
(2010) 09 PAT CK 0057

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9963 of 2003

Lakshman Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0057

Final Decision : Allowed

Judgement

Jyoti Saran, J.—As the two writ petitions raise common issues, hence they have been made analogous and have been taken up together for hearing and disposal on merits.

2. Heard learned Counsel appearing on behalf of the petitioners and learned Counsel appearing on behalf of the State.

3. The prayer made on behalf of the petitioner in C.W.J.C. No. 11771 of 1998 is for setting aside the charge sheet dated 31.7.1996 passed by the Deputy Collector, Revenue Division, Ara issued after 28 years of the appointment of the petitioner, inter alia, on grounds of his appointment not being regular. A consequential prayer for salary was also made. During the pendency of the writ petition an order of removal of the petitioner dated 20.2.1999 was passed which was brought on record through Annexure-31 and was also sought to be challenged by filing an interlocutory application bearing I.A. No. 3287 of 1999 which was allowed by a Bench of this Court vide order passed on 18.3.1999. However, the prayer for stay was refused. The petitioner at the stage of his removal was holding the post of Clerk.

4. The petitioner of C.W.J.C. No. 9963 of 2003 had filed the writ petition seeking, inter alia, a direction to the respondents for payment of his post retiral benefits having superannuated with effect from 31.7.2002 while holding the post of Circle Clerk on attaining the age of 58 years. During the pendency of the proceedings an order in purported exercise of power under Rule 43(b) of the Bihar Pension

Rules was passed on 5.3.2004 withholding the entire post retiral benefits of the petitioner and which was brought on record vide Annexure-11 to I.A. No. 5023 of 2004 and was sought to be challenged and which prayer of the petitioner was allowed vide order passed on 18.9.2008.

5. For the reason that the issue raised in the two writ petitions are common, I shall be referring to the facts eloquent from C.W.J.C. No. 11771 of 1998 and the Annexures thereto unless specified by specific reference to any pleadings made or Annexures appended to C.W.J.C. No. 9963 of 2003.

6. The petitioner initially was appointed against the post of Moharrir upon selection made by a Committee pursuant to an advertisement in the then pay-scale of Rs. 85-120/- and posted in the Revenue and Land Reforms Department vide order dated 28.7.1966, on which post the petitioner joined on 1.8.1966. Unfortunately the petitioner was retrenched from services vide order dated 18.6.1967 with effect from 25.5.1967. The orders of appointment of the petitioner and his removal have been placed on record of the proceedings vide Annexure-3 Series. The petitioner was registered with the District Employment Exchange, Ara, Sahabad through the Economic Cell of the Finance Department, Government of Bihar and was informed as such vide letter dated 16.2.1968 (Annexure-4). On the basis of a requisition placed by the Water Resources Department in its Irrigation Revenue Establishment, the petitioner was called to attend a written test for appointment against the post of Clerk/Circle Clerk/Tahsildar vide letter dated 23.12.1968 (Annexure-5) and pursuant thereto the petitioners appeared in the same on 5.1.1969. The petitioners were duly selected by the Committee along with others and which fact is manifest from the proceedings dated 6.1.1969 (Annexure-6). The name of the petitioner Lal Babu Keshari appears at serial No. 60 and that of petitioner Lakshman Singh appears at serial No. 27 of the proceedings of the Selection Committee. The Selection proceedings as contained in Annexure-6 culminated in an order of appointment against the post of Seasonal Clerk contained in the order dated 17.11.1969 (Annexure-7). The name of the petitioner Lal Babu Keshari appears at serial No. 7. A formal order of posting followed the appointment order posting the petitioner against the post of Circle Clerk in the then pay-scale of Rs. 105-145/- in the Piro Circle vide Memo dated 1.9.1970 (Annexure-8). Subsequently, the petitioner was transferred to Daudnagar Circle vide order dated 11.8.1971 (Annexure-9). The petitioner Lakshman Singh was also appointed and posted in a similar manner. The services of the petitioners was dispensed under the order dated 6.11.1972 upon their failure to pass some test. However upon representations being filed, the State Government upon considerations of the matter took a conscious decision appointing the petitioners and some others against the post of Clerk and communicated the same vide order dated 21.12.1972 as contained in Annexure-10 of the application. A formal order to that effect was issued vide Memo dated 8.2.1973 (Annexure-11). The name of the petitioner Lal Babu Keshari appears at serial No. 6 and petitioner Lakshman Singh appears at serial No. 4 of the order. Vide order dated 24.5.1979 a mass

scale transfer took place in the Divisional Office and Circle Office and whereunder the petitioner Lal Babu Keshari was transferred at Natwaar Circle and petitioner Lakshman Singh was transferred to Jamridh Circle. The order of transfer is present in Memo. Dated 18.11.1976 (Annexure-12). The gradation list was published vide Memo dated 24.5.1979 of the Clerks within the Ara Revenue Division and the name of the petitioner Lal Babu Keshari appeared at serial No. 113 and petitioner Lakshman Singh appeared at serial No. 116 of the gradation list placed at Annexure-13. Under the 4th Pay-Revision, the Pay-Scale of the Government employee was revised under resolution dated 30.12.1981 with effect from 1.4.1981. The petitioner was given time bound promotion to the Junior Selection Pay Scale of Rs. 680-065/- with effect from 1.8.1984. The service book of the petitioner was opened albeit belatedly in the year 1989. Under the resolution dated 18.12.1989 the pay-scale of the Government employees was further revised with effect from 1.1.1986 and as a consequence whereof the scale of Clerk was revised to 1200-1600/-. Pursuant to the said resolution pay-scale of the petitioner Lal Babu Keshari was revised in the Junior Selection Grade Pay Scale of Rs. 1400-2300/- vide Memo dated 26.2.1992 (Annexure-18). Similarly, the petitioner Lakshman Singh was also provided the said Scale with effect from 1.12.1986. A provisional gradation list was published vide Memo dated 28.5.1992 (Annexure-19) of the Circle Clerks and Steno-Typist and in which the name of the petitioner Lal Babu Keshari appears at serial No. 109 and the name of petitioner Lakshman Singh appears at serial No. 200. While the petitioners were working on their respective posts they were individually served with show cause notices containing an identical allegation holding that they were illegally functioning on their respective posts since after the termination of their services from the post of Shishikshu Tahsildar. The show cause served upon the petitioner Lal Babu Keshari is appended to Annexure-20 of the writ application.

7. A similar charge sheet was also served upon the petitioner Lakshman Singh on 29.7.1994 as is stated in paragraph-15 of the writ petition filed on his behalf.

8. The petitioners filed their respective reply denying the allegations. The petitioner Lal Babu Keshari was served with another show cause dated 4.11.1993, this time issued by the Deputy Secretary-cum-Special Officer, Water Resources Department, Patna which was duly replied on 17.11.1993. The show cause notices aforesaid were followed by a formal charge sheet dated 31.7.1996 as contained in Annexure-1. Charge No. 1 indicted the petitioner of having continued on the post of Clerk even after having failed to pass the examination for appointment on the post of Tahsildar. Charge Nos. 2 and 3 indicted the petitioner of suppression of this fact and of having violated the service rules which constituted misconduct. The petitioner filed the reply to the charge sheet and requested to provide the evidence/documents relied upon by the department vide his reply dated 12.8.1996 (Annexure-22). Nothing progressed in the proceedings since after the filing of the response by the petitioner on 12.8.1996, rather a third show cause notice was issued on 15.6.1998 by the Deputy

Collector, Revenue Division Irrigation, Madhubani holding his appointment as illegal. The petitioner again submitted a detailed reply on 20.6.1998. It is the case of the petitioner that by order dated 27.6.1998 (Annexure-2), his salary was stopped, inter alia, on grounds of absence of entries in his service book. It is at this stage that the petitioner Lal Babu Keshari moved this Court through C.W.J.C. No. 11771 of 1998 and by an interim order dated 3.2.1999, the operation of the order as contained in Annexure-2 was stayed. During the pendency of the writ petition the petitioner Lal Babu Keshari was served with an order of removal dated 20.2.1999 which was challenged through I.A. No. 3287 of 1999 and which prayer was allowed on 18.3.1999 but the prayer for stay of the order of removal was rejected.

9. In so far as the petitioner Lakshman Singh is concerned, learned Counsel contends that an ex-parte enquiry behind the back of the petitioner was held about which neither the said petitioner was given information nor any paper supplied and an ex-parte report was submitted on 16.8.1994. No order was passed thereon. The said petitioner was served with another charge sheet on 14.12.1994. The petitioner appeared before the Enquiry Officer pursuant to the second charge sheet on 21.12.1994 and submitted his defence statement denying the charges. It was stated that in view of the finding given by the Enquiry Officer pursuant to the earlier charge sheet and in which the appointment of the petitioner pursuant to the decision of the Selection Committee dated 6.1.1969 was accepted, no further enquiry could be held on the same charges. It was contended that an ex-parte enquiry was held behind the back of the petitioner and report submitted, about which the petitioner gathered information upon receipt of the second show cause notice dated 28.6.1996 enclosing a copy of the enquiry report dated 4.9.1995. Learned Counsel further contends that though the Enquiry Officer has accepted that the petitioner stood transferred but no sufficient time was granted enabling him to attend the proceedings. Thereafter, nothing happened in the proceedings and the petitioner superannuated with effect from 31.7.2002. The retiral benefits of the said petitioner having been withheld by the respondents forced him to file the present writ petition for payment of his retiral benefits. It is while the matter was pending consideration before this Court that the respondents chose to issue the impugned order dated 5.3.2004 in purported exercise under Rule 43(b) of the Rules holding that the petitioner had obtained appointment by committing fraud and as the other petitioner Lal Babu Keshari had been removed from service, hence this petitioner would also not be entitled to any post retiral benefits. The Director, Revenue Administration, while passing the matter candidly accepted that no final order was passed in the departmental proceedings during the service period of the petitioner. The said impugned order was sought to be challenged by filing an interlocutory application and which has since been allowed vide order dated 18.9.2008.

10. Learned Counsel for the petitioners has made the submissions in support of the relief prayed in the respective writ petitions. Learned Counsel submits that

the appointment of the petitioners had been made after following the procedure fixed for regular appointment. He submits that though the nomenclature of the post was seasonal but the continuity of the services for a period ranging almost 25 years by itself demonstrated its permanency and justified the entitlement of the benefits attached to a regular post. Learned Counsel further submits that there is no finding by the Enquiry Officer that the appointment and continuation of the petitioners was in any manner wreathed by way of fraud, misrepresentation or by adoption of wrong practices by the petitioners. Learned Counsel, with reference to the appointment order placed at Annexure-7 dated 17.11.1969, the order dated 8.2.1973 (Annexure-11), the order dated 9.8.1974 (Annexure-A to the counter affidavit) submits that the same were issued pursuant to the conscious decision of the State Government communicated vide letter dated 21.12.1972 as contained in Annexure-10. Learned Counsel further submits that although 10 persons were appointed under the order dated 17.11.1969 and continued vide order dated 21.12.1972 but except the two petitioners herein who have been picked up, the others have been allowed to continue. He thus submits that the action of the respondent-authorities in allowing the petitioners to continue on their respective post for almost 25 years, pursuant to the orders passed by the appropriate competent authorities of the State Government and then taking the impugned action in isolation is arbitrary and discriminatory to the core. He submits that the plain reading of the order of appointment itself demonstrates that though the nomenclature of the post was Seasonal Clerks but no fixed time was mentioned in the appointment order and the petitioners continued on their respective posts without any complaint or objection. He submits that even if the petitioners are treated as temporary Government servant, yet they are entitled to the retiral benefits on the basis of their service tenure. He submits that the orders impugned have been passed without flowing the mandatory provisions of Rule 55 of the Central Civil Services Rules and without affording reasonable opportunity of hearing to the respective petitioners. He submits that the only doubt being raised at the fag end of the career of these petitioners is their respective continuity on their posts after having been appointed in a seasonal capacity although the order of appointment as contained in Annexure-7 has neither been challenged nor withdrawn.

11. Learned Counsel submits that in the light of the corroborative evidence available on the record of the proceedings demonstrating the valid appointment of the petitioners under the order dated 17.11.1969 and 8.2.1973 and their respective continuity, and which has not been seriously disputed by the respondents, the onus was on the respondents to prove it otherwise. Learned Counsel thus submits that the impugned action of the respondents in raising unwarranted doubts and objections over the respective appointment of the petitioners and requiring the petitioners to dispel the same is patently arbitrary and abuse of powers by the respondent-authorities. He submits that a plain reading of the impugned order appended in the case of Lakshman Singh itself demonstrates the insensitive, casual and the mechanical manner in which the

right vested in the petitioner of deriving post retiral benefits is sought to be nullified. He submits that even the impugned order dated 20.2.1999 passed in the case of Lal Babu Keshari demonstrates that the disciplinary authority has not disputed the appointment of the petitioner as a Seasonal Clerk rather has doubted his continuity and on that basis has removed him from service. Learned Counsel thus submits that the orders impugned in the two writ petitions are manifestly attended with non-application of mind, passed in a mechanical manner and infested with arbitrariness and perversity.

12. Mr. J.P. Karn, learned Additional Advocate General No. 9 opposing the prayer made by the petitioners, submits that the issues raised are disputed and cannot be entertained in a writ petition. He submits that there is no procedural irregularity in the proceedings which has culminated in the impugned orders requiring no interference by this Court in exercise of power under Article 226 of the Constitution of India. Learned Counsel, with reference to a Judgment passed by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, submits that being a case of an illegal appointment and illegal continuation, no case for indulgence has been made out by the writ petitioners.

13. I have heard learned Counsel appearing on behalf of the parties and perused the materials on record. The only issue which requires consideration by this Court is whether or not the appointment of these petitioners against the post of Seasonal Clerk was valid and made after following the procedures and whether their respective continuation has lawful support.

14. The respondents have filed separate counter affidavits in each of the two cases. However, the stand is universal. Upon going through the statement made in the respective counter affidavits it is manifest that the respondents do not doubt the initial appointment of these petitioners as a seasonal employee. What they doubt is their continuity. The stand taken in each of the counter affidavits by the respondents is common. The respondents have admitted that these petitioners were initially appointed as Seasonal Clerk vide order dated 17.11.1969 (Annexure-7) pursuant to the selection conducted vide Annexure-6. It is next contended that as the appointment was seasonal, hence it was made for specific and limited period. It is contended that the petitioner was thereafter appointed on the post of Trainee Tahsildar in which an examination was conducted which the petitioner failed and thus the recommendation contained in Annexure-7 came to an end. The respondents go on to submit that upon the representation made by the petitioner, the matter was reconsidered and appropriate directions were issued for their respective appointment against available vacancies which is present at Annexure-10 and pursuant whereunto the petitioners along with others were appointed afresh on seasonal basis against the post of Seasonal Clerk vide Annexure-11 for one season only. It is stated that thereafter vide letter No. 6647 dated 9.8.1974 (Annexure-A), the next seasonal appointment of the petitioner was issued. It is finally contended that the issue

was examined in a departmental proceeding and as the petitioner failed to produce any letter of regularization, hence the impugned order dated 20.2.1999 (Annexure-31) was issued discharging the petitioner from service. The gist of the contentions of the respondents can be found in paragraph 3 and 5 of the counter affidavit filed in the case of Lal Babu Keshari.

15. Similar is the stand taken by the respondents in the counter affidavit filed in the case of Lakshman Singh with the difference that in this case the petitioner had already superannuated and completed his service tenure. Faced with this situation the respondents for the same reason and on same grounds issued the impugned order dated 5.3.2004 (Annexure-11) in purported exercise of power under Rule 43b of the Bihar Pension Rules withholding his entire post retiral benefits.

