

(2016) 04 PAT CK 0143

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7456 of 2014

Manjeet Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 941

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Anurag Saurav, Advocate, for the Petitioner; Mr. Sunil Kumar Mandal, SC 24, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Ajay Kumar Tripathi, J.(Oral)—Petitioner pursuant to advertisement no.1 of 1997 applied for consideration and appointment on the post of a Health Visitor. There were 148 vacancies, which were required to be filled up. Petitioner was selected and he found his name at serial no.2 of the merit list.

2. Despite such a selection and position of the petitioner, his appointment did not come through because there was some doubt raised with regard to authenticity of the training certificate produced by the petitioner. Petitioner was left with no option but to approach the High Court by filing CWJC No.7441 of 2000. The writ application was allowed in favour of the petitioner vide order dated 24.10.2008. A copy of the order is Annexure- 4.

3. The State Government did not accept the decision of the learned Single Judge. They decided to challenge the said order by filing LPA No.326 of 2009. The LPA was dismissed and the order of the learned Single Judge was upheld with some modification. The relevant part of the order is reproduced herein below :-

"11. The next question which arises for consideration is as to the relief admissible to the petitioner. The learned Single Judge has directed for the

petitioner's appointment, but has denied to the petitioner salary for the past period, but has given notional benefits. We are of the view that the same needs modification in the interest of justice, even though the writ petitioner has not preferred appeal. The petitioner shall be entitled to the salary with effect from the date of disposal of the writ petition, inter alia, for the reason that, we are clearly of the view that the present appeal is wholly unjustified and unmerited, causing clearly avoidable harassment to the petitioner, and has burdened this Court with a most unwanted matter.

12. In the result, the order of the learned Single Judge is upheld with the modification that the writ petitioner shall be entitled to the appointment with effect from 25.3.2000 (Annexure-6), the date on which the notification appointing others including those junior to the petitioner, was issued. He shall be entitled to his seniority and shall rank just next to the person above him in the merit list. He shall accordingly be entitled to computation of salary notionally and computation of actual money benefit with effect from 24.10.2008. He shall also be entitled to full salary with effect from 24.10.2008, after taking into account the benefit accruing to him notionally till 23.10.2008."

4. It is only thereafter that the petitioner was permitted to join on 4.9.2009.

5. Since the officers of the Department are not willing to apply themselves, therefore, another round of litigation has been created. The petitioner made a prayer before the authorities that even though the petitioner was given a joining letter in the year 2009 after the Division Bench decision in terms of the declaration made by the Division Bench, petitioner for all practical purposes will be treated to be an appointee with effect from 25.3.2000. Still the authorities under the Health Department continue to treat the petitioner as an appointee of 2009 and they are insisting that instead of the Old Pension Scheme being applicable to the petitioner, the New Pension Scheme with contributory fund shall apply to the case of the petitioner.

6. If only the respondent authorities had a re-look on their own appointment letter dated 27.8.2009, contained in Annexure-6, they would not have insisted upon the petitioner being covered by the New Pension Scheme. The respondent Director-in-Chief, Health Services, Government of Bihar was well versed with the facts and the legal battle which has been fought both by the petitioner and the State. The outcome of the said adjudication is also reflected in Annexure-6.

7. Much the and cry is raised at various levels with regard to pendency of litigations before Courts of law and as to how the arrears are creating its own perils. Still nobody in the Government is willing to apply himself as to what is their contribution to the docket explosion plaguing the writ courts.

8. This is one of the cases where litigation has been unnecessarily generated because the authorities will not apply their mind and take a decision despite decisions rendered by a Court of law in previous litigations.

9. The present writ application, therefore, was a totally uncalled for litigation and the petitioner has been unnecessarily compelled to come to the Court of law for a direction which was not required to be given since the status of the petitioner being an appointee of 25.3.2000 is not the subject matter of the dispute any further.

10. The writ application is allowed. The Director-in-Chief, Health Services is directed to ensure that the petitioner will be covered by the Old Pension Scheme keeping in mind what the Division Bench had declared in this regard while dismissing the appeal of the State and this must be done within a period of eight weeks from the date of production of a copy of this order.

11. The Court is also of the opinion that to send a message across to the authorities, who matter, a cost of Rs.50,000/- is imposed upon the Director-in-Chief, Health Services, Government of Bihar. Rs.25,000/- will be payable to the Patna High Court Legal Services Committee and Rs.25,000/- to the petitioner within a period of four weeks from today. The Government will be free to recover that amount from any person, who has been responsible for creating an unnecessary litigation and harassing a citizen to approach a Court of law where there was no necessity in the very first place.

12. Let a copy of this order be marked to the Chief Secretary, Government of Bihar for implementation.

13. The Court would also like to make it clear that the present order has not been passed in isolation but such orders will be passed even in future, if this kind of litigation is thrust upon the Court of law by the State authorities.