

(2012) 01 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 7459 of 1998

Ganesh Chandra Verma and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 4 PLJR 469

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherji and Shanti Pratap, for the Appellant;
Arvind Ujjwal and Yashwant Kumar Chaman, for the Respondent

Final Decision : Dismissed

Judgement

Shivaji Pandey, J.—Heard learned counsel for the petitioner and learned counsel for the State. Petitioners have filed a writ petition making prayer for payment of salary for the period with effect from May, 1998 till date (filing of the writ petition). But subsequently, an interlocutory petition was filed whereby the fact has been brought that petitioners were terminated from services on the ground that their appointments was found illegal as their appointments were made without following the due procedure as they never appeared before the Selection Board nor any interview was conducted and vide order dated 12.9.1998, Annexure-9 series, petitioners were terminated from services. The claim of petitioners are that they have worked from 1986 as a daily wages/muster roll in the different Mechanical Divisions of Road Construction Department as they continued such a period, the petitioners were asked to appear before the Selection Committee for regularisation of appointment on Class-III post i.e. Typist, Correspondence Clerk and Stenographer and they were appointed accordingly.

2. Accordingly, petitioner Nos. 1 and 6 were appointed on the post of Typist/ Correspondence Clerk/Stenographer for three months vide Memo No. 207 dated 22.6.1995, No. 265 dated 22.7.1995 issued under the signature of

Superintending Engineer, Mechanical Circle, Darbhanga and petitioner No. 8 was appointed vide letter No. 758 dated 17.8.1995 under the signature of Chief Engineer, Road Construction Department, Patna respectively.

3. It has further been averred that their appointments was extended from time to time and ultimately their services were extended till further order vide letter No. 938 dated 2.6.1997, letter No. 915 dated 30.5.1997 and 928 dated 31.5.1997 under the signature of Chief Engineer (Mechanical), Bihar, Patna.

4. Similarly petitioners No. 2, 3, 4, 5 and 7 were appointed on the post of Correspondence Clerk and Typist vide letter No. 1001 dated 21.9.1995, 1003 dated 21.9.1995, 803 dated 22.8.1995, 639 dated 22.7.1995 and 808 dated 22.8.1995.

5. In this way, petitioners were appointed on different dates but the terms of the order was that till further order they will continue in service. It has been stated that petitioners were working to the satisfaction of the higher authority smoothly but all on a sudden they received the show cause notice vide letter No. 1535 dated 17.9.1997 (Annexure-5) under the signature of Chief Engineer, Mechanical, Road Construction Department, Govt. of Bihar by which petitioners were directed to show cause as to why they be not removed from their services on the ground that they were appointed illegally as they were appointed without following the prescribed procedure laid down by the Government.

6. The counsel for the petitioner submits that there was a scheme for promotion to the post of Class-III was to be made from the Class-IV employees and 50% vacancy of Class III were kept for that purposes. It appears that on receipt of the show cause reply, petitioners were terminated from services vide letter dated 12.9.1998 i.e. Annexure-9 series whereby it has been found that the appointment of petitioners were illegal as they could not produced any document to show that they appeared in the selection test or the Interview Board and accordingly, their services were terminated.

7. The counsel for the petitioners has pointed out that petitioners have appeared in the selection process as it is appeared from the Annexure-13. According to them it shows that they were appointed on the recommendation of Selection Committee. According to petitioners they appeared before the Selection Committee, they were found fit and they were appointed to the aforesaid post.

8. The counsel for the State has relied upon counter affidavit and said that their appointments were completely illegal as the selection process for the appointment of petitioners were not followed and further stated that the case of petitioners are covered by the judgment of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . It has held that in the case of appointment made through the illegal manner the person holding the post does not have a right to continue on that post. The claim of petitioners that they appeared before the Selection Committee, this Court wanted to see the admit card/any call letter by which they were called to face interview before the Selection Board but there

is nothing on record to show that they were called for interview to appear in the test. In this circumstances it is very difficult to accept their contention that they appeared before the Selection Board, in this situation statement made in the letters of termination Annexure-9 series are not incorrect.

9. Looking to the facts and circumstances of the case, it is very difficult to pass any order in favour of petitioners as they were appointed illegally. The writ petition is dismissed.

10. It is submitted on behalf of petitioners, post are still vacant and as such they should also be considered for regularization. Annexure-13 shows that some exercise were conducted before the appointment of these petitioners but it is very difficult for this Court to find out the actual fact. If any fresh appointment would be made the case of petitioners would be considered giving benefit of age relaxation and then as a major (sic) of one time exercise their cases also be considered for regularization in the light of direction given by the Supreme Court in para-53 Ed.--Para 14 of PLJR of Uma Devi (supra) and also in view of the fact that they were in service as a daily wager from 1986 to 1995 and thereafter they were appointed on the Class-III post. Accordingly, this petition is dismissed with the aforesaid observation and direction.