

(2001) 03 PAT CK 0082
In the Patna High Court
Case No : C.W.J.C. No. 9147 of 2000

Mahendra Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Citation : (2001) 4 PLJR 29

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—By office order, dated 18.11.1997 issued by the Director, Secondary Education, 31 persons working on Class-III and Class-IV Posts in the different offices under the Regional Deputy Director of Education, Tirhut Division were removed from service on the ground that they were appointed illegally and irregularly. Petitioner No. 1 who, at that time, was working as Clerk in the Office of the District Superintendent of Education, Vaishali was at serial No. 17 in the list of the employees removed from service. Petitioner No. 2, who was working as Clerk in the Office of the Subdivisional Education Officer, Hajipur, was at serial No. 13 in that list. Petitioners 3 and 4 were at that time working as Orderlies. Petitioner No. 3 was in the office of Sub-divisional Education Officer, Hajipur and he was at serial No. 29 and Petitioner No. 4, who was in the Office of the District Superintendent of Education, Vaishali, was at serial No. 30 among the removed employees.

2. The Office order, dated 18.11.1997 came under challenge before this Court in several writ Petitions, filed in batches, by persons removed from service by that order. The writ petition filed by the present 4 Petitioners was registered as C.W.J.C. No. 717 of 1998. By order, dated 27.08.1998 (Annexure-13), passed by this Court in that writ petition, the order of the Director, was quashed in respect of the four Petitioners but it was left open to the concerned authorities "to decide the matter afresh in accordance with law after due opportunity to the Petitioners

of hearing".

3. Following the order passed by this Court, the Director, Secondary Education passed a long and detailed order, dated 14.06.2000 after hearing the Petitioners and considering all the relevant materials on record. By this order, he once again held that the Petitioners were appointed in a manner contrary to the rules and executive instructions in force at the material time and their appointment was, therefore, illegal and invalid. He, accordingly, passed the order of their removal from service. This writ petition has been filed challenging the order, dated 14.06.2000 passed by the Director, Secondary Education.

4. But before proceeding to examine the case of the Petitioners on merits, it would be appropriate to take note of another aspect of the matter on which considerable reliance has been placed by the Petitioners in support of their case.

5. It may be noted here that about a fortnight before C.W.J.C. No. 717 of 1998 (filed by the four Petitioners) was disposed of by order dated 27.08.1998, the same Hon"ble Judge, by an order passed on 12.08.1998 (Annexure-19) had allowed C.W.J.Cs. No. 667 and 6074 of 1998 filed by another batch of persons removed from service by the same office order, dated 18.11.1997. What is, however, of significance is that by the order passed in C.W.J.Cs. No. 667 and 6074 of 1998, the impugned order was quashed in so far it related to the Petitioners of those two writ petitions but with no liberty to the concerned authorities to reconsider the validity of their appointment. The State preferred appeals being L.P.As. No. 964 and 965 of 1999 against the order, dated 12.08.1998 passed in the aforementioned two writ Petitions. Both the appeals were dismissed by a Bench of this Court on 30.08.1999 (Annexure-20). The State then took the matter to the Supreme Court where the SLP is reported to have been dismissed in limine. The result is that the Petitioners in the aforementioned two writ petitions being C.W.J.Cs. No. 667 and 6074 of 1998 got reinstated in service while the four Petitioners, who were removed from service by the same impugned order dated 18.11.1997 continue to remain out of service.

6. Dr. Sadanand Jha, learned senior counsel appearing on behalf of the four Petitioners laid great stress on this aspect of the matter. learned Counsel submitted that except the four Petitioners, almost all the 27 persons, removed from service by order, dated 18.11.1997, were reinstated as a result of the different orders passed by this Court and the four Petitioners were the only unlucky ones to remain out. learned Counsel submitted that appointments of all the 31 persons were made in the same manner and they were also removed from service by the same order. Therefore, there was no reason, according to the learned Counsel, to subject them to different treatment.

7. The submission, though apparently attractive, seems to overlook certain important distinguishing features in case of each of the 31 persons covered by the order, dated 18.11.1997. It is significant to note that while allowing C.W.J.Cs. No. 667 and 6074 of 1998, it was noticed in order dated 12.08.1998 that the

Petitioners, in those two writ petitions, had continued in service for more than 10 to 15 years. On the other hand, the four Petitioners, on their own showing, had been in service for periods ranging from 4 years to 7 years. Now, it cannot be denied that unless there be something fundamentally wrong in the manner of appointment such as fraud etc., the long period of service cannot be completely overlooked and it may sometimes tilt the balance in favour of the individual employee. I am, therefore, of the view that there was an important difference in the case of the Petitioners in C.W.J.Cs. No. 667 and 6074 of 1998 and the case of the present Petitioners in C.W.J.C. No. 717 of 1998. It was this difference that led the Court to leave it open to the concerned authorities to reconsider the case of the Petitioners while giving no such liberty in the case of the Petitioners in the other two cases and I find myself in respectful agreement with the two courses adopted by the Hon"ble Judge in the facts of the two cases.

8. I am, therefore, further of the view that regardless of the apparent similarity arising from the fact that all the persons were removed by the same order, it would be required to go into the details of each case in order to test the validity of the removal of each of the four Petitioners. And if one goes into the details, it would become evident that even the case of the present four Petitioners is not identical or even similar.

