
(2008) 06 PAT CK 0038
In the Patna High Court
Case No : CWJC No. 4588 of 2008

Gautam Kumar Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 4 PLJR 468

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—I.A. No. 3439 of 2008 has been filed assailing the order of termination of services of the petitioner dated 6.5.2008. Having heard the Learned Counsel for the parties and considering that it is only a sequel to the order of the Public Service Commission recommending cancellation of the candidature of the petitioner vide Annexure-7 dated 21.1.2008, the same is allowed. The pleadings and the challenge laid down in the Interlocutory Application shall form part of the pleadings of the original writ application.

2. An advertisement was published by the respondent-Health Department on 5.5.1997 inter alia for Grade-IV posts. The maximum age limit as on the date of advertisement was prescribed as 18-35 years as on 31.12.1996. The petitioner applied in response to the same for the Grade-IV post. He competed successfully in the written examination held in 2005 and his name appeared at serial 105 of the merit list. The authorities verified his certificates on 11.7.2000 and 23.6.2005 whereafter the petitioner joined duties in pursuance of letter of appointment dated 26.11.2005. The order dated 21.1.2008 then came to be passed by the respondent-Commission recalling and annulling its recommendation with regard to the petitioner on the ground that he was underage in terms of the advertisement. In pursuance thereof the impugned order of termination dated 6.5.2008 has been passed.

3. Learned Counsel for the petitioner fairly submitted that in terms of the advertisement he was clearly underage, his date of birth being 15.2.1979. But, it was urged that the petitioner had committed no misrepresentation, it were the authorities who were at fault, his certificates were verified twice. During all these stages the petitioner could easily have been turned away when he could have looked for another job. Today he finds himself in a predicament because of the respondents and has lost valuable time in looking for alternative employment. It was therefore submitted that equity was in his favour and that the order of termination should therefore be quashed. It was lastly submitted that by the date that the petitioner came to be appointed he had already become a major.

4. Learned Counsel for the State sought to justify the impugned order on the simple premise of the petitioner admittedly being not eligible, for reasons of his age.

5. The law stands settled that equity follows the law and not vice versa. It is equally settled that compassion or sympathy cannot override or run contrary to law. That mistake may have been committed by the respondents cannot persuade this Court to invoke sympathy or compassion contrary to law and interfere with the impugned order. When the position is admitted that the petitioner was not eligible under the advertisement, being underage, it would be a gross violation of Article 14 to grant him any relief. In law, the eligibility of a candidate has to be determined in accordance with the conditions in the advertisement. The petitioner clearly was not eligible on the relevant date being underage. The fact that he may have subsequently attained majority on the date of his appointment cannot come to his aid.

6. In *Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another*, it has been held that under Article 226 the High Court cannot act as a benevolent appellate authority and that benevolence had no place under Article 226, to quote, "If the Court departs from law and enters the arenas of benevolence the perils and pitfalls are too many to recount. There will be no objective standards of judging, Justice becomes personalized. It would vary from Judge to Judge".

7. In *Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel*, the Industrial Tribunal gave a direction for appointment despite the candidate not having been selected by the Selection Committee. The High Court dismissed the writ petition challenging the award. Setting aside the orders of the Tribunal and the High Court holding that there was no cogent evidence before the Tribunal it was held that there was no room for sympathy or equity in matters of appointment as otherwise favoritism, nepotism and arbitrariness will have full play and therefore the law could not be bent to adjust equity.

8. Learned Counsel lastly raises a plea for salary for the period that the petitioner has worked. Since this Court has held that the petitioner on his own showing was clearly ineligible for appointment making the initial appointment itself contrary to

law, this Court finds it difficult to grant salary to him. this Court finds no merit in this application. It is accordingly dismissed.