

(2003) 04 PAT CK 0152
In the Patna High Court
Case No : L.P.A. No. 1317 of 2002

Kamal Kishore Sinha

APPELLANT

Vs

Bihar State Schedule Caste Cooperative Development
Corporation Limited and Others

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Citation : (2003) 3 PLJR 73

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and S.S. Sundram, for the Appellant; R.C.P. Bharti and Ramesh Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—The order impugned in the present Letters Patent Appeal is dated 30 October, 2002 : Kamal Kishore Sinha v. Bihar State Scheduled Castes Development Corporation and Ors.

2. The Court has heard argument at length submitted by Mr. Ganesh Prasad Singh assisted by Mr. S.S. Sundram.

3. Since arguments were addressed at much length the Court considers it appropriate that the issues and facts as are noticed by the learned Judge whose order has been impugned ought to be reproduced. Thus, this Court is reproducing the relevant portions of the order.:

It is to be noted that the Petitioner was put under suspension on 3.10.2000 and the order of his discharge was passed on 15.9.2001. This writ petition was filed in this Court on 23.1.2002. But even before the proceeding was initiated against the Petitioner, the Engineering Cell of the Corporation was wound up by office order No. 136, dated 25.7. 2000. It is further to be noted that having regard to the fact that the Engineering Cell of the Corporation was no longer in existence, this Court in several other similar cases has held that no relief can be granted to

the employees working in the cell against the orders for their removal from service, for any reason. In Arun Kumar Vs. The State of Bihar and Others, , a Division bench of this Court declined to give relief to the Appellant for the reason that the Engineering Cell of the Corporation was no longer in existence observing as follows:

6. On behalf of the Corporation it was stated that the Engineering Cell has been abolished in the Corporation w.e.f. 25.7.2000 pursuant to the policy decision of the State Government dated 17.5.1995 to the effect that the work being done by the Engineering Cells in different departments/Corporations be assigned to the Building Construction Department and the Engineering Cells be abolished. Pursuant to the said decision the Welfare Department which is the Administrative Department vis-a-vis the Respondent Corporation, stopped allotting any work to the Engineering Cells of the Corporation vide memo No. 2/C 01-2039/90 Ka-4042 dated 3.8.1996. While finally abolishing Engineering Cells in the Respondent Corporation it was noted that in the above background there was no justification to keep the Engineering Cell which was only adding to the financial burden on the Corporation.

7. Counsel for the Appellant relied on a decision of this Court in Nirmal Kumar and Others Vs. State of Bihar and Others That was a case of termination of field organisers working on daily wages in the Respondent Corporation. The Court held that termination of employment after lapse of more than 10 years by a stroke of pen in the absence of any rule governing such termination was illegal. The decision, we are afraid, is of no help to the Appellant who seek appointment/regularisation on the post of Junior Engineer. The Engineering Cells in the Corporation having been abolished there can be no justification to issue any direction to the Corporation to consider the Appellant's case. It may be recalled that while the first writ petition stood dismissed by speaking order the second one too was dismissed as withdrawn with an observation that the Corporation may consider the Appellant's case for fresh appointment if there are vacancies in the Corporation. The abolition of the Engineering Cell impliedly Corporation against which the Appellant's case can be considered.

4. Not to be ignored are certain aspects on record set out in the paragraphs of the writ petition and the manner in which the Petitioner replied to the counter affidavit of the Bihar State Scheduled Caste Cooperative Development Corporation Ltd. This is very relevant as this would show how much is in issue and how much are facts which are admitted. In this regard the Court considers it appropriate to reproduce paragraphs 5 and 8 of the counter affidavit and the rejoinder in reply to it by the Petitioner in paragraphs 3 and 5.

5. The pleadings in the counter affidavit are reproduced on the left and the reply in the rejoinder on the right:

That in response to statement made in paragraph No. 5 it is stated that the appointment of Petitioner was ab initio void as there was no advertisement and

the Petitioner was appointed by an incompetent authority i.e. Executive Engineer against an unsanctioned post and was overage at the time of his appointment and as far as the approval of Managing Director is concerned, it is strongly denied as being a false statement and the Petitioner has also admitted in his show cause that he was appointed against an unsanctioned post.

That in reply to paragraph Nos. 8 and 9 it is stated that the said order of adjustment of the Petitioner to the post of Assistant Engineer is bad on several scores, viz. the post of Assistant Engineer is of Class II and there cannot be an adjustment against Class II post of a work charge employee and also the said adjustment was prior to five years of the service tenure of the Petitioner which is not permissible in law, and for such appointment it was also mandatory to get the approval of Board of Director and Executive Committee under the relevant provision but that has also not been observed and as such Petitioner was wrongly adjusted.

That the statement made in paragraph 5 of the counter affidavit is misleading and hence denied. The Petitioner was appointed by the Executive Engineer after getting it approved by the then Managing Director as contained in Annexure-2 of the writ application and very first payment of salary/wages made as per the order of Managing Director through cheque bearing No. 07608 dated 02.03.1981.

Therefore it is no doubt that the Petitioner was appointed by granting approval for appointment by the Managing Director.

That the statement made in paragraph Nos. 7, 8 and 9 of the counter affidavit is denied as the same is incorrect. The Petitioner was appointed in the pay scale of Rs. 850-30-1270 E.B.-1360 by the competent authority.

6. It would be seen that the Petitioner has avoided answering statement of fact that there was no advertisement when he was appointed by an authority which was incompetent on an unsanctioned post and that he was over age at the time of his appointment. These are not matters of issue now as statement of fact in the counter affidavit has not been denied by the Petitioner.

7. In submissions, learned Counsel accepted that notwithstanding that he was appointed irregularly or, for that matter, he was over age or again, for that matter, that the post on which he was appointed was not in existence, all this be ignored as the power was vested in the competent authority to condone these aspects. Clearly, the Petitioner came through the back door.

8. The exercise of the manner in which the Petitioner was appointed virtually rests on collusion and fraud. The question is, is the Corporation not entitled to protect itself from a person seeking benefit of such appointment ?

9. In the proceedings a finding was also recorded that the Petitioner was appointed on 10.2.1981 when there was no post in existence. The regularisation in the work charge establishment was also contrary to the rules and bringing him to a regular establishment was also against rules and circulars. On all the four

charges a finding was recorded that the charges stood established. An opportunity was also given to the Petitioner-Appellant. He also filed a show cause and gave list of the witnesses but in spite of several adjournments and issuance of notices none appeared. This fact was known to the Appellant but he did not take any step to bring them for their evidence.

10. Thus, as discussed above, this Court is of the view that nothing could be pointed out by counsel for the Appellant to interfere with the order impugned.

11. Dismissed.