

(2009) 02 PAT CK 0129
In the Patna High Court
Case No : CWJC No. 185 of 2001

Krishna Prasad Srivastava and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2009) 4 PLJR 174

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, Vindhya Keshari Kumar and Umesh Kumar Singh, for the Appellant; Sunil Kumar Mandal and Bipin Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioner and the State. Petitioners in both writ applications have prayed for quashing the order contained in Memo No. 1013 dated 19.10.2000 issued by the District Education Officer, West Champaran terminating their services in the light of the orders of the Department issued by the Director, Secondary Education, R.D.D.E. Tirhut Division, Muzaffarpur and Deputy Director, Secondary Education.

2. Petitioners have been terminated on the ground that appointments are illegal as it has not been made according to the procedures for appointment, without following the reservation policy and in violation of the Circular of the Personnel and Administrative Reforms Department contained in letter No. 16441 of the year, 1980.

3. All these petitioners were appointed by the District Education Officer, West Champaran in different schools on Class-IV posts of peon. Their appointments were made by the District Education Officer by different order in the year, 1989.

4. Petitioners' case is that all secondary schools recognized by the Bihar

Secondary Education Board were taken over by the Government with effect from 2.10.1980. The service conditions and rules governing the service condition of teaching and non-teaching staffs of nationalized secondary schools framed by the Government in exercise of power conferred u/s 9 of Non-Government Secondary School (Take-over of Management and Control) Act, 1981, were applicable in case of the employees working in the nationalized schools. Under the rule, the District Education Officer is the controlling officer of Class-IV employees working in such schools. Petitioners were appointed by the District Education Officer on account of vacancy in the school in question. They were appointed on ad hoc basis till the regular appointments are made. The petitioners joined in compliance of their appointment at their respective posts of peon. Since the date of the joining, they have been working continuously as peon in the respective schools. No regular peon was appointed against those posts except the petitioners. Subsequently, finding the work of the petitioners satisfactory, they continued on the posts. Deductions from their salary against the general provident fund were also being made. They were given all benefits of regular employees. Subsequently, the Deputy Director of Secondary Education and the Regional Deputy Director of Education, Tirhut Division Muzaffarpur vide their letters bearing Nos. 1104 dated 25.9.98 and 775 dated 29.10.98 directed the District Education Officer to issue show cause notice to such employees whose appointments were found to be doubtful. Petitioners on receiving such show cause notice submitted their explanation. On submission of the first show cause notice, second show cause notice was issued and that was also properly replied by the petitioners. Finally, the District Education Officer issued impugned order terminating the services of the petitioners on various grounds mentioned in the impugned order.

5. Counter affidavit has been filed on behalf of the respondent No. 4 stating that the order contained in different Memo Nos. through which petitioners were appointed, in fact were not issued from the office of District Education Officer, West Champaran, Bettiah, Appointment letters are forged and fabricated documents. According to Government Circular, there should be an advertisement of the appointing authority for any type of appointment. The then District Education Officer, West Champaran had not advertised vacancies for the post of peon in nationalized schools of West Champaran. There was no request of the Headmaster from the concerned school to the District Education Officer to make appointment on the vacant posts of peon. The petitioners had also not applied for appointment. There was no interview letters issued to them. They did not face interview, as such, the appointment of the petitioners was totally illegal. It is also required that for appointment even on Class-IV posts, a District level panel should be prepared and the appointment should be made from these panels against the existing vacancies. The panel is required to be approved by the District Magistrate but none of the procedure was followed, Considering this illegality and irregularity, the Director (Secondary Education), Bihar, Patna, the Deputy Director, Secondary Education and the Regional Deputy Director of Tirhut

Division, Muzaffarpur directed the District Education Officer to ask the appointees to submit relevant papers with explanation about the validity of their appointment. The petitioners had submitted their explanation with relevant documents. The documents and explanations were examined. It was found that the appointment had been made against the norms and procedures laid down by the Personnel & Administrative Reforms Department and Education Department, Govt, of Bihar, Patna. After giving due opportunity of hearing to the petitioners, their appointment was cancelled vide Memo No. 1013 dated 19.10.2002.

6. What I find from the pleadings and submissions of the parties that the appointment letters issued in favour of the petitioners are alleged to be forged and fabricated documents. It is also alleged that procedure for appointment, was not followed. The petitioners were appointed in the year, 1989. They continued in service till 2000, almost 12 years. During this period, they were treated as regular appointees. In this circumstance, they could have been terminated only in the manner services of a permanent civil servant can be dispensed with. Permanent employees' service can only be terminated by following procedure laid in Rule for removal of a permanent employee and that procedure accorded within Article 311(2) of the Constitution. There is no allegation of forgery committed by the petitioners or misconduct on the part of the petitioners. It is not alleged that the forgery was committed by them in securing their appointment letters. There is allegation that appointment letters were forged but the authority under whose signature, appointment letters were issued, was not questioned and he was not asked regarding genuineness of his signature on the appointment letters. In this view the allegation that the petitioners had forged their appointment letters is not sustainable. Such allegations could have been proved only after holding an inquiry in accordance with law. Considering the fact that the order terminating service of the petitioner has been issued contrary to the provisions known for termination of Government employee, the impugned orders cannot be sustained. The respondents are directed to reinstate the petitioners to their posts with all back wages and other consequential benefits. Both these writ applications are allowed.