dismissed on 22.11.2000. SLP preferred against the same being SLP (Civil) No. 6077 of 2000 came to be dismissed on 14.9.2001. The case of Ravindra Kumar Tiwary again came up for consideration before a Division Bench of this Court in L.P.A. No. 1237 of 1999 and analogous cases. The Division Bench by its judgment and order dated 7.10.2005 made a clear distinction with regard to those whose names had been sponsored by the Employment Exchange and relying upon the case of Ravindra Kumar Tiwary (supra) held that such appointments could not be termed illegal. This order in L.P.A. No. 1237 of 1999 came to be followed again in L.P.A. No. 733 of 2007 by a Division Bench of this Court in its order dated 7.1.2008.

5. Reliance has also been placed on a Bench decision in CWJC No. 4333 of 2000 which in turn placed reliance upon AIR 1998 SC 331 (Arun Tewari and Ors. v. Zila Man Savi Shikshak Sangh and Ors.) holding that appointment after calling for names from the Employment Exchange may not be the most desirable method of appointments but that such appointment cannot be classified as an illegal appointment.

6. Counsel for the State urged that there had been no advertisement prior to the appointment of the petitioner; that appointment of the petitioner was ab initio void and illegal contrary to Articles 14 & 16 of the Constitution and that it was a backdoor appointment; that the petitioner was given adequate opportunity by a show cause and consideration of his reply. He relied upon an order of a Division Bench of this Court dated 4.1.2008 in L.P.A. No. 704 of 2007 and the judgments of this Court reported in 2006 (1) PLJR 100 (State of Bihar and Ors. v. Rajeshwar Bhagat and Ors.) Ashutosh Kumar Vs. The State of Bihar and Others and a judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

7. The petitioner a Class IV employee (Peon) finds himself pitted against the might of the State. He is alleged to have had illegal entry into service. Surprisingly, the entire counter affidavit is completely silent with regard to what action the State has taken against those who made the appointment of the petitioner. Being a class IV employee, the State naturally finds him a very soft

target given his limited ability to contest, without the pretence of any action against those, who made hay while the Sun shone on them. If the petitioner has to go, according to the State, the Respondents were necessarily required to take appropriate action whether civil and/or criminal against those, who allegedly inducted the petitioner. They have not done so.

8. The crux of the present controversy is that the name of the petitioner was registered with the Employment Exchange and that his name had been forwarded to the Employer by the Employment Exchange. His registration certificate is at Annexure-1. The Respondents have not denied or disputed it and have preferred to conveniently avoid dealing with it in the counter affidavit. Paragraph 17 of the counter affidavit acknowledges its existence, but wishes it away by simply saying that it was an eye-wash.

9. This Court, as already noticed hereinabove, in C.W.J.C. No. 4333 of 2000 (Bharat Ram and Ors. v. State of Bihar and Anr.) has already held placing reliance on AIR 1998 SC 331 that calling of names from the Employment Exchange and making appointment of such persons cannot be said to be an illegal appointment. It stands settled law that calling of names from the Employment Exchange is also a mode of appointment which also finds mention in the Government policy dated 3.12.1980. In L.P.A. No. 1237 of 1999 and analogous a Division Bench of this Court at paragraph 7 & 8 considered the case of those who came to be appointed after their names were sponsored and forwarded by the Employment Exchange. In that case also at paragraph 9 it was noticed that the State had not denied that the names were called from the Employment Exchange and that the name of the petitioner therein figures, whereafter appointment was made. The case of those whose names had not been forwarded by the Employment Exchange were distinguished and noticed in paragraph 10 of the judgment as not falling within the ratio of the case of Ravindra Kumar Tiwary. It has been held upholding the findings of the Hon''ble Single Judge that since the appointment had been made after calling of names from the Employment Exchange, there was no infirmity in the appointment and the same could not be terminated without assigning any reason.

This has been subsequently followed by the Division Bench in L.P.A.No. 733 of 2007.

10. In L.P.A.No. 704 of 2007 arising out of CWJC No. 5314 of 2000 relied upon by the Respondents the question which fell for consideration did not at all relate to the issue of calling of names from the Employment Exchange. In the writ petition, the question was that the appointment was made by a process unknown to law; in as much as it was neither advertised or notified in the office. The issue being entirely different is of no benefit to the Respondents.

