
(2023) 04 PAT CK 0052

In the Patna High Court

Case No : Letters Patent Appeal No. 687 Of 2022 In Civil Writ Jurisdiction Case
No. 14648 Of 2018

Kanchan Kumar Mishra

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 04 PAT CK 0052

Hon'ble Judges : Ashutosh Kumar, Harish Kumar, J

Bench : Division Bench

Advocate : Kanchan Kumar Mishra, S. D. Yadav

Final Decision : Disposed Of

Judgement

1. We have heard Mr. Kanchan Kumar Mishra (in person) and Mr. S.D. Yadav, learned AAG-9.

2. The challenge in the present Letters Patent Appeal is to an order/judgment of the learned Single Judge dated 18.10.2022 passed in C.W.J.C. No. 14648 of 2018 whereby the claim of the appellant for his reinstatement and allowing him to continue to work as Health Manager on contractual basis has been turned down.

3. What has been culled out from the materials available on record and the order under challenge, it is an admitted fact that pursuant to an Advertisement dated 14.02.2007, the petitioner being found eligible participated in the process for selection of Health Manager on contract basis. The advertisement, inter alia, stipulated certain terms and conditions, including, the tenure of contractual engagement to be for a period of two years after entering into an agreement with the candidate and the same shall stand terminated automatically on completion of two years. The candidate was also compulsorily required to file an Indemnity Bond that he would not be claiming any permanence in future. It was made clear that the contract may be terminated after service of one month

notice or payment of one month honorarium.

4. The appellant having qualification of MBA was duly selected as Health Manager for a period of two years in Referral Hospital, Jhajha by the District Magistrate-cum-Chairman District Health Society, Jamui vide letter no. 07 dated 30.08.2007. The letter of engagement also specifies the aforementioned conditions. The District Health Society subsequently extended the period of contract of the appellant for a further period of three years after giving one day break in between the lapse of earlier contractual service and commencement of contract in terms of the decision of the District Health Society dated 15.12.2009.

5. While the appellant was continuing on his contractual post, in the meantime, in course of verification it was found that he obtained the contractual engagement on the basis of marks-sheet in respect of his MBA certificate, showing his marks to be 1303 out of 1800, which was found to be false and incorrect, resulting into lodging of a criminal case bearing Jamui P.S. case no. 177 of 2013 registered on 15.07.2013.

6. It is the case of the respondent that the appellant/writ petitioner's marks-sheet was sent for verification to the concerned institution, which was issued the same; and the institution sent its report that the appellant only obtained 1065 marks out of 1800 and the marks-sheet sent for verification had never been issued by the said institution hence, prima facie, the marks claimed by the appellant at the time of selection process on the basis of which he was declared 1st empanelled candidate and was selected was found to be an act of deliberate cheating and forgery, resulting into his termination of contractual appointment.

7. The aforesaid contention of the respondent was vehemently refuted by the appellant and submission has been made that the petitioner has never produced any marks-sheet containing 1303 marks out of 1800, rather he had obtained total 1065 marks, out of 1800 in his MBA course from L.N. Mishra College of Business Management, Muzaffarpur and it is only that marks-sheet, which was submitted by the appellant. He also submitted that since there were only few candidates having qualification of MBA against so many seats, hence there was no reason or occasion to produce any forged and fabricated marks-sheet, apart from the fact the candidate was required to submit a

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duly attested certificate, which has never been verified. He next submitted that the very engagement of the appellant has been dispensed with on account of submission of forged marks-sheet by the appellant, which charge has ultimately not been proved by the trial court and he has been acquitted from all the charges beyond the shadow of reasonable doubt vide judgment dated 18.12.2021 passed in Trial No. 42 of 2021, arising out of Jamui P.S. Case No. 177 of 2013 by the court of learned Chief Judicial Magistrate, Jamui.

8. This Court has given anxious consideration to the submissions made on behalf of the parties and also carefully perused the order/judgment passed by the learned Single Judge.

9. The learned Single Judge while considering the aforementioned submissions found that the disputed issue of fact regarding the participation of the appellant on the basis of the marks-sheet, in question, requires pleading of evidence in appropriate proceeding, hence the Court did not delve to enter into adjudication of the matter while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution. The learned Single Judge also took note of the fact that the appellant was removed from his contractual service way back on 15.07.2013, but he did not choose to assert his right till 2018 and in fact he slept over his right over a pretty long time, which itself disentitles him to invoke the equitable writ jurisdiction of this Court and consequently the writ petition is found to be barred by delay and laches.

10. Before parting with the final conclusion this Court thinks it apposite to observe that it is well settled that no contractual employee has any right to have his contract renewed time to time in absence of any statutory rules or other rules in favour of him. In the case in hand, the engagement and extension of engagement was only for a specific period and admittedly the same came to an end by efflux of time and any further extension is dependent upon the subjective satisfaction of the employer as per the terms and conditions governing the service condition of a contractual employee. In no circumstances, any contractual employee can claim his permanence/regularization unless there is any stipulation in the agreement or any rules provides for the same.

11. This Court also thinks it apt to note down the observation of the Apex Court that in modern commercial world, the executives are engaged on account of their expertise in a particular field and those, who are so employed are free to leave and asked to leave by the employer. Contractual appointment works only if the same are mutually beneficial to both the contracting parties and not otherwise. With the development of law relating to judicial review of the administrative action, a writ court may examine the validity of a termination order passed by public authority (Gridco Ltd. & Another Vs. Sadananda Doloi & Ors, AIR 2012 SC 729). It is true that termination of service of a temporary employee, without holding enquiry is valid, when it is for unfitness and unsatisfactory service. Nonetheless any order casting aspersion or stigma must be passed in consonance with the principles of natural justice and in no stretch of imagination, avoid judicial review.

12. In the aforementioned settled principles of law, this Court finds that the engagement of the appellant has been dispensed with only on account of discovery of forgery committed by the appellant by producing incorrect and forged marks-sheet of MBA resulting into institution of a criminal case. However, the said charge has ultimately not been found proved by the trial court and, as such, the cause of action has arisen in favour of the appellant to challenge the

same before the appropriate forum, which fact has also suggested by the respondent in filing supplementary counter affidavit, duly sworn by the Civil Surgeon, Jamui, who has submitted before this Court that the appellant/writ petitioner has expeditious alternative remedy available before the District Magistrate, who happens to be the Chairman of District Health Society.

13. In view thereof, this Court in the aforementioned facts and circumstances partly allows the present Letters Patent Appeal after setting aside the order/judgment of the learned Single Judge, giving liberty to the appellant to assail the impugned order of termination before the appropriate authority, as noted above, who shall consider the same in view of the fact that the appellant has been acquitted from all the charges of obtaining engagement by producing forged and fabricated marks-sheet and others have been still continuing as Health Manager on contractual basis.

14. Accordingly, the present Letters Patent Appeal stands disposed of with the observations made hereinabove.

I agree