
(2011) 02 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 14527 of 2005

Kishori Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 4 PLJR 149

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The petitioner has challenged Annexure-20 dated 8.7.2005 issued by the District Superintendent of Education, Sitamarhi by which the petitioner has been dismissed from services on the ground that the petitioner does not belong to the Schedules Castes and Scheduled Tribes category rather his caste comes within the Backward Category of caste.

2. The petitioner is an Assistant Teacher and was appointed on 28.7.1976 under the special employment schemes. At the time when he was appointed, he described himself to belong to BEDIA caste. Vide Annexure-6, BEDIA caste comes within the (sic) of the Scheduled Castes and Schedule Tribes category of castes. On 18.1.2002, a co-villager filed an application stating that the petitioner actually belong to the BANOUDHIYA caste, on the basis of which this proceeding was initiated. A show cause was given to the petitioner, he filed a reply stating the aforesaid facts. On the basis of the show cause and the facts stated by the petitioner, an enquiry was held by the Block Development Officer, Parihar.

3. The enquiry report contained in Annexure-B to the counter affidavit as well as Annexure-13 to the writ application indicates that the Block Development Officer verified from the persons, not named in the enquiry report, and on the basis of this ex-parte enquiry, he came to the conclusion that earlier the petitioner and several persons like him had settled in the village and were said to belong to

BANOUDHIYA caste, however, he could not trace or decipher as to how this group of persons settled down in the village and identified themselves as belonging to the BEDIA caste. On the basis of this ex-parte enquiry, the Block Development Officer came to the conclusion that the petitioner is not of the BEDIA caste.

4. The Deputy Development Commissioner, Sitamarhi on the basis of the objection filed by one Shankar Das has reported that the petitioner belongs to TATMA caste. Both these documents contradict each other. This Court cannot understand as to how the enquiry held by the Block Development Officer could be considered to be an authentic enquiry, deciding the question of the caste of the petitioner in view of the fact that the enquiry report neither discloses the names of the persons who were examined nor does it disclose the reasons for coming to the conclusion that the petitioner does not belong to the BEDIA caste, although the Block Development Officer admits that the entire population which has settled in the village is now known and recognized as the BEDIA caste.

5. On perusal of Annexure-20, this Court finds that in fact the petitioner has been dismissed from services on the basis of an enquiry contained in Annexure-B of the Block Development Officer which has been discussed above. This Court has already come to a finding that the enquiry report is completely unreliable and as such could not have been used against the petitioner being vague and based on no cogent materials.

6. This writ application has also to be allowed on the basis of the judgment rendered by the learned Counsel for the petitioner in the case of Raja Ram Vs. State of Bihar and Others wherein this Court has held that after putting in 25 years of services, a person who has a good service record cannot be dismissed from service on the ground that he has produced a forged caste certificate. The present case stands on a better footing inasmuch as there is no material to indicate that the certificate produced on behalf of the petitioner was forged, rather it has been specifically stated that there is a possibility that the certificate is forged. On such surmises, it cannot be held that in fact the certificate was forged.

7. In the result, I quash the order issued under memo no. 3088 dated 8.7.2005 (Annexure-20) by which the petitioner was dismissed from services.

8. I may state here that the petitioner has retired on 30.9.2010, Therefore, the respondent no. 6 is directed to pay the consequential benefits to the petitioner treating him to be a retired employee of the institution. In the facts of this case, the petitioner would also be entitled to his salary for the period for which he was illegally kept out of the service i.e. 8.7.2005 to 30.9.2010.

9. The said calculation of the pensionary benefit and payment of salary for the period indicated aforesaid should be made within a period of six months from the date of receipt/production of a copy of this order.

10. This application is accordingly allowed.