

(2017) 11 PAT CK 0018

In the Patna High Court

Case No : 2284 of 2015

Harendra Upadhyya, S/o Sri Krishna Kumar Upadhyya

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Citation : (2017) 11 PAT CK 0018

Hon'ble Judges : Ajay Kumar Tripathi, Rajeev Ranjan Prasad

Bench : DIVISION BENCH

Advocate : P.K. Shahi, Vikas Kumar, Lalan Kumar

Final Decision : Dismissed

Judgement

1. The batch of Letters Patent Appeals arise out of common judgment and order dated 25.02.2015 passed by learned Single Judge of this Court in the batch of writ applications and are being disposed of by this common order.

2. Sri P. K. Shahi, learned Senior counsel assisted by Mr. Vikash Kumar, Advocate, led the arguments on behalf of the appellants, whereas Mr. Lalan Kumar, Assistant Counsel to G.P.-IX has assisted the court on behalf of the State.

3. The appellants moved this court by filing the writ applications for issuance of a writ in the nature of mandamus directing the State respondents to make entire payment of arrear of salary which according to the petitioners-appellants became due since October, 1984. They also prayed for a

direction to the State respondents to convert temporary service of the petitioners-appellants from temporary to permanent, as according to the petitioners-appellants, they were working on temporary appointments since last about 17 years.

4. The learned Single Judge examined the claims of the writ petitioners and after tracing the history as to mode and manner in which the writ petitioners came to be appointed as Tax Collector without there being any advertisement or availability of a sanctioned post in the then Notified Area Committee concluded that in fact their very engagement/appointments were back door appointments without following any procedure.

5. The learned Single Judge also rejected the claim for salary keeping in view the order of the Division Bench of this court passed in C.W.J.C. No. 1440/1992, in the case of one of the writ petitioners, Rajdhari Prasad. The said Rajdhari Prasad preferred SLP(C) No. 22670/1994, where the Notified Area Committee admitted that the said petitioner had worked for 2600 days and, therefore, he was paid for the said period of work rendered by him at the rate of Rs. 8/- per day.

6. The learned Single Judge having taken note of the earlier judgment of this court as well as the Hon''ble Supreme Court found that this is not in dispute that the petitioners were paid their salary up to September, 1984, but the writ application was filed seeking direction for payment of salary for the entire period of about 14 years with an inordinate and unexplained delay of 14 years. The case of said Rajdhari Prasad was distinguished on the ground that he had approached the court in the year 1990.

7. Before us, the learned Senior counsel has placed reliance upon a calculation chart of the salary paid, admissible and due, as contained in Annexure-10 to the supplementary affidavit filed on behalf of the petitioner before the learned Single Judge.

8. Submission of learned Senior counsel is that the petitioners-appellants were entitled for the pay scale for the post of Tax Collector but right from the year 1981 till December 1998 they have worked, but the chart would show that they have been paid some amount till February 1992 only. Learned Senior counsel, therefore, submits that the petitioners-appellants should be paid their difference in wages as per the pay scale attached to the post of Tax Collector in the then Notified Area Committee.

9. On the other hand, learned counsel for the State submits that the Notified Area Committee is no longer in existence. It is categorical stand of the respondents in the writ application that no work was taken from the petitioners- appellants after 16.02.1991 by the Notified Area Committee,

Maharajganj. It is also a categorical stand of the respondents Nos. 2 & 3 that the then Vice-Chairman of the Notified Area Committee, Maharajganj had appointed 70 persons such as the petitioners, and all those appointments were illegal and procedures for appointment were not followed. As such the then Chairman-cum-Sub-Divisional Officer, Siwan had cancelled all those appointments.

10. We have considered the rival submission and perused the pleadings exchanged by the parties before the learned Single Judge. We find force in the submission of learned counsel for the State, as it appears that the

engagement of these petitioners-appellants were done without following established procedure for appointment and in fact it is a clear case of back door appointments. As per their own calculation chart, the petitioners-appellants were paid up to February, 1992 the admissible amount but not paid a single paisa after February, 1992. The stand of the respondent Nos. 2 & 3 is that no work was taken from these petitioners since February, 1991. In these circumstances, the learned Single Judge has rightly relied upon the judgment of the Hon''ble Supreme Court in the case of State of Orissa and Another Vs. Mamata Mohanty reported in (2011) 3 SCC 436. The relevant paragraph 36 relied upon by the learned Single Judge from the said judgment of the Hon''ble Apex Court is reproduced here-in-below:

"36. Therefore, it is a settled legal preposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

11. We are of the considered opinion that the learned Single Judge has correctly dismissed the writ applications on the ground of inordinate delay in approaching the court particularly where the respondent Nos. 2 & 3 have categorically denied taking any work from these petitioners since February, 1991 and their entitlement, as claimed, and further on the ground that the appointment/engagement of

these petitioners being in violation of Article 14 & 16 of the Constitution of India, they are not entitled to any relief, as prayed for. No illegality or infirmity may be found with the judgment of the learned Single Judge.

12. These Letters Patent Appeals have no merit and are hereby dismissed. There will be no order as to costs.