16. As I have observed earlier, the initial appointment of these petitioners has not been doubted by the respondents nor any objections raised. From a perusal of the notice dated 23.12.1968 placed at Annexure-5, the proceedings of the Selection Committee dated 6.1.1969 placed at Annexure-6, it is clear beyond any shadow of doubt that the selection of these petitioners had been made pursuant to a valid selection process conducted by a duly constituted Selection Committee. The selection was followed by an order of appointment dated 17.11.1969 (Annexure-7) against the post of Seasonal Circle Clerk. Under the order dated 6.11.1972 the services of these petitioners had been dispensed with. However, upon representation being filed on their behalf and upon being duly considered, the State Government took a conscious decision to appoint them against vacant post of Clerk. The decision taken by the State Government can be found in the letter dated 21.12.1972 of the Deputy Secretary-cum-Special Officer, Irrigation Department placed at Annexure-10. The name of the petitioners also finds mention therein. Following the decision of the State Government as contained in Annexure -10 a formal order of appointment was issued bearing Memo No. 685 dated 8.2.1973 placed at Annexure-11 to the writ petition. Needless to mention that the name of the petitioners again finds place in the memo dated 8.2.1973. The veracity and the genuineness of the orders placed at Annexures 10 and 11 have not been doubted by the respondents rather have been admitted. Even the decision taken at the level of the State Government as referred to in Annexure-10 has not been objected to. All that the respondents contend is that the said appointment was for a limited period. The said contention of the respondents is not reflected from the orders placed at Annexures 10 and 11. It is nowhere to be "found in either of the two orders that the appointments were made for a limited period rather the wordings of Annexure-10 is very clear that the appointments were being made against a post of Clerk. Following the orders as contained in Annexures 10 and 11, a formal order of appointment was issued in favour of the petitioner Lal Babu Keshari dated 9.6.1974 which is placed at Annexure-A to the counter affidavit and which again does not show that the appointment was made for a limited period. The petitioners since after their respective appointments were transferred and posted like regular employees and

which fact is eloquent from the order of transfer as contained in Annexure-12. The gradation list dated 24.5.1979 (Annexure-13) also certifies the appointment and continuation of the petitioners with their names appearing at serial Nos. 113 and 116 respectively. That the service book of the petitioners were opened, has not been challenged by the respondents who also do not question the grant of Junior Selection Grade and the replacement scale pursuant to the pay-revision consequent upon the time bound promotion to the petitioners. The substantive nature of the appointment of the petitioner is further fortified from the gradation list dated 28.5.1992 (Annexure-19), with the name of the petitioners appearing at serial Nos. 109 and 200 respectively. In fact it is at this stage that the respondents decided to issue the impugned memo of charges against the petitioner Lal Babu Keshari dated 19.4.1993 (Annexure-20) on a completely misconceived charge of having continued in service in some manner or the other. Here again the appointment of the petitioner vide memo dated 9.4.1974 has not been questioned. The case of petitioner Lakshman Singh is even more interesting. The said petitioner has superannuated while the proceeding initiated by the respondents regarding his alleged illegal continuity retrained pending. When the said petitioner moved the present writ petition, the impugned order withholding his retiral benefits as contained in Annexure-11 was passed without even passing any order in the pending proceedings.

17. I am in no manner of doubt that the issue raised by the respondents questioning the continuity of the petitioner is palpably unreasonable, an act of gross arbitrariness and an absolute abuse of executive power. The petitioner having been duly appointed pursuant to the selection process conducted by a Selection Committee and continued in service under a conscious decision taken by the State Government as contained in Annexure-10 and which order of appointment nowhere indicates that the same was meant for a specific period the objection raised at such belated stage is preposterous. The petitioners having continued on their respective post with no complaints regarding their discharge of duties and during which they have not only earned promotion but have been also visited with replacement scale under the revised scale of pay coupled with all important fact that their name finds mention in gradation list of the clerks, the service book having been opened, it does not lie in the mouth of the respondents to question their continuation or to withhold the service/retiral benefits. No role can be attributed to these petitioners and in absence of any material connecting the continuity of the petitioners with fraud, misrepresentation or the like, it is indubitable that the orders impugned in the respective writ petitions are manifestation of arbitrary exercise of power and cannot be sustained.

18. I have thus no hesitation in holding that there is no infirmity in either the appointment of the petitioners or their respective continuity in service.

19. In the result, the writ petitions are allowed. The orders impugned in two writ petitions are set aside. The petitioner Lal Babu Keshari shall be deemed to be in service until his age of superannuation and would be entitled to all consequential

reliefs including the payment of his post retiral benefits. In so far as the petitioner Lakshman Singh is concerned, as he has already superannuated, he shall be entitled to all his retiral benefits. The petitioners shall be entitled to statutory interest as found admissible on their post retiral dues, which shall be calculated until the date of the respective payments.

20. The orders be carried out within a period of three months from the date of receipt/production of a copy of this order.

21. In the circumstances, however, there shall be no order as to costs