

(2003) 07 PAT CK 0136
In the Patna High Court
Case No : C.W.J.C. No. 4222 of 2003

Kameshwar Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-07-2003

Acts Referred:

Citation : (2003) 3 PLJR 504

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Satyendra Prasad, for the Appellant;
Jawahardhari Singh and Madho Kr. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Mr. Ganesh Prasad Singh, learned senior Counsel for the Petitioner and Mr. Jawahardhari Singh, learned Government Pleader Mo. 1 for the State.

2. This writ petition is directed against the order as contained in Annexure-11 vide Memo No. 1851 dated 8.3.2003 whereby and whereunder the services of the Petitioner have been terminated holding that his appointment was not valid.

3. According to the case of the petitioner he applied for the post of Family Planning Worker pursuant to the advertisement published in daily newspaper "Aryavarta" as contained in Annexure-1; dated 4.9.1981. Pursuant to his application, interview letter as contained In Annexure-2 was issued to the Petitioner for his appearance. The Petitioner faced the interview and finally, he was selected and appointed only for three months on temporary basis vide order as contained in Annexure-3 dated 8.1.1983 in the pay-scale of Rs. 535-765. The services of the Petitioner thereafter were made regular vide order as contained in Annexure-5 dated 4.10.1983 and vide order as contained in Annexure-6, he was transferred from Tandwa Block in the district of Hazaribagh to the office of the Regional Deputy Director, Health Services, Patna and during continuation of his

service, benefits of first time bound promotion were given to him vide order dated 4.5.1998 as contained in Annexure-7.

4. In the meantime, a show cause notice was issued to the Petitioner by the Civil Surgeon-cum-Chief Medical Officer, Patna vide notice as contained in Annexure 8 asking him to explain about his appointment failing which his services would be terminated. Pursuant to the show cause notice, the Petitioner filed his explanation as contained in Annexure-9 dated 22.2.2003. The authorities not being satisfied with the explanation submitted by the Petitioner, called for a report from the Civil Surgeon, Hazaribagh about appointment of the Petitioner and the Civil Surgeon Hazaribagh in his turn sent his report (sic) contained in Annexure-10 stating therein (sic) appointment of the Petitioner was found to be genuine. The authorities, however, at (sic) face of the explanation filed by the Petitioner and report submitted by the Civil (sic)geon, Hazaribagh passed the order impugned terminating the services of the Petitioner.

5. learned Counsel for the Petitioner submitted that the Petitioner was appointed (sic)er following due procedure, as referred (sic) above, and by no stretch of imagination, (sic) can be said that his appointment is void p initio. learned Counsel further submit-(sic)d that the Petitioner was made regular in (sic) year, 1983 and he continued on the (sic) post as such uninterruptedly. The order impugned therefore, is being assailed on (sic) ground that without holding any entry and without affording sufficient opportunity of hearing to the Petitioner, the (sic)re was passed which is not sustainable (sic) law and wholly without jurisdiction.

6. A counter affidavit has been filed on behalf of the Respondents. Learned (sic)overnment Pleader No. 1 on the basis of (sic) counter affidavit submitted that satis-(sic)dory explanations were not furnished by (sic)Petitioner in support of his appointment (sic)d, therefore, the order impugned was (sic)sed as large-scale bunglings were de-(sic)dod in appointment of such persons in (sic) Health Department. It is lastly submit-by learned Government Pleader No. 1 (sic) appointment of the Petitioner was made (sic) for three months and such stipulation was not find place in the advertisement contained in Annexure-1 and secondly (sic) according to the advertisement, the (sic) scale of the Family Planning Worker (sic) Rs. 220 315 but the Petitioner was appointed only for three months in the pay-scale of Rs. 535-765.

7. A reply to the counter affidavit has (sic)n filed on behalf of the Petitioner stating therein that though the advertisement does not stipulate about appointment for only three months, the Civil Surgeon in its wisdom made his appointment only for three months and subsequently, the same was made regular after finding his services satisfactory. It is also stated that pay-scale as mentioned in the advertisement was, however, revised with effect from 1.12.1981 and the pay-scale of Rs. 535-765 was made available and the Petitioner was placed in revised pay-scale with effect from 8.1.1983. learned Counsel for the Petitioner, therefore, submitted that there is no discrepancy

either in the terms of appointment or in the pay-scale given to the Petitioner.

8. From the pleadings of the parties and at the face of the argument advanced by the Counsel for the parties and also from the materials and documents brought on record, it appears that the Petitioner was appointed to the post of Family Planning Worker after due advertisement of the post and after facing interview. The appointment of the Petitioner, therefore, cannot be said to be void ab initio.

9. For the reasons aforementioned, the order impugned as contained in Annexure-11 is not sustainable in law.

10. In the result, this application is allowed and the order impugned as contained in Annexure-11 is set aside. The Petitioner is directed to be, reinstated on his previous post with all consequential benefits. No costs.