
(2015) 05 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2879 of 2013

Kumkum Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311, 311(2)

Citation : (2015) 05 PAT CK 0050

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Banwari Sharma, for the Appellant; Jaishankar Barnwal, SC,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

"1. That the present application is for issuance of a writ in the nature of writ of Certiorari for quashing the order issued vide memo No. 2990 dated 30.10.04 under the signature of Civil Surgeon cum Chief Medical Officer, Darbhanga as contained in Annexure-10, whereby and whereunder the service of the petitioner has been terminated with immediate effect. And further a writ in the nature of writ of mandamus for directing the respondent authorities to reinstate/regularize the service of the petitioner on the post on which she was working before termination of her service with all the salary and other consequential benefits in accordance with law, as done in case of several similarly situated persons as per the order dated 26.6.2006 passed in L.P.A. No. 946/03 and analogous cases by this Hon"ble Court. And/or pass such other order or orders as this Hon"ble Court may think fit and proper."

3. Learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that the impugned order was passed against the petitioner in

violation of the principle of natural justice and without following the safeguard of Article 311(2) of the Constitution of India as well as Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. In this regard, Mr. Banwari Sharma, learned counsel for the petitioner, has submitted that the petitioner was appointed as a Female Health Worker (ANM) by an order dated 10.3.1992 and after the petitioner was allowed to continue for a period of more than twelve years, she was unceremoniously removed from service on the basis that the impugned order dated 30.10.2004 only by way of giving a show-cause notice. The emphasis of the learned counsel for the petitioner that the petitioner ought to have been subjected to departmental enquiry and given full protection of Article 311(2) of the Constitution of India.

4. Per contra, learned counsel for the State has submitted that this writ application, assailing the order of termination of the services of the petitioner after a delay of more than 8.5 years, is fit to be dismissed on account of the laches and delay. He has further explained that in course of enquiry, the petitioner's appointment was found to have been based on forge certificate of Bihar Nurses Registration Council and the petitioner, after being confronted with this allegation, was issued a show-cause notice and also being afforded an opportunity of hearing had been removed from service by the impugned order. According to the learned counsel for the State, the moment the respondents had reason to believe that that the petitioner had obtained her appointment by playing fraud and committing forgery in her Nursing Registration Certificate, she was not required to be proceeded departmentally by way of giving her protection of Article 311(2) of the Constitution of India.

5. Learned counsel for the State in this regard has also referred to the averments made in the counter affidavit which would be dealt at the appropriate place.

6. The first and foremost question, however, would be as to whether this writ application can be entertained after an unexplained delay in assailing the impugned order of termination of service of the petitioner of more than eight years. Let it be noted that the services of the petitioner was terminated by an order of the Civil Surgeon cum Chief Medical Officer, Darbhanga dated 30.10.2004 but this writ application has been filed only on 7.2.2013. There is no explanation whatsoever for explaining this abnormal delay save and except that the petitioner has referred to some similar cases of the Health Department and different orders passed by this Court. It however remains an admitted fact that the petitioner had never moved this Court against the impugned order before filing of this writ application. The oral submission of Mr. Sharma that the petitioner had also filed representation before the higher authority will also be of no avail.

7. By now it is also well settled that mere filing of representation and awaiting result of the same would not explain the delay and the writ application for the unexplained delay in moving court would be dismissed on the ground of delay and laches. Reference in this connection may be made to the judgment of the

Apex Court in the case of Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, AIR 2006 SC 1581 : (2006) 109 FLR 724 : (2006) 4 JT 312 : (2006) 2 LLJ 421 : (2006) 4 SCALE 56 : (2006) 4 SCC 322 : (2006) SCC(L&S) 791 : (2006) 3 SLJ 201 : (2006) AIRSCW 3259 : (2006) AIRSCW 1828 : (2006) 5 Supreme 309 : (2006) 3 Supreme 370 wherein it was held as follows:-

"9. It was stated in State of M.P. and Others Vs. Nandlal Jaiswal and Others, AIR 1987 SC 251 : (1986) 2 SCALE 638 : (1986) 4 SCC 566 : (1987) 1 SCR 1 that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weights with the High Court in deciding whether or not to exercise such jurisdiction."

8. The additional plea of the petitioner that since similarly situated persons had moved this Court and in their cases the issue relating to termination of services made in the Health Department was referred by this Court in the case of The State of Bihar and Others Vs. Purendra Sulan Kit and Others etc. etc., (2006) 3 PLJR 386 to the Five Men Committee to be appointed by the Health Department and such Committee had submitted its report in the year 2009 whereafter a few of them could get relief of reinstatement and, therefore, the case of the petitioner should also be sent to the Committee is also not acceptable to this Court because the petitioner has come out to assail the impugned order of termination passed on 31.10.2014 by filing the present writ application on 4.1.2013. In this regard, it has to be kept in mind that somewhat in a similar situation, the Apex Court in the case of Bhoop Singh Vs. Union of India and others, AIR 1992 SC 1414 : (1992) 3 JT 322 : (1992) LabIC 1464 : (1993) 1 LLJ 260 : (1992) 1 SCALE 954 : (1992) 3 SCC 136 : (1992) 2 SCR 969 : (1992) 2 SLJ 103 : (1992) 2 UJ 238 had held as follows:-

"-----the question here is of interfering with the Tribunal's order since the Tribunal has refused relief on this ground. Unless it can be held that delay of several years in claiming the relief of reinstatement must be ignored simply because some others similarly dismissed had been reinstated as a result of their success in the petitions filed many years earlier, the Tribunal's order cannot be reversed in the present case."

"-----No attempt has been made by the petitioner to explain why he chose to be

silent for so long, if he too was interested in being reinstated and had not abandoned his claim, if any. If the petitioner's contention is upheld that lapse of any length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this cannot be the true import of Article 14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner's case."

9. Apart from delay which in this case itself will be fatal, this Court has also found that the petitioner had claimed that she was admitted in L.H.V./A.N.M. School, Patna City for undergoing training of Female Health Worker and she had appeared in the examination held in October, 1989 whereafter she was registered as Auxiliary Nurse Midwifery by the Bihar Nurses Registration Council on 2.11.1990.

10. The respondents in their counter affidavit have explained this aspect that when her certificate allegedly issued by the Bihar Nursing Registration Council as contained in Annexure-1 was sent for verification to Bihar Nurses Registration Council along with 11 similar cases, the Registrar of the Council in her letter dated 14.8.2004 clearly reported that the petitioner was never registered in the records of the Bihar Nurses Registration Council. In the report of the Registrar of the Bihar Nurses Registration Council, even the authenticity of the mark-sheet Mark Sheet Roll City 37 as produced by the petitioner, it was found that the same had been issued in favour of one Pushpa Kumari daughter of Ram Babu Ray having her date of birth of 16.11.1999 and, as such, her both certificate and mark-sheet was found to be forged. In this regard, it would be also useful to refer to paragraph No. 9 of the counter affidavit, which reads as follows:-

"9. That it is submitted that in reference to the above letter the Registrar, Bihar Nurses Registration Council, Patna had sent a verification report to the answering respondent, vide Letter No. 412 dated 14.08.2004, wherein it is clearly stated that the Registration No. 8616 dated 16.04.1990 is not available in the record of the Council and the mark sheet Roll City 37 as submitted by the petitioner shows the name of another candidate such as Roll No.- MUJ-37, Session 1989, namely, Pushpa Kumari, D/o Ram Babu Roy, Date of Birth- 16.11.1969. Though, the petitioner had submitted his Registration Certificate bearing Registration No. 8616 and Mark Sheet Roll City 37.

A photocopy of the letter No. 412 dated 14.08.04 is being Annexed as Annexure-D to this affidavit.

10. That thus, it is quite clear from the verification report of the Registrar, Bihar Nurses Registration Council, Patna, that the Registration Certificate, mark sheet and other relevant paper as submitted by the petitioner are forged."

11. Let it be noted that despite service of copy of the counter affidavit on the

learned counsel for the petitioner on 8.5.2013, there is no rejoinder on behalf of the petitioner and, therefore, the allegation of forgery against the petitioner becomes admitted.

12. The moment this Court would find that the petitioner had produced a forged mark-sheet and certificate for obtaining her appointment on the post of A.N.M., it has to be essentially held that the petitioner will not be entitled for protection under Article 311(2) of the Constitution of India, inasmuch as, fraud and forgery vitiates everything.

13. To that extent, it would be relevant to quote the judgment of the Apex Court in the case of *R. Vishwanatha Pillai Vs. State of Kerala and Others*, AIR 2004 SC 1469 : (2004) 2 CTC 196 : (2004) 1 JT 88 : (2004) 1 SCALE 285 : (2004) 2 SCC 105 : (2004) SCC(L&S) 350 : (2004) 2 SCR 360 : (2004) AIRSCW 419 : (2004) AIRSCW 4826 : (2004) AIRSCW 3038 : (2004) 4 Supreme 77 : (2004) 6 Supreme 306 : (2004) 1 Supreme 436 wherein it was held as follows:-

"15.-----Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah v. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be

terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar*. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled

Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud."

(Underlining for emphasis)

14. Let it be noted that such findings of forgery in the case of the petitioner cannot be said to bolt out of blue, inasmuch as, the show-cause notice which was given to the petitioner on 29.8.2004 had specifically contained the findings recorded by the Registrar of the Registration Council in her letter dated 14.8.2004 and to that extent, it would be relevant to quote the show-cause notice dated 22.9.2004, which reads as follows:-

15. The petitioner in fact having received the show-cause notice dated 22.9.2004 claims to have filed show-cause reply on 11.10.2004 wherein she did not explain the findings of the Bihar Nurses Registration Council in respect of the forgery in both the certificates and the mark-sheet. Her only explanation was that whatever documents were submitted by her were correct. The moment this Court would find that the petitioner has not produced the copy of the mark-sheet and has come out with registration certificate which has been found to be forged and has also not dared to controvert the statement made in para-9 and 10 of the counter affidavit, the inescapable conclusion will be that the petitioner's alleged certificate and mark-sheet issued by the Bihar Nurses Registration Council were forged and, therefore, this Court would not find any error in the impugned order of the petitioner dated 30.10.2004 which, for the sake of clarity and convenience, is quoted herein below:-

16. Let it be noted that on issuance of the impugned order dated 30.10.2004, the petitioner became completely silent as there was a direction of the Civil Surgeon, Darbhanga to also lodge a First Information Report against the petitioner for playing fraud and committing forgery in obtaining her appointment. The delay therefore was only to make the respondents forget about her case. This Court, however, would not like to make any further observation in this regard because neither the petitioner has made any averment with regard to lodging of the First Information Report nor the respondents have brought anything in the counter affidavit as to the fate of the criminal case directed to be lodged against her but, then, the petitioner cannot claim reinstatement in service only because she was not subjected to a regular departmental proceeding. The petitioner was given two show-cause notice to explain as with regard to the specific findings of forgery in her certificate and mark-sheet and once she neither

satisfied the competent authority nor she has even been in a position to question the findings even in this writ application, it will have to be essentially held that the petitioner had procured her appointment by pressing forged certificate and mark-sheet.

17. There is also no dispute that for the post of A.N.M., the basic requirement was passing of the examination conducted by the Bihar Nurses Registration Council followed by issuance of a genuine mark-sheet and certificate by the Council. In absence thereof, the petitioner could not have been appointed on the post of A.N.M.

