

(2000) 08 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 10300 of 1992

Dr. Anirudh Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2000) 4 PLJR 725

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Indu Shekhar Sinha, Chandra Shekhar Pd. Singh and Brij Mohan Kumar Singh, for the Appellant; S.B.N. Singh for State, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by the petitioner against the order dated 14th August, 1992, whereby and where under, his services were terminated by the Secretary, Muzaffarpur Development Agency. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

2. The District Industries Centre (D.I.C.), Muzaffarpur was placed under the control of Respondent Muzaffarpur Development Agency, Muzaffarpur. For proper functioning of said D.I.C Muzaffarpur, the petitioner was appointed as General Manager by order dated 8th December, 1990 issued by the Chairman of the Agency.

3. The Joint Secretary, Industries Department having received the aforesaid information, intimated different officers, in eluding the Development Commissioner (Small Scale Industries) and Commissioner, Tirhut Division, Muzaffarpur relating to his joining. Subsequently, forma terms and conditions were intimated a petitioner, vide letter dated 4th March 1991, wherein it was stipulated that the petitioner is to remain on probation for six months,

whereinafter, his case will be considered for secularisation/regular and appointment, but with rider that the period probation can be extended. It was further stipulated that the appointment was temporary and even on completion of probation period, his service can be terminate giving three months' notice.

4. The petitioner performed duty (sic) the full satisfaction of the authorities are appreciation of work was recorded by Sal" perior authorities. On completion probation period, the service of petition, was regularised/he was given regular as appointment, vide letter dated 17th December 1991, issued by the Chairman of the Agency. While so functioning, the Respondent; dents issued impugned letter no. 14 dated 14th August, 1992 and terminate the service of the petitioner with effect from 17th August, 1992, giving referee of a decision of Working committee/ executive Committee of the Agency taken in its meeting dated 12th August 1992. The petitioner challenged the order of termination dated 14th August, 1992. mainly on the ground of arbitrariness, will further plea that the order is based on non est ground.

5. During the pendency of the was petition, step was taken to till up the post of General Manager. This Court, vide order dated 26th July, 1993 while took into consideration that one Mr. I.B. Choudhary, who was discharging function of General Manager on ad hoc basis, the authorities were contemplating to appoint him to the post, on substantive basis. In the aforesaid background, this Court observed that the appointment to the post of General Manager, D.I.C., Muzaffarpur, will be subject to the result of this case.

6. In the meantime, it appears that the petitioner has already been taken in a job in D.I.C, Gaya, but against a lower post, on deputation under the State of Bihar in the Industries Department.

7. The State Government took decision to take over D.I.C, Gaya, as also D.I.C, Muzaffarpur.

8. As no decision was taken to take over the services of employees who were posted in D.I.C, Gaya and Muzaffarpur, the petitioner Dr. Anirudh Prasad, preferred another writ petition, C.W.J.C. No. 3712 of 1994, whereby and where under, he challenged the Govt. decision, contained in letter No. 1346 dated 28th February, 1994, as a result of which services of the employees working in D.I.C, Gaya and Muzaffarpur were not taken over, though the State Govt. decided to manage both the D.I.Cs. The said writ petition, C.W.J.C No. 3712 of 1994 was heard by a Bench of this Court along with other similar applications and vide judgment and order dated 13th March, 1997, the State of Bihar has been directed to take over the services of petitioner, including this petitioner and to absorb them in Govt. service on such terms and conditions, as are applicable to officers and employees working in other D.I.Cs., which are being run and managed by the State Govt. However, liberty was given to the State of Bihar to retrench or terminate the services of petitioners of the said case, in accordance with law, if the circumstances so warranted.

9. It was also made clear that until the petitioners continue in the services of the State of Bihar, and absorbed, they will continue to receive the same emoluments, including the arrears of salary which were being paid to them prior to 28th February, 1994. The writ petitions were allowed with the aforesaid observations and directions.

10. Though notices were issued on Respondents 2 to 4 and they appeared but they did not choose to file any counter affidavit. The facts as pleaded on behalf of the petitioner have not been disputed.

11. In the counter affidavit filed on behalf of the State, as back as, on 29th April, 1993, while they did not choose to controvert the facts, taken plea that the petitioner was an employee of the Muzaffarpur Development Agency and he has neither been appointed, nor confirmed by the Industries Department of the State.

12. A question fell for consideration before this Court as to similar agency (at Gaya) is a State in terms with Article 12 of the Constitution of India or not, in the case of Ashok Kumar Singh in C.W.J.C. No. 12804 of 1992, this Court, vide judgment and order dated 28th February, 1996, held the same as a State in terms with Article 12 of the Constitution. However no such objection raised by Respondents 2 to 4 in the present case, and admittedly, the D.I.C, in question (Muzaffarpur) is now run by the State of Bihar.

13. From the impugned order of termination dated 14th August, 1992, it will be evident that no other ground has been given than the reference of a decision taken by the Working Committee/Executive Committee of the Agency in its meeting dated 12th August, 1992. The agenda as was placed in the said meeting held on 12th August, 1992, has been annexed as Annexure-16. From the said agenda, it will be evident that no agenda was prepared relating to termination of service of petitioner, on the other hand, the question relating to payment of T.A. was discussed, when "Item No. 11 and other matter" were taken up. In fact, the petitioner was also asked to attend the said meeting of the Working Committee/Executive Committee held on 12th August, 1992, which will be evident from letter no.38 dated 20th July, 1992, wherein no such item/agenda has been shown relating to termination of service of petitioner. The aforesaid fact will also be evident from letter no. 2939 dated 24th August, 1992 written by the District Magistrate, Muzaffarpur, wherein it is specifically stated that on enquiry it was found that there was no such agenda placed before the Working Committee/Executive Committee on 12th August, 1992 for termination of service of petitioner.

14. From the facts aforesaid, it will be evident that no agenda was prepared nor any formal decision was taken by the Working Committee/Executive Committee on 12th August, 1992 to terminate the service of petitioner, as mentioned in the impugned order and said order dated 14th August, 1992 has been passed on such non-est ground.

15. This apart, the authorities have not made it clear as to what was the

occasion to terminate the service of petitioner, the petitioner having given substantive appointment on completion of probation, vide order dated 17th December '91.

16. For the reasons aforesaid, I declare the impugned order of termination dated 14th August, 1992 as illegal and direct the Respondents/State to treat the petitioner as continuing against the post of General Manger, D.I.C, Muzaffarpur since the date of such termination.

17. The Respondents are directed to reconsider the case of the petitioner for absorption of his service under the State in the light of decision of this Court date; 13th March, 1997, passed in C.W.J.C No. 3712 of 1994 and analogous cases in the aforesaid background. The writ petition is allowed with the aforesaid observations and directions. However, in the facts and circumstances there shall be no order, as to costs.