

(2004) 02 JH CK 0009

In the Jharkhand High Court

Case No : WPS No. 31 of 2004 with WPS No's. 284 nad 545 of 2004 and WPS No. 6597 of 2003

Kishore Kumar Sinha and Others, Mrs. Putul Shome, Joseph Hembrom and Shanti Kachhap and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 BLJR 754 : (2004) 2 JCR 50

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ritu Kumar, R.K. Singh, N. Sinha, N.K. Sahani and A.K. Sahani, for the Appellant; B.S. Lal, AAG, S. C. Verma, S.C. Mines and A. Allam, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In these writ petitions since, common question of law and facts are involved, the same have been heard and disposed of by this common judgment.

2. Petitioners have prayed for quashing the order as contained in letter dated 29.11.2003 issued under the signature of Joint Director (Headquarter), Directorate, of Employment, Jharkhand, Ranchi whereby services of the petitioners have been terminated on the basis of letter issued by Director, Directorate of Employment and Training, Government of Bihar vide memo dated 21.10.2003.

3. There are altogether 22 writ petitioners. Their case is that they being eligible for appointment on Class III posts got themselves registered in different employment exchanges. In 1989 the Assistant Director, Directorate of Employment and Training made requisition for appointment against the vacant class-III posts from the employment exchange and advertisements to that effect were also

made in the local newspaper. Pursuant to that names of the petitioners were forwarded by the Employment Exchange. Their further case is that a Selection Committee was constituted who considered the names of the eligible candidates including the petitioners and after interview a panel of selected candidates were prepared. Petitioners were thereafter issued appointment letters in 1991. Petitioners submitted their joining and started working at different vacant posts. However, the Director, Directorate of Employment and Training, Patna suddenly issued memo No. 2054 dated 9.9.1992 by which services of 25 persons including petitioner Nos. 1, 2, 3, 6, 8, 10, 12, 13 and 14 were terminated on the ground that their appointments were made in excess of the sanctioned strength of the clerks. Several writ petitions were filed before the Patna High Court challenging the order of termination being CWJC No. 12059/1992, CWJC No. 12649/1992 and CWJC No. 10380/1992. Those writ, petitions were heard and disposed of on 16.8.1994.

4. Petitioners' further case is that thereafter petitioners were reinstated in service on 2.9.1995. Petitioners were again called upon to submit show cause with regard to validity of their appointment. In 2003 a Committee was constituted by the Labour, Employment and Training Department, Government of Bihar for making enquiry and the said Committee submitted its report on 5.7.2003. The Committee after considering the individual show cause and other documents of 61 persons, declared the appointment of 56 persons including all the 16 writ petitioners legal and valid. Copy of the inquiry report has been annexed as Annexure-13 to the writ petition. However, after bifurcation of the State and the allotment of cadres, the impugned order dated 21.10.2003 was issued under the signature of Director, Labour, Employment and Training, Bihar Patna whereby the appointment of 24 clerks in Jharkhand was declared illegal and the Government of Jharkhand was directed to take necessary action in the matter. On the basis of aforesaid letter of the Director, the impugned order of termination was issued by the Government of Jharkhand terminating the services of the petitioners.

5. In the counter affidavit filed by the State of Bihar, it is stated that the Enquiry Committee under the Chairmanship of the then Joint Director (Employment) has declared 27 appointment of clerks as legal and 43 appointment as illegal and for rest 18 appointments decision was left either on the Director, Employment and Training or on the Government. It is contended that the Committee was constituted for making inquiry in the light of the order passed in CWJC No. 5530/2000. Respondents' further case is that the appointments of the petitioners were made during the period when Bihar was undivided and therefore decision with regard to validity of appointments have been considered and decided by the Government of Bihar.

6. Separate counter affidavits have been filed by the Directorate of Employment, Government of Jharkhand. It is contended that the inquiry with regard to validity of appointment has not been done by the State of Jharkhand as the same was

being done by the Government of Bihar and the Government of Jharkhand has issued impugned order of termination on the basis of direction issued by the Government of Bihar. It is contended that respondents-Government of Jharkhand was not involved at any stage of inquiry in the matter of petitioners who were working in the State of Jharkhand have neither gone into the merit of appointment of the petitioners nor they conducted inquiry of their own.

7. I have heard Mrs. Ritu Kumar and Mr. A.K. Sahani, learned counsels for the petitioners and also Mr.B.S. Lal, learned Additional Advocate General and the learned counsel for the State of Bihar.