9. In the writ petition, it is suggested that appointments to different Class-III and Class-IV Posts in the offices under the Regional Deputy Director of Education, Tirhut Division used to be made at his level on the basis of local advertisements. It is stated that for making appointments on those posts, an advertisement was made in the Bihar Gazette, dated 14.01.1987. Petitioner No. 1, made application in response to that advertisement. He was selected on the basis of an interview, and was appointed as a Clerk by appointment letter, dated 17.11.1990. The appointment letter is not on the record and it was sought to be explained that earlier Petitioner No. 1 was asked to submit his appointment letter for verification and as demanded by the authorities, he had submitted his appointment letter to them. The Court, however, finds it rather surprising that though, a Class-III employee, he did not consider it prudent to retain in his possession even a photo-copy of his appointment letter.

10. In respect of Petitioner No. 2, it is stated that on 30.12.1992, an advertisement was issued for appointment on Class-III Posts. Petitioner No. 2 applied in response to that advertisement and after due selection, he was appointed by appointment letter, dated 25.02.1993 (Annexure-2). It is stated in the appointment letter that he was being appointed on a temporary basis, till a regular arrangement was made and further that his appointment was a purely temporary arrangement and it could be terminated without any prior notice.

11. In respect of Petitioners 3 and 4, who were working on Class-IV Post, it is stated (in paragraph-11 of the writ petition) as follows:

The Petitioners No. 3 and 4 were appointed on Class-III (sic) and Class-IV Posts

in similar manner by the Regional Deputy Director of Education, Tirhut Division on 04.04.1991 and 05.03.1992 respectively.

12. The appointment letters of Petitioners No. 3 and 4 are at Annexures-3 and 4. In the appointment letter of Petitioner No. 3, which was issued on 04.04.1991, it was stated that the appointment was purely temporary and it could be terminated at any time.

13. The appointment letter of Petitioner No. 4, which is dated 05.03.1992 is somewhat extraordinary. It is stated therein that Petitioner No. 4 was appointed on an ad hoc and provisional basis till a permanent arrangement was made on the basis of the directions contained in Letter No. 5089591, dated 20.09.1991 issued by the Deputy Secretary in the Chief Minister's Secretariat. This, to my mind, puts the case of Respondent No. 4 in a class apart. There is nothing to show how the Chief Minister's Secretariat would come in the picture in the matter of appointment on a Class-IV Post in an office under the Regional Deputy Director of Education, Tirhut Division and to me it appears that it was a clear case of unwarranted and undesirable interference in public employment in derogation of the constitutional mandates. It is all the more regrettable as the interference was made by the office of the highest governmental functionary. The Director, Secondary Education has considered the case of each of the four Petitioners at great length. He has taken into consideration the facts and circumstances relied upon by the Petitioners in support of their respective cases and he has also taken into account the report of the Regional Director of Education, Tirhut Division, according to which, no records in connection with those appointments were available in the office. He has also described in detail the procedure of appointments, which were in force from time to time, during the relevant period, on the basis of the instructions and circulars issued by the Education Department and the Personnel and Administrative Reforms Department of the State Government. On a detailed consideration of all the relevant materials, he has come to the conclusion that all the appointments were invalid and illegal for the reason that those were made without following the appointment procedure in force at that time. The Director has pointed out that the appointment procedure was apparently breached in several ways, inter alia, such as the failure to take roster clearance, the failure to form a Selection Committee, the failure to issue an advertisement and the failure to prepare a select list etc. In case of Petitioner No. 2, it is pointed out that at the time of his appointment, an appointment to a Class-III Post could only be made by a Committee presided over by the District Magistrate.

14. However, it is to be noted that most, if not all the inference are arrived at because no records relating to those appointments were available in the office of the Regional Deputy Director of Education, Tirhut Division. On the other hand, it is expressly averred on behalf of Petitioners No. 1 and 2 that their appointments were made on the basis of advertisements followed by due selection on the basis of interview. I find it difficult to see how those averments can be effectively

refuted when, admittedly, no records are available in the Office.

15. Another aspect of the matter which cannot be overlooked is that there is no evidence of any fraud or foul play in the appointments of Petitioners 1, 2 and 3.

16. Petitioner No. 1 had worked for seven years before he was removed from service by order, dated 18.11.1997. Petitioner No. 2 for four and half years and Petitioner No. 3 for six and half years. There being no case that these appointments were fraudulent or were obtained on the basis of fake or forged documents etc. All that can be said is that certain procedural requirements were not complied with and as a result these appointments were irregular but having regard to the long years of service, put in by the Petitioners, I find it rather difficult to uphold the order of their removal from service at this stage.

17. The case of Petitioner No. 4, however, stands on a different footing. It is seen above that his case was not a case of irregular appointment but his appointment was procured on the basis of a direction from the Chief Minister's Secretariat. Upholding such appointment, to my mind, would give wrong message and would amount to putting premium on such unhealthy practices. I am, therefore, not inclined to interfere with the order of removal from service in so far as Petitioner No. 4 is concerned. But so far as Petitioners No. 1, 2 and 3 are concerned, the impugned order passed by the Director is set aside and they are directed to be reinstated on their respective posts. The reinstatement would be with continuity of service but without back wages.

18. In the result, this writ petition is dismissed in so far as Petitioner No. 4 is concerned but is allowed in respect of Petitioners No. 1, 2 and 3.

19. There will be no order as to costs.