
(2003) 09 PAT CK 0113
In the Patna High Court
Case No : C.W.J.C. 6449 of 2003

Maresh Choubey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Citation : (2003) 3 BLJR 2002 : (2004) 1 PLJR 159

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Dilip Kumar Tewari, for the Appellant; JC to GP 8, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Counsel for the parties.

2. This writ application has been directed against the order, as contained in Annexure-33, whereby and whereunder the petitioners have been terminated from services.

3. The facts of this case lay in narrow compass.

4. According to the case of the petitioners, the State Government decided to fill up 50% vacancies in different high schools, and the Regional Deputy Director of Education, Patna Division, Patna, appointed the petitioners as Assistant Teachers in Shaheed Rajendra Prasad Singh Government High School, Gardanibagh, Patna, in between 1982 to 1989 vide different notifications on ad hoc basis for a period of three months and due approval of the Director, Secondary Education, Government of Bihar, was obtained. The period of appointment was, however, extended from time to time with due permission of the Director and thus, the petitioners continued to work on the post of Assistant Teachers in the school for more than ten years and for the first time, in the year 2000, on the basis of audit report, so-called notices were served upon them, calling upon them to explain as to why they should not be terminated. The petitioners approached this Court

against the show-cause notices in C.W.J.C. No. 11644 of 2000. The aforesaid writ application was, however, disposed of by this Court by order, as contained in Annexure-24 directing the petitioners to file their respective representations before the authority concerned and at the same time, this Court observed that since the petitioners were allowed to continue in services for several years, the audit objection was without any basis and further, in any view, it will not be just and proper to terminate their services after 18 years. Pursuant to the direction of this Court, the petitioners filed their representations before the authority concerned. The authorities vide order, as contained in Annexure 26, decided not to take any action against the petitioners since they continued in services for pretty long time and sent a copy of the same to the Accountant General, Bihar, Ranchi. In the meantime, again show-cause notices were served on the petitioners in the same term, as referred to above. They again came to this Court in C.W.J.C. No. 3055 of 2003 and this Court vide order, as contained in Annexure-30, disposed of the writ application directing the Secretary Incharge, Secondary Education, to take final decision in the matter by speaking order after taking into account the relevant facts and circumstances including the recommendation of the Director, Secondary Education, in accordance with law within a period of six weeks of receipt of copy of the order. This Court, however, observed in the following terms :

"Needless to clarify that in view of the above order the petitioners are not required to file another show-cause/explanation pursuant to Annexures 27, 28 and 29."

5. Pursuant to the order passed by this Court, as contained in Annexure 30, the Secretary, Secondary Education, took final decision in the matter and terminated the services of the petitioners holding their appointments as irregular/invalid vide order, as contained in Annexure-33, giving rise to this writ application.

6. Mr. Rajendra Prasad Singh, learned Counsel appearing on behalf of the petitioners, submitted that it would be manifest from the order impugned that the appointments of the petitioners were not found to be ab initio void nor the Secretary of the Department has anywhere held that the authority, who appointed them even on ad-hoc basis, was not the competent authority nor it is stated that they were appointed without approval of the State Government. Mr. Singh, however, points out from the order impugned that the Secretary of the Department has found the appointment of the petitioners only irregular saying that the period of appointment on ad hoc basis could not have been extended, It is further submitted by Mr. Singh that the petitioners have continued to work on the post of Assistant Teachers for more than a decade and now they should not be terminated and the order impugned, therefore, must be held to be arbitrary, unreasonable and wholly without jurisdiction.

7. A counter-affidavit has been filed on behalf of the respondents. It is stated that the appointments of the petitioners were wholly without jurisdiction and ab initio void. It is also stated that the period of their appointment could not have

been extended. Learned Counsel appearing on behalf of the State, however, points out from the order impugned that in view of the ban imposed by Personnel and Administrative Reforms Department, such appointments were impermissible on ad-hoc basis.

8. It is not in dispute that the petitioners were appointed by the Regional Deputy Director of Education, Patna Division, Patna and their appointments were approved by the Director, Secondary Education and from time to time, the period was extended allowing the petitioners to work for more than 10 years on the post of Assistant Teacher in the school in question. The Secretary of the Department now finding fault with the then Director, Secondary Education and the Regional Deputy Director of Education, who made such appointments on ad hoc basis, terminated the petitioners.

9. Since the petitioners have continued in services for more than a decade, the infirmities/irregularities found to have been committed in the appointment of the petitioners on ad hoc basis stood cured, as the petitioners were allowed to continue from time to time and the authorities, thus, acquiesced in the infirmities, if any. Termination of Government servant after continuance for more than a decade is not being approved by this Court nor by the apex Court.

10. I have noticed above that this Court while disposing of the earlier writ application, has also observed that it would be unjust to terminate the petitioners after more than a decade.

11. In the given facts and circumstances of the case of the petitioners, the authorities would have considered the case of the petitioners equitably, as they continued in services for several years. This Court by applying equity in the case of Abhay Kumar Pandey Vs. The State of Bihar and Others, has held the order of termination as illegal and wholly without jurisdiction, as he was terminated after more than a decade. The decision of this Court, as rendered in the case of Abhay Kumar Pandey (supra) has been affirmed by the apex Court in Special Leave to Appeal No. 10405 of 2001. Again this Court in the case of Sitendra Kumar Singh v. State of Bihar and Ors., in CWJC No. 4702 of 2003 and its analogous cases has taken the same view, where a large number of employees of the Health Department of the State Government were terminated after their continuance in services for more than a decade or two and this Court held that in such cases, equities were required to be applied to save such appointments even when the same is held to be invalid and irregular.

12. Having heard Counsel for the parties and considering the facts and circumstances of the case and in view of the legal propositions, as noticed above, the order impugned, as contained in Annexure 33, is held to be highly arbitrary, unreasonable and without jurisdiction and the same is not sustainable in law.

13. In the result, this application is allowed, order impugned is set aside and the petitioners are directed to be reinstated with all consequential benefits.

14. No order as to costs.