8. In course of argument learned counsel for the State has not disputed the fact that post of clerks were advertised and requisitions were also sent to the Employment Exchange for sending the names of registered candidates. Pursuant to that names of petitioners were sent by the Employment Exchange and a Selection Committee was constituted. Annexures-2 and 3 of the writ application are the minutes of the Selection Committee held on different dates and a panel of selected candidates were prepared and appointment letters were issued in 1991. Petitioners joined their services. However, in 1992 all of a sudden, the Director Employment issued order of termination dated 9.9.1992 by which service of 25 persons including some of the petitioners were terminated on the ground that their appointments were made in excess to strength of cadre of clerks and thereby holding their appointment illegal. Several persons including some of the petitioners have challenged said order of termination by filing several writ petitions which have been finally heard and disposed of by the Patna High Court on 16.8.1994. A copy of the said judgment has been annexed as Annexure 7 to the writ application (WPS No. 31/2004). The Court in the aforesaid judgment was of the view that the termination order suffers from non application of mind for the reason that prima facie the appointment appears to have been made against the vacancy existing in the respective office of the Employment Exchange. The Court therefore, set aside the order of termination. The operative portion of the judgment is worth to be quoted herein below :

"There cannot be any dispute to the proposition which has been contended by Mr. Warish but, in the peculiar facts and circumstances of the cases, from bare perusal whereof it is apparent that the impugned order suffers from non-application of mind as also that it is difficult to completely ignore the materials produced by the petitioners in support of the fact that their appointments were made against the vacancies existing in the respective offices of the employment exchange, I am of the view that the respondents authorities should have given an opportunity to the petitioners to explain their cases before cancelling their appointments. As that has not been done, the impugned order cannot be sustained and it is, accordingly quashed.

However, as the impugned order has been quashed on technical ground, the matter regarding the payment of salary to the petitioners shall depend on the result of the enquiry which the respondents are directed to conclude by a

reasoned order within a period of four months from the date of receipt/ production of copy of this judgment/ order after giving show cause notice to the petitioners respondent No. 2 is further directed to place all the materials on the record as regards the total number of sanctioned strength of clerk in the Directorate as well as the appointments made thereon as claimed in the counter affidavit. These facts should also form part of the enquiry being held by the respondents.

In the result, these writ applications are allowed with the aforementioned direction."

9. It appears that after the termination order was quashed by the Patna High Court petitioners were reinstated in service in 1995. Curiously enough respondents again issued show cause notice to the petitioners in 1996 asking them to show cause as to why their appointments may not be declared illegal on the ground that their appointments were made in excess of the sanctioned strength. In the meantime, some of the petitioners were issued memo dated 5.8.1998 under the signature of Director informing them that their appointments have been found within the sanctioned limit. Copy of this memo have been annexed as Annexures-10 and 10-A to the writ application. It further reveals that after lapse of more than four years petitioners were again Issued show cause dated 31.5.2000 to file show cause as to why their services be not terminated. Petitioners again moved Patna High Court by filing CWJC No. 5896 of 2000 challenging the said notice and the writ petition was disposed of on 12.7.2000 with a direction to the petitioners to file their show cause which shall be considered and disposed of by the respondents in accordance with law.

10. In the meantime, appointment of all those persons including the petitioners have/been considered by duly constituted committee of the Directorate of Employment and the Committee submitted their report on 5.7.2003. Copy of the inquiry report has been annexed as Annexure-13 to the writ application. In the said report appointment of all the petitioners excepting 2-3 persons have been declared legal and valid. Petitioners were reinstated in service and continued to work as such till 2003. Thereafter, the impugned letter dated 21.10.2003 was issued under the signature of Director, .Employment and Training. Bihar by which appointment of 24 clerks including the petitioners have been found to be illegal and such Government of Jharkhand was directed to take necessary action in the matter. Copy of the said order dated 21.10.2003 is Annexure-14 to the writ application (WPS No. 31/2004).

11. From perusal of Annexure-14, it appears that the Director after discussion and after considering the show cause found that the appointment of 24 persons is illegal. Nothing has been mentioned in the said order regarding any separate inquiry conducted either by the Director or any person on his behalf. As noticed above when duly constituted committee after making thorough inquiry submitted an elaborate inquiry report holding appointment of these petitioners legal and valid but the Director after discussion declared such appointment as illegal.

Nothing has been said in the said memo as to for what reason the appointment of those petitioners was found illegal.

12. As noticed above, the only ground taken by the respondents for terminating the services of the petitioner in the year 1992 was that the appointment was made beyond the sanctioned strength. It is not the case of the respondents that appointments were made without following the Recruitment Rules and the Procedure or in violation of Articles 14 and 16 of the Constitution of India. When such appointment of petitioners was made in the year 1991 by duly constituted Selection Committee in accordance with the select list and the petitioners joined service and continued for the last 9-10 years then termination of service by the authorities of the State of Jharkhand merely on the basis of non-speaking order received from the Director of Employment, Government of Bihar is wholly unjustified and unwarranted in law.

13. Taking into consideration the entire facts and circumstances of the case and the documents annexed with the writ petition, I am of the opinion that the action of the respondents in terminating the services of the petitioners is illegal, arbitrary and unjustified. This writ application are therefore, allowed and the impugned order of termination is set aside. Petition allowed