11. Reliance by the Respondents on the judgment of Hon''ble Single Judge of this Court in Ashutosh Kumar Vs. The State of Bihar and Others is equally misconceived. In that case, the question for consideration was an appointment in

pursuance of a notice on the notice board of the office and the consequent appointment. The petitioner applied in response to the same and stated that he was also registered with the Employment Exchange and gave his registration number. From the facts of the case noticed in the judgment the distinction lies on the issue that although he may have been registered in the Employment Exchange his name was not sponsored by the Employment Exchange. It was in that background noticing the circular dated 3.12.1980 it was held that no advertisement had been published, and that under the aforesaid circular it was only the names forwarded by the Employment Exchange which had to be empanelled. The effect of an appointment made of a person registered with the Employment Exchange and whose names had been duly forwarded by the Employment Exchange did not come up for consideration in the said judgment.

12. The judgment of the Division Bench of this Court in L.P.A. No. 1237 of 1999 and analogous cases reported in 2006 (1) PLJR 101 (State of Bihar v. Rajeshwar Bhagat) in fact supports the case of the petitioner as noticed hereinabove. Paragraphs 6, 7 & 9 on which reliance has been placed by the Respondents to the satisfaction of this Court, in fact, supports the case of the petitioner.

13. In the case of Uma Devi (supra) the facts were that the persons have been working for more than 10 years and claimed the benefit of regular employment. It was recommended to absorb them. The recommendation was not accepted leading to their approaching the Tribunal. The Tribunal rejected the claim. The High Court granted them the relief and directed their cases to be considered for regularization. In the analogous cases being considered, it was the appointment of casual workers and the order of their regularization which came up for consideration. The High Court directed consideration of their claims. The Division Bench of the High Court held that the daily wages employees were not entitled to the benefits of the scheme for regularization. In this background the case of Uma Devi came to be decided. The issue of legality and validity of appointment of persons whose name has been sponsored from the Employment Exchange did not fall for consideration at all in that case and, therefore, the principles laid down therein on a particular set of facts does not have any relevance in the present controversy.

14. Coming to the facts of the present case, the show cause notice was issued to the petitioner on 12.12.1998. It is also based on the directions of the Director, Secondary Education dated 9.12.1998. It states that the appointment of the petitioner was illegal/irregular; that he should show cause or else his services will be terminated. No grounds of the alleged illegality have been mentioned in the show cause notice. That itself would have been sufficient to hold that no order of termination could be passed on a vague show cause notice. Nonetheless, the petitioner submitted his reply in January, 1999. He specifically stated that his name has been sponsored and forwarded by the Employment Exchange, whereafter he came to be appointed. The final order of termination came to be passed on 26.11.1999. It states that the prescribed procedures and roster

clearance of reservation rules were not followed. Therefore, it was clear that his appointment was irregular, illegal and that he had managed to obtain the appointment letter in a design. The arbitrariness of the order is apparent from the fact that the reply to the show cause by the petitioner specifically stated that his name had been sponsored and forwarded by the Employment Exchange. It finds no consideration whatsoever in the order of termination. What may have happened inside their own office by non-consideration of procedures for reservation etc. with which the petitioner had no concern, when no action was taken against those who were inside the office, who may have acted for his own benefit to do so finds fault to be founded on a Class IV employee making him a soft target. This Court, therefore, has no hesitation in holding that the order of termination is arbitrary and bad.

15. In view of the aforesaid discussion and the authoritative pronouncement in CWJC No. 5003 of 1999 (Rabindra Kumar Tiwary v. The State of Bihar and Ors.) affirmed in L.P.A. No. 1512 of 2000 against which SLP also came to be dismissed, the order of the Division Bench in L.P.A. No. 1237 of 1999 and analogous cases as also the order of the Division Bench in L.P.A. No. 733 of 2007, all dealing with the appointment made of persons who were registered with the Employment Exchange and that their names had been forwarded by the Employment Exchange, the case of the petitioner stands fully covered, the petitioner is entitled to succeed. Annexure-9 is, accordingly, quashed.

16. That brings the Court to the next issue, what will be the extent of relief to be granted to the petitioner. As a result of setting aside the order of termination, the petitioner stands reinstated. Since he has remained out of service since 26.11.1999, the question of grant of any back wages to him does not arise. However, the Court does grant him liberty to file a representation before the authority with regard to the grant of back wages, which shall be duly considered for the interregnum period and the status of the petitioner and a decision be taken with regard to such claim by Respondent No. 2 within a period of eight weeks from the date of submission of such representation by him.

The writ application is allowed.