
(2012) 10 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 11440 of 2007

Manoranjan Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2013) 1 PLJR 779

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ashok Kumar Singh and Rajendra Prasad, for the Appellant; Dhurjati Prasad, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—With consent of parties, this writ petