
(2011) 09 PAT CK 0123
In the Patna High Court
Case No : CWJC No. 3269 of 2007

Kundan Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 1 PLJR 363

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Santosh Kumar Sinha-2, for the Appellant; D.P. Choudhary and Arjun Pd. Singh, for the Respondent

Judgement

V.N. Sinha, J

1. Heard learned counsel for the petitioner and the State. Petitioner is the son of late Urmila Devi who was dismissed from service by the Director, Industries, Bihar, Patna under order bearing Memo No. 964 dated 5.2.1998, Annexure-10. He has filed this writ petition challenging the order bearing Memo No. 964 dated 5.2.1998, Annexure-10 as also the appellate order, dated 3.1.2006 bearing Memo No. 103 dated 18.1.2006, Annexure-13 passed by the Industrial Development Commissioner, Bihar, Patna affirming the dismissal order.

2. Earlier Urmila Devi, mother of the petitioner challenged the dismissal order by filing review petition before the Director, Industries itself. During the pendency of the review petition mother of the petitioner left for heavenly abode. After dismissal of the review petition her son, the present petitioner challenged the dismissal order by filing C.W.J.C. No. 11278 of 2004, which was disposed of under order dated 17.8.2005, Annexure-11 granting liberty to the petitioner to prefer statutory appeal against the dismissal order passed against his mother. In the light of the order dated 17.8.2005, Annexure-11 petitioner preferred appeal which was dismissed under order dated 3.1.2006 bearing Memo No. 103 dated 18.1.2006, Annexure-13 holding that there is no material on record to disprove

the finding contained in report dated 10.5.1995, 7.7.1997 that transfer certificate no. 26/71 is not forged.

3. By filing the present writ petition petitioner has challenged the dismissal, appellate order on the ground that her mother was dismissed from service by the Director, Industries on the ground that she submitted forged transfer certificate at the time of her appointment as Pern Binder. The genuineness of the certificate was enquired into by the authorities and it was found under report bearing memo No. 1819 dated 10.5.1995 and letter no. 1415 dated 7.7.1997 that the transfer certificate bearing no. 26/71 issued from Ramanand High School, Birampur, Bhojpur was never issued from the said school. Aforesaid dismissal, appellate order is being challenged on the ground that very assumption that mother of the petitioner submitted forged transfer certificate no. 26/71 said to have been issued from Ramanand High School, Birampur, Bhojpur is wholly incorrect and misconceived as there was no occasion for the mother of the petitioner to submit any transfer certificate much less a forged transfer certificate at the time of her appointment on the post of Pern Binder under Memo No. 28461 dated 30.12.1976, Annexure-1 issued by the Addl. Director, Industries, Bihar, Patna who issued the appointment letter without ever asking the mother of the petitioner to furnish any transfer certificate. In this connection, it is further pointed out that perusal of the appointment letter dated 30.12.1976, Annexure-1 would indicate that mother of the petitioner was serving the Handicraft Investigation Centre, Digha, Patna as a piece rate worker from before and in consideration of such fact she was appointed at the centre on the post of Pern Binder on temporary basis for six months. Later considering her satisfactory service at the centre she was regularized by the Addl. Director, Industries under order bearing Memo No. 15026 dated 4.6.1977, Annexure-2. With reference to Annexures-1, 2 it is asserted that mother of the petitioner was never asked to produce any transfer certificate either at the time of her initial appointment on temporary basis or at the time of her regularization in the service of the centre. In this connection, it is also pointed out that appointment, regularization was made considering the fact that mother of the petitioner was serving the centre from 1971 as a piece rate worker. Learned counsel for the petitioner further submitted that in course of time considering her satisfactory service mother of the petitioner was also promoted on the post of Skilled Artisan, which fact would appear from Memo No. 2627 dated 2.9.1988 issued by the Under Secretary to the Government, Annexure-8 to this application in connection with the treatment of her daughter. Learned counsel further submitted that in the year 1992 Secretary, Communist Party of India Sri Ashok Kumar, Sadakat Ashram informed the Director, Industries Department that the mother of the petitioner has been appointed on the post of Pern Binder on the basis of transfer certificate bearing no. 26/71 granted by the Principal, Ramanand High School, Birampur, Bhojpur, which is a forged transfer certificate and her appointment is required to be cancelled on the ground that she submitted forged transfer certificate at the time of her appointment. In the light of the representation made by the then

Secretary of the Communist Party of India Sri Ashok Kumar enquiry was made and the transfer certificate no. 26/71 issued from Ramanand High School, Birampur, Bhojpur was found to be forged under report bearing Memo No. 1819 dated 10.5.1995 and letter no. 1415 dated 7.7.1997. It is submitted that aforesaid certificate was never produced by the mother of the petitioner either at the time of her engagement as piece rate worker at the centre or at the time of her temporary appointment under order bearing Memo No. 28461 dated 30.12.1976, Annexure-1 or at the time of her regularization under order bearing Memo No. 15026 dated 4.6.1977, Annexure-2 and the assumption of the authorities that it was the mother of the petitioner who produced forged transfer certificate bearing No. 26/ 71 said to have been issued from Ramanand High School, Birampur, Bhojpur is wholly uncalled for. In this connection, it is again submitted that mother of the petitioner was initially engaged as piece rate worker and considering her performance as piece rate worker she was first appointed on temporary basis and then regularized on the post of Pern Binder. It is further submitted that there is hardly any basis for the assumption of Sri Ashok Kumar the then Secretary, Communist Party of India that mother of the petitioner furnished forged transfer certificate no. 26/ 71 at the time of her temporary appointment, regularization.

4. Counsel for the State has opposed the aforesaid submission. He submitted with reference to letter of the Administrative Officer bearing letter no. 603 dated 24.5.1985 Annexure-6 that mother of the petitioner was asked to produce her educational/technical qualification under letter dated 24.5.1985, Annexure-8 so as to enable the authorities to consider her case for promotion, it is submitted that in compliance of the instructions contained in letter dated 24.5.1985, Annexure-6 mother of the petitioner may have submitted forged transfer certificate no. 26771. From perusal of letter dated 24.5.1985, Annexure-6 it does not appear that in compliance of the directions contained in the said letter mother of the petitioner ever submitted any certificate much less forged certificate. Any mischief maker, may have submitted forged certificate for which mother of the petitioner could not have been dismissed from service unless it was established that it was mother of the petitioner furnished the forged certificate.

5. From the records appended with the writ petition as also the contents of the counter affidavit, I am satisfied that mother of the petitioner has not produced any transfer certificate, much less the forged transfer certificate. In the circumstances, the order dismissing the mother of the petitioner from service for producing forged certificate as also the appellate order dismissing the appeal filed against the said order is wholly arbitrary, infracting Article 14 of the Constitution and is accordingly, set aside. Mother of the petitioner having already died on 20.2.2005 arrears of salary of the mother of the petitioner till the date of her superannuation or death, whichever is earlier as also the retiral dues admissible to her be paid to the petitioner within reasonable time of production of this order before the Director, Industries, Bihar. The writ application is,

accordingly, disposed of.