
(2000) 12 PAT CK 0031

In the Patna High Court

Case No : L.P.A. No's. 931 and 955 of 1997

Kishore Kumar Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Citation : (2001) 1 BLJR 68 : (2001) 2 PLJR 45

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shashank Kumar Singh, J.—Both these Letters Patent Appeals had been made analogous and arise out of a common judgment of the learned Single Judge dated 4th July, 1997 and had been heard together and are as such being disposed of by a common judgment with the consent of the parties.

2. L.P.A. No. 931 of 1997 has been preferred against the order and judgment of learned Writ Court dated 4th July, 1997 passed in C.W.J.C. No. 5123 of 1994 whereby the learned Writ Court refrained from interfering in the order of cancellation of appointment of the appellants which were found to have been made illegally without advertisement, in violation of reservation policy of the State Government as no roster clearance has been made and there was no Selection Committee rather from the records of the State, it transpired that no appointment letters had been issued in favour of the writ petitioners.

3. L.P.A. No. 995 of 1997 has been preferred against the order of learned Writ Court dated 4.7.1997 vide C.W.J.C. No. 3017 of 1994 wherein also the writ petition had been dismissed as the appointment of the petitioners which had been cancelled were found to have been made without advertisement, roster clearance and other norms which were required for regular appointment.

4. Earned Counsel appearing for the appellants in L.P.A. No. 931 of 1997 has vehemently argued that all the writ petitioners of C.W.J.C. No. 5123 of 1994 had

applied pursuant to the advertisement dated 14.10.1986 (Annexure-2 to the writ application). It has further been contended that all the writ petitioners were registered with the respective employment exchanges and their candidatures had been sponsored by the respective employment exchanges. It has further been contended by learned Counsel that after receiving interview letters, the appellants appeared before the Interview Board and subsequently, they were appointed. However, the appellants could report to the places of posting by order dated 12.7.1987 (Annexure-3 to the writ petition) their appointments were cancelled on the ground that the same had been made illegally as has been found on an inquiry made by the State Government.

5. Being aggrieved by the aforesaid order, the appellants filed several representations before the authority concerned bringing to their notice that the aforesaid order terminating the services of the appellants and other similarly situated persons has already been quashed by this Court and as the writ petitioners of those writ petitions have been allowed to join their services, the appellants should also be allowed to join but as no order has been passed by the authorities, the appellants also challenged their termination order by filing a writ application which was numbered as C.W.J.C. No. 1692 of 1993. The same was disposed of by order dated 3.3.1993. In spite of the same the appellants were not re-instated in service, as such, contempt application was filed which was numbered as M.J.C. No. 1039 of 1993. This Court by order dated 23.8.1993 directed the Director Science and Technology Department, Government of Bihar to dispose of the representations of the petitioners in terms of the order of this Court within a period of four weeks from the date of receipt of a copy of the aforesaid order.

6. The appellants in view of order of this Court in the contempt application filed a fresh representation before the Director, Science and Technology Department, Government of Bihar. However as the said representation was not decided, the appellants again filed M.J.C. No. 1639 of 1993. In the said contempt, letter No. 3765 dated 10.12.1993 issued under the signature of Joint Secretary-cum-Director, Science and Technology was brought on record showing that the services of the appellants had been terminated. In view of a positive order already being passed, the contempt application was permitted to be withdrawn to enable the appellants to challenge the order dated 10.12.1993. The impugned judgment under appeal is in the writ application filed by the appellants against the aforesaid order.

7. The learned Writ Court taking into consideration the counter-affidavit and the supplementary affidavit filed on behalf of the respondents, had come to the conclusion that the petitioners had not been appointed in pursuance of the advertisement dated 14.10.1986 and no Selection Board had been constituted prior to their appointment and further that roster clearance as regards reservation had not been obtained from the Personnel and Administrative Reforms Department nor was any requisitions made from employment exchange.

It has also come to light that the appointment letters had not been issued to the appellants from the dispatch register maintained in the department meaning thereby that no appointment letter or interview letter had been issued by the department concerned making them a forged and fabricated document.

8. As far as judgment rendered in C.W.J.C. No. 3017 of 1994 is concerned more or less same argument has been advanced by the Counsel of the appellant in L.P.A. No. 995 of 1997. The only difference which has been brought on record is that the appellants of this appeal were daily wage workers and had applied pursuant to the said advertisement and as a policy decision has been taken by the State Government in 1985 to regularise the services of daily wagers who had worked for three years or more and as the appellants of present appeal have been working continuously for nearly seven years, their services should have been regularized in any view of the matter. The contention of the Counsel is that the appellants of the present appeal had also applied pursuant to the advertisement dated 14.10.1986 and were registered with the respective employment exchanges and their candidatures have been sponsored of those employment exchanges and in the month of October 1986 itself they had been appointed on daily wages and as the negligence of the State in not getting the roster clearance from the appropriate authority would not be taken as a ground for finding a lacuna in the appointment of the appellants as the same was not of their making.

9. It has further been contended that some other persons similarly situated have already been retained in service and as such, the appellants should also be directed to be reinstated in service and alternative argument has also been made on behalf of the appellants that as they have been working on daily wages on various posts in the Government Polytechnic at Jamshedpur, Saharsa and Patna and their services regularized in May 1997 on the basis of the recommendation made by the Deputy Director, Science and Technology, Government of Bihar and Setters of appointment were issued between 25.2.1987 to 24.6.1987 by the Director, Science and Technology and they continued to discharge their duties and functions on the post of Clerk/Instructor/Laboratory Assistant in the pay scale of Rs. 580-860, 730-1,080 and 785-1,210 respectively in the Government Polytechnics at Jamshedpur, Saharsa, Bokaro and Dumka. As such, they have acquired legal right to continue on the said post for which joining report along with medical certificate had been submitted on 1.6.1987, 25.6.1987, 16.6.1987, 22.6.1987 and 15.12.1987 to the Principal of the respective Government Polytechnics and thereafter they were paid their salaries.

10. However, from the impugned judgment, it would be clear by order No. 2208 dated 13.7.1987 the Commissioner, Science and Technology, Government of Bihar, cancelled their appointment, the appellant preferred representation before the authority concerned for redressal of their grievances, however, as no heed was made on their representations, appellants approached this Court by filing C.W.J.C. No. 3122 of 1992 which were heard and decided by a Division Bench of

this Court by order dated 3.11.1992 and the impugned order was quashed with liberty to the competent authority of the State Government to consider the matter afresh in accordance with law. The appellants submitted joining report pursuant to the quashing of the termination order by a Division Bench of this Court. However, in view of subsequent direction in the aforesaid judgment, show-cause notice was served on them as to why their appointment be not cancelled and they were called to submit their reply within one week. The appellants filed their reply and denied the allegations in the show cause. However, not being satisfied by the show cause, the authority passed the order dated 2.2.1994 terminating the services of the appellants on the ground that the roster clearance has not been obtained from Personnel and Administrative Department as regards reservation, no list of candidates was called for from the employment exchange, no Selection Committee was constituted prior to their appointment, approval of Government had not been obtained after preparing the panel, no interviews was ever held and the alleged appointment letters had not been issued from dispatch register maintained in the department.

11. Contention on behalf of the State is that the appellants had never been allowed to continue in service for a long time. As per their own contention they had given their joining in between 1.6.1987 to 22.6.1987. However, by order dated 13.7.1987 all of them had been remitted their service, as such, they had worked only for one month or a little more.

12. The contention of earned Counsel for the appellants has also challenged to the extent that in the same month i.e. October, 1986 if the appellants had applied pursuant to advertisement issued in the same month itself they could have been given appointment letters even on ad-hoc basis if the post has already been advertised. It has further been contended by earned Counsel that there is no record in the department to show that any interview letter or appointment letter had ever been issued, as such, according to State Counsel all these appointment letters and interview letters were fake and manufactured documents. It has further been contended by earned Counsel that the Director, Science and Technology during the relevant period has already been indicated as a large number of fake appointments had been issued by him. Subsequently, continuation of the appellants has been in view of order of this Court by which earlier termination order of the appellants had been quashed as the same has been done without providing them an opportunity to show cause. As subsequently according to earned Counsel for the State opportunity to show cause has already been given to them and after their considering the same the order of termination has been passed, as such, learned Writ Court had rightly dismissed the writ application.

13. Learned State Counsel has also brought on record the facts the Selection Committee for the selection of the candidates has been notified on 12.11.1987 whereas letters of appointments of writ petitions in C.W.J.C. No. 3017 of 1994 were issued between 25.2.1987 to 24.6.1987 which is a date prior to the

composition of the Selection Committee. As such, according to learned Counsel, appellants did not face Selection Committee also. According to him, this infirmity in itself was sufficient to vitiate the appointment of the appellants. However, in the facts of the case, as per the infirmity as drawn to the notice of this Court, the order and judgment of the Writ Court does not require any interference by this Court.

14. In the facts of the case and for the reasons already stated above, both the appeals have to be dismissed as the learned Writ Court, rightly, in view of the fact that termination order has been passed after considering the show cause filed by the appellants and in view of the fact that the authorities came to the conclusion that records of the department went to show that the appellants had not applied pursuant to advertisement, no interview letter had been issued to them, they had not faced the Selection Committee which was subsequently, constituted and no appointment letter had been issued, refused to interfere with the same.

15. During the course of argument of the parties, a fact which has been brought to the knowledge of this Court is that a large scale, bunglings resulting in fake appointments had been done during the period when Dr. B.P. Sinha was Director, Science and Technology. According to the State counsel, few hundred fake appointments in class-III and class-IV posts had been made during his period as Director, Science and Technology for which he has been indicted also. As the appointments of the appellants of the two appeals have been found to be through fraudulent and deceitful means no relief can be given to the appellants, as such, both the appeals stand dismissed but from the facts brought on record and as discussed above, it is evident that the persons who were mainly behind this fraud and are the real players of this nefarious game of issuing fraudulent appointment letters have been allowed to go completely untouched. If they are allowed to go free, they are bound to indulge in same kind of fraud in favour of others and similarly vitiates other appointment proceedings. It is, therefore, imperative that further investigations be made with a view to fix the involvement of the persons responsible for these fraudulent acts.

16. We accordingly hold that it is a fit case in which Vigilance Department of the State Government be asked to investigate the irregularities committed in the appointment in question and other similar appointments made during the period Dr. B.P. Sinha was Director, Science and Technology to fix the culpability of the persons responsible for the same. We accordingly direct the Vigilance Department of the State Government to investigate the matter and submit a report of this Court within a period of four months from today.

17. Both the Letters Patent Appeals stand dismissed with an observation and direction as made.

18. Let copy of this order and judgment be sent to the Director General of Police (Vigilance), Patna for necessary compliance.

Ravi S. Dhavan, C.J.

19. I agree.