
(2000) 05 PAT CK 0032
In the Patna High Court
Case No : L.P.A. No. 342 of 1999 (R)

Dr. Uma Shankar Verma

APPELLANT

Vs

The Birsa Agriculture University and Others

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 2 BLJR 1478

Hon'ble Judges : Someshwar Nath Pathak, J; Narayan Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—We have heard learned Counsel for the parties.

2. This appeal is directed against the order dated 16.8.1999 passed in CWJC No. 545 of 1998 (R) whereby and whereunder the learned Single Judge of this Court dismissed the writ application of the writ petitioner-appellant holding that the appointment of the appellant was irregular and against the mandates of Articles 14 and 16 of the Constitution of inasmuch as that the appointment of the appellant was made on the basis of stop-gap arrangement and not in pursuance of the advertisement. However, the learned Single Judge of this Court directed the respondents to fill up the posts of Medical Officers on regular basis pursuant to advertisement No. 1/97, if not yet filled up, immediately and if the petitioner has applied in pursuance of the said advertisement No. 1/97, his case be considered along with others and due relaxation of age shall be allowed to the petitioner as he continued for about nine years under the University. It was further directed that till such regular appointment is made pursuant to advertisement No. 1/97, the writ petitioner will continue to function by way of stop-gap arrangement as ordered by the University.

3. From the pleading of the writ petitioner-appellant, it appears that pursuant to the advertisement No. 4/85, the appellant along with several other persons

applied for and the respondent-University issued an interview letter on 18.12.89 to the appellant and the date of interview was fixed on 3.1.1990 at 11 a.m. where the appellant appeared before the interview board and he joined the post on 8.11.90 and thereafter, the appellant approached the respondent to fix the scale at par with the Civil Assistant Surgeon of the State of Bihar in terms of the advertisement No. 4/85 and vide notification dated 8.2.94, the scale of the appellant was fixed with effect from 8.11.1990 from the date of the joining on the pay-scale of Rs. 2,425/- to Rs. 4,000 plus other admissible allowances subject to approval of Board of Management of the respondent-University and thereafter, the appellant was paid his regular scale. Increments, etc. were also given to the appellant vide office order dated 21.1.1995 from the date of the joining till 1994. In the meantime, the respondents issued an office order dated 2.5.1995 cancelling the appointment of the appellant. The appellant, however, represented the matter before the respondents-authorities and the Vice-Chancellor, vide his letter dated 10.12.1995 withdrew the letter No. 244 dated 2.5.1995 and thus the appellant continued in the service. An inquiry committee, thereafter, was set up duly constituted by the Vice-Chancellor with regard to cancellation of the appointment of the appellant and the inquiry committee came to the conclusion that order dated 2.5.1995 issued by the University was an illegal order. However, again order dated 10.12.1995 was cancelled vide order dated 13.6.1996 restoring the order of cancellation of appointment of appellant dated 2.5.1995 giving rise to the writ application.

4. Learned Counsel for the appellant submitted that the appellant was selected pursuant to the advertisement No. 4/85 and he was duly interviewed and he was appointed on the post of University Doctor in the pay-scale as prescribed in the advertisement aforesaid. It was further submitted that the appellant continued on the post as such till date with break of few days and there was no material before the authorities to hold that the appointment of the appellant was irregular and the same was made on the basis of stop-gap arrangement and not pursuant to the advertisement. It was further submitted that since no pay-scale was prescribed in the advertisement No. A/85 the appellant was being paid a consolidated scale and his pay-scale was fixed on the regular basis vide notification dated 8.2.1994 and, therefore, the learned Single Judge of this Court without appreciating the facts of this case, held that the appointment of the appellant was made on the basis of the stop-gap arrangement and not in pursuance of the advertisement. Learned Counsel further submitted that the findings arrived at by the learned Single Judge of this Court are contrary to the facts and thus, not sustainable in law. Learned Counsel further submitted that right from the date of joining of the appellant with effect from 8.11.90, he was continued till date even after dismissal of the writ application pursuant to the direction envisaged in the impugned order itself and no notice whatsoever was given to the appellant before passing of the order dated 13.6.1996 cancelling his appointment as University Doctor.

5. Learned Counsel for the respondents, on the other hand submitted that the

appellants appointment was not on regular basis as the advertisement was issued by the Vice-Chancellor and the matter was not processed through the interview board and, therefore, no right had accrued to the appellant to remain on the post as such which was irregular.

6 I have perused the order impugned passed by the learned Single Judge of this Court. The learned Single Judge of this Court has noticed the fact that the appellant applied pursuant to advertisement. No. 4/85 as referred to above and thereafter, he was appointed on the post of University Doctor. The learned Single Judge of this Court also noticed that the pay-scale of the appellant was fixed by notification dated 8.2.1994 but at the same time held that the appointment of the appellant was made on the basis of stop-gap arrangement and not in pursuance of the advertisement.

7. It is not in dispute that the appellant's services were terminated without following the principles of natural justice. It is also not in dispute that the appellant is continuing on the post as such till date pursuant to the direction of this Court. From the facts noticed above, it appears to me that services of the appellant could not have been terminated without following the requirement of audited team pattern. It further appears to me that the appellant has continued on the post as such for more than ten years and, therefore, appointment made ought not to have been disturbed I after serving for some time as such delay defeats equity.

8. It is informed at the Bar by the learned Counsel for the respondents that the advertisement No. 1/97 as referred to in the impugned order, has been quashed by this Court in CWJC No. 2505/98(R) and fresh advertisement being advertisement No. 1/2000 has been published inviting applications from the eligible doctors for the post of University doctor, already held by the appellant.

9. Incase of Basudeo Tiwary v. SidoKanh University and Ors. 1998 SCC page 194. the apex Court has held:

The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. if it has come to be established, as a further corollary, that the audi alterarn partem facet of natural justice is also a requirement of Article 14, for natural justice is the anti-thesis of arbitrariness. In the share of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress.

10. In the case at hand, it appears that the manner of appointment of the appellant does not appear to be contrary to the provisions of the Act, Statute, Rules or Regulation rather it appears that the appellant was appointed pursuant

to an advertisement and he had faced interview. Thus, it can safely be held that cancellation of appointment of the appellant is not sustainable as admittedly, no notice was given to the appellant before holding his appointment as irregular or unauthorized.

11. From the materials on record, it appears that the appellant is continuing on the post of University Doctor till date and thus, he has continued for about ten years and, therefore, in my opinion, equity demands that he should not be disturbed from the post as such. In the case of Union of India and Others Vs. Kishorilal Bablani, , the apex Court, in such a situation, held that the appointment made ought not to be disturbed as it is a well-known principle of jurisprudence that, delay defeats equity. The apex Court further held that re-opening of process of selection and notification of vacancies after such delay is also not in interest of proper functioning and morale of the service concerned.

12. In view of the legal proposition noticed above, in case of Union of India v. Kishorilal Bablani (supra), it is directed that re-opening of process or selection and notification of vacancy after such delay will not be in interest of proper functioning and morale of the service concerned.

13. For the reasons and discussions aforementioned, therefore, I find merit in this appeal. In the result, this appeal is allowed and the order impugned is hereby set aside and consequent thereof, the writ application filed by the appellant is allowed.

14. However, there shall be no order as to costs.