
(2004) 10 PAT CK 0040
In the Patna High Court
Case No : CWJC No. 8842 of 1999

Dilip Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 PLJR 172

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and C.M. Chaurasia, for the Appellant; A.R. Jittu, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to pay to the petitioners, salary since the date of their joining in February, 1990 to the post of Clerk and to transfer them to any Primary Health Centre as Clerks where the sanctioned and vacant posts exist and to regularise their payment of salary. According to the petitioners, in the year 1989 several Class 111 and IV posts of Health Educators, Clerks, Non,-Medical Assistants, Pharmacists, Dressers etc., fell vacant in the district of Madhubani and Civil Surgeon by letter dated 6.9.1989 (Annexure-1) wrote to the Director of Public Relation to advertise the Class III and IV posts in the newspaper. According to the said communication the number of vacant posts of Clerk was 30. As directed the advertisement was published in the daily newspaper "Times of India" in its issue dated 14th of September, 1989 (Annexure -2) besides other newspapers. The advertisement contemplated submission of the application by the candidates through the Employment Exchange. Petitioners offered their candidature for appointment as Clerks through the Employment Exchange. The District Employment Officer by his letter dated 18.11.1989 (Annexure-3) forwarded the names of the petitioners to the

office of the Civil Surgeon for appointment as Clerk.

2. According to the petitioners, a selection committee was constituted which consisted of the Collector, the Additional Collector, the District Welfare Officer, the Superintendent of Sadar Hospital, Madhumane and the Civil Surgeon, Madhubani. According to the petitioner the constitution of the Selection Committee for appointment to Class III and IV posts would be evident from the communication dated 28th December, 1989 (Annexure-4) of the Additional Collector addressed to the Civil Surgeon in which the former had informed the later about his nomination by the Collector as his nominee in the selection Committee and to apprise him about the programme of selection. After that, a notice was issued in the daily newspaper Hindustan in its issue dated 19th of January, 1990 in which the candidates from different districts were asked to appear on the dates fixed for interview. According to the petitioners, they appeared in the interview on the date fixed and by order dated 21.2.1990 (Annexures 6, 7 and 8) petitioners were appointed as Clerks and posted at Primary Health Centre, Bisfi. According to them in pursuance of the said order petitioner No. 1 submitted his joining on 24.2.1990 whereas petitioner Nos. 2 and 3 on 25.2.1990.

3. It is the stand of the petitioners that since the date of their joining they are working on the post of the Clerks but they are not being paid their salary without any reason, it is their assertion that they filed various representations but the same till date yielded no result. Their further assertions is that they filed application for transfer to any place where the sanctioned and vacant posts exist so that they are paid their salary but that prayer has also not been acceded too. Left with no option, according to the petitioners, they had preferred this application which was filed on 6th of September, 1999.

4. In the counter affidavit filed on behalf of respondent Nos. 4 and 5 it has been clearly stated that the letters of appointments are forged and fabricated and were not issued from the office of the Civil Surgeon-cum-Chief Medical Officer, Madhubani from where it is purported to have been issued. It has also been stated that the petitioners have submitted their joining on the basis of the forged appointment letters and, as such, the same shall not enure to the benefit of the petitioners. Respondents have further pleaded that as the appointment letters are forged, the question of its acceptance does not arise. Answering respondents have further pleaded for dismissal of the writ application the ground of delay and laches.

5. It is relevant here to state that in the counter affidavit filed by respondent Nos. 4 and 5 they have annexed letter dated 19th of June, 1999 (Annexure-A), a letter written by the Chief Secretary about the large scale illegal and forged appointments in the Health Department as also the letter dated 22.12.1999 (Annexure-A) whereby the Incharge Medical Officer of Primary Health Centre, Bishfi had informed the Civil Surgeon that the petitioners never joined the Primary Health Centre, Bishfi nor they are working.

6. Petitioners have filed rejoinder in which the letter dated 17.6.2000, and the extract of despatch register showing that the same Incharge Medical Officer of the Primary Health Centre had written to the Civil Surgeon cum Chief Medical Officer that at Primary Health Centre Bisfi, five posts of Clerks are sanctioned whereas eight persons have been posted, which included the petitioners and on account of inadequate number of sanctioned posts petitioners have not been paid their salary right from the date of their joining. In the aforesaid premise the Incharge Medical Officer had sought for instruction from the Civil Surgeon. Petitioners in rejoinder had also placed on record one letter dated 17.11.1999, in which the Civil Surgeon had communicated to the Commissioner that excepting record pertaining to appointment of Pharmacists and Paridhapak made by the then Dr. M.K.Sharma, Civil Surgeon, other record are not available, it is the assertions of the petitioners that some Clerks posted at Primary Health Centre Bisfi have been transferred but the case of the petitioners is not being considered and they have not been paid their salary.