18. The reliance placed by the learned counsel for the petitioner on the judgment of this Court in the case of *The State of Bihar and Others Vs. Purendra Sulan Kit and Others etc. etc.*, (2006) 3 PLJR 386 or the subsequent event will be of no avail because even if some illegality may have been committed by the respondents in reinstating some of the persons whose cases were remitted by this Court, that cannot be made a ground for now reinstating the petitioner in service. Article 14 of the Constitution of India is a positive concept and cannot be enforced in a negative manner.

19. The Apex Court, while examining this aspect in the case of illegal appointment arising from the State of Bihar itself, had explained and summarized the law in this regard in the case of *State of Bihar Vs. Upendra Narayan Singh and Others*, (2009) 4 JT 577 : (2009) 4 SCALE 282 : (2009) 5 SCC 65 : (2009) 1 SCC(L&S) 1019 : (2009) 4 SCR 866 : (2009) 2 SLJ 392 : (2009) 4 UJ 1651 in the following words:-

"65 In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits.

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - *Chandigarh Administration and another Vs. Jagjit Singh and another*, AIR 1995 SC 705 : (1995) 2 BC 191 : (1995) 1 JT 445 : (1995) 110 PLR 176 : (1995) 1 SCALE 131 : (1995) 1 SCC 745 : (1995) 1 SCR 126 , *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, (1996) 7 AD 550 : (1996) 8 JT 387 : (1996) 7 SCALE 135 : (1997) 1 SCC 35 : (1996) 6 SCR 584 Supp , *Union of India (Railway Board) and others Vs. J.V. Subhaiah and others etc. etc.*, AIR 1996 SC 2890 : (1995) 9 JT 488 : (1996) 1 SCALE 193 : (1996) 2 SCC 258 : (1995) 6 SCR 812 Supp , *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, (1996) 2 AD 48 : AIR 1996 SC

1175 : (1996) 1 JT 647 : (1996) 1 SCALE 615 : (1996) 2 SCC 459 : (1996) 1 SCR 1154 : (1996) 1 UJ 628 , State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35], M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, AIR 1997 SC 3801 : (2003) 89 ECC 468 : (1997) 72 ECR 801 : (1997) 95 ELT 161 : (1997) 8 JT 171 : (1997) 6 SCALE 148 : (1997) 7 SCC 752 : (1997) 4 SCR 122 Supp : (1997) AIRSCW 3716 : (1998) 5 Supreme 287 , M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another, AIR 1999 SC 3678 : (1999) 6 JT 67 : (1999) 123 PLR 504 : (1999) 5 SCALE 74 : (1999) 7 SCC 89 : (1999) 1 SCR 591 Supp : (1999) AIRSCW 3706 : (1999) 7 Supreme 311 and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, AIR 2000 SC 2306 : (2000) 5 JT 389 : (2000) 4 SCALE 417 : (2000) 9 SCC 94 : (2000) SCC(L&S) 845 : (2000) AIRSCW 2389 : (2000) 4 Supreme 197 , Union of India (UOI) and Another Vs. International Trading Co. and Another, AIR 2003 SC 3983 : (2003) 4 JT 549 : (2003) 4 SCALE 581 : (2003) 5 SCC 437 : (2003) 1 SCR 55 Supp : (2003) AIRSCW 2828 : (2003) 4 Supreme 114 and Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, AIR 2007 SC 1640 : (2007) 5 JT 394 : (2007) 5 SCALE 565 : (2007) 4 SCC 737 : (2007) 5 SCR 7 : (2007) AIRSCW 2497 : (2007) 3 Supreme 855 ."

(underlining for emphasis)

20. That being so, this Court does not find any reason to interfere with the order of termination of service of the petitioner passed way back in the year 2004 and that too on the specific ground of the petitioner having obtained her appointment by playing fraud and producing forged certificate and mark-sheet.

21. In the result, this application fails and is hereby dismissed.

22. There would be however no order as to costs.