

(2012) 08 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 2617 of 2011

Kedar Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2013) 1 PLJR 226

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Bindhyachal Singh and Satya Prakash, for the Appellant; Rajeev Kr. Singh and Sanjeev Kumar Singh, for the Respondent

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. The petitioner is aggrieved by order dated 30.12.2010 passed by the Regional Deputy Director of Education, Saran Division at Chapra terminating him from the post of Assistant Teacher on the ground that he does not come within 150 persons recommended for appointment from the panel and that his name stood at serial 340.

2. It is submitted that pursuant to an advertisement for Matric Trained Teachers in August, 1988, the petitioner participated in the interview in March, 1989. A final panel was prepared and approved from serials 1 to 150 on 11.12.1990. Subsequently, pursuant to objections filed with regard to the panel recommendations, appointment letter was issued to the petitioner on 30.11.1991 and he started discharge of duties and was granted A.C.P. after 12 years of service by order dated 30.5.2009. He was issued a show cause notice on 17.7.2009. His panel position in paragraph-III was blank. It simply alleged that he was beyond 150. The petitioner filed his reply on 29.7.2009 asserting that his name was within the extent of persons recommended. A departmental proceeding was then initiated against the petitioner for an allegedly wrong appointment on 27.4.2010 as not being within 150 persons. On 6.12.2010 final orders were passed that his name stood at serial 340, much beyond 150 persons

recommended. The impugned order has then been passed. The enquiry report as appended to the second show cause does not contain any finding of the nature mentioned in the second show cause notice. The impugned order dated 30.12.2012 has been brought on record by I.A. No. 1108/11 which is allowed.

3. The submission on behalf of the petitioner is that it is nobody's case that he was not an applicant and did not undergo a selection process. The orders do not suggest that he was ineligible to be considered for appointment. Without prejudice to his contentions that his name figured within the list of selected 150 candidates, it is submitted that even if what the respondents contend be correct, it was a mere irregularity if the panel position had been violated. That cannot be sufficient justification to terminate his service nearly 20 years later. Reliance is placed on State of U.P. Vs. Rafiquddin and Others, , V.N. Sunanda Reddy and others Vs. State of Andhra Pradesh and others, , A.P. Public Service Commission Vs. K. Sudharshan Reddy and Others, and H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, .

4. Learned counsel for the State submits that the process of appointments appears to have been under a cloud right from the beginning. The petitioner has himself alleged that objections against the panel had been filed at the very initial stage in 1990 itself, the writ petition acknowledges that an enquiry was held by the Regional Deputy Director of Education as far back as 12.5.1993. Several writ applications were filed including C.W.J.C. No. 8942/01, C.W.J.C. No. 10212/01 and C.W.J.C. No. 20639/10 which have been disposed on 25.7.2012. The Court had directed the Department of Vigilance to enquire. Report has been submitted and directions have been issued by the Court with regard to the manner in which the matter is now required to be considered. The order adequately notices that persons have been appointed violating the panel position etc.

5. The Court does find substance in the submission on behalf of the petitioner with regard to the long continuance. Equally, there does not appear to be any allegation of ineligibility against him. The enquiry report in the departmental proceeding discloses nothing and leads to no conclusion. It does not mention any finding of the enquiry officer with regard to his merit position as distinguished from that mentioned in the second show cause notice. Equally, the show cause notice issued to him does not mention his panel position. The petitioner fares no better when in his reply to the show cause he also does not mention his panel position.

6. Learned counsel for the State has rightly relied upon a Division Bench decision in Archana Sinha and Others Vs. The Union of India (UOI) and Others with regard to reluctance of the Court to interfere with the orders of termination, especially when there has been large scale irregularities in the selection process as distinguished from individuals, making it difficult to separate the grain from the chaff. The Court is unable to consider grant of any relief to the petitioner for continuity on the submission that his appointment may at best have been irregular, in view of the order of a coordinate Bench where a vigilance report has

been submitted that irregularities have been committed and directions have been given to re-work the appointments and in accordance with the merit position in the panel. The submission on behalf of the petitioner that even in the revised panel pursuant to the vigilance report they stand a very good chance of reinstatement is an aspect which cannot be speculatively considered at this stage.

7. That brings to the fore the nature of relief to be granted to the petitioner pending compliance of the order dated 25.7.2012 in C.W.J.C. No. 8942/01 and analogous cases. The order for termination dated 30.12.2010 was stayed much belatedly on 1.6.2012. That was the final relief to be granted.

8. Learned counsel for the petitioner submits that the interim order may be allowed to continue till the fresh process as per the directions in C.W.J.C. No. 8942/01 is not complied with.

9. Interim orders passed in a case always merge into the final order that may be passed in the case. No writ petition can be disposed off in context of an interim order unless the Court is satisfied to hold that it deserves to be given the shape of a final order. To hold that the order of termination dated 30.12.2010 shall stand quashed today pending final decision in accordance with the directions in C.W.J.C. No. 8942/01 may amount to giving the final relief to the petitioner which is impermissible. The question of continuity, seniority etc., if the petitioner is found entitled to relief pursuant to the order in C.W.J.C. No. 8942/01 is left open for the respondents to consider appropriately at the relevant time. The application is disposed in the aforesaid terms.