7. Mr. Ganesh Prasad Singh, Senior Advocate, appearing on behalf of the petitioners submits that the very assumption of the respondents that the letters of appointment of the petitioners are forged is unfounded on fact and, as such, the petitioners are entitled to the reliefs claimed. It has been pointed out that from the communication of the Civil Surgeon to the Commissioner (Annexure-14), It is evident that no record pertaining to the appointment made by Dr. M.K. Sharma, the then Civii Surgeon is available and, as such, the respondents' plea that appointment letters of the petitioners are forged is based on surmises and conjectures. In support of the submission reliance has been placed on a decision of the Supreme Court in the case of Subodh Kumar Prasad Vs. State of Bihar and Others, and my attention has been drawn to paragraph 6 of the judgment which reads as follows :-

"What should have been really examined in the case is the letter of appointment itself and not the mere registeres which indicate dispatch of letters. If the letter of appointment issued to the appellant was a fake one there was certainly a cause for disciplinary action, but not by merely looking to the register such conclusion could be inferred for numbers noted therein may have been as a result of mistake. Therefore, the inquiry should have been as to the actual nature of the order or the letter of appointment issued to the appellant. That inquiry was not done by the learned Single Judge."

8. Mr. A.P. Jittu Standing Counsel No. II appearing on behalf of the respondents, however, submits that the record pertaining to the appointment of the petitioners is not available, not on account of the same being lost, but the appointment having not taken place as alleged, there is no question of the record pertaining to the appointment of the petitioners being available.

9. Having considered the rival submission, I do not find any submission of Mr. Singh. Petitioners are alleged to have been appointed as Clerks and posted at Primary Heath Centre, Bisfi. Undisputedly at the said Centre such number of

posts were not available so as to post the petitioners. It is unlikely that the persons appointed shall be posted at a place where no vacancy exists. Further in case the petitioners had been appointed, the record pertaining to their appointments ought to have been available in the office of the appointing authority. Merely from the fact that the process of appointment was initiated, it cannot be said that in fact appointments were made. Petitioners waiting for nine years to approach this Court also creates a shadow of doubt on their claim of appointments. From what has been stated above it seems more plausible that the petitioners have not been appointed. Once it is held so whether they have joined in pursuance of the order of appointment or not pales into significance although to put the record straight, counsel representing the petitioners made endeavour to show that they had infact joined which was countered by the learned Standing Counsel. Be that as it may petitioners having not been able to satisfy that the letters of appointment are genuine and valid, the relief sought for is not fit to be granted in exercise of jurisdiction under Article 226 of the Constitution of India.

10. Now reverting to the authority of the Supreme Court in the case of Subodh Kumar Prasad (supra) same is clearly distinguishable. In the said case in absence of the despatch register showing the letter of appointments having been issued, the authority concluded that the same was forged which was not approved by the Supreme Court. Here there is nothing on record to show the petitioners appointment and in my opinion that is so because no appointment had taken place. I am of the opinion that the conclusion arrived at by the respondents cannot be said to be without justification calling for interference by this court in exercise of its jurisdiction.

11. Once having accepted the plea of the respondents that the appointment letters of the petitioners are not genuine the plea of discrimination raised by their learned counsel deserves to be rejected outright as it is well settled that a person whose very claim of appointment is founded on forged letters of appointment can not claim discrimination.

12. There is yet another impediment in the way of the petitioners. According to their own showing they were appointed by order dated 21.2.1990 and submitted their joining on 24.2.1990 and 25.2.1990 but they have approached this court after an inordinate delay of more than nine years by filing the present application on 6.9.1999. Undisputedly petitioners were not paid the salary and allegedly not allowed to function for long nine years, hence, the petitioners approaching this Court after such a long time on the purported ground that they were representing before the authority can not be justified. In the result I do not find any merit in the application and it is dismissed accordingly, but without any order as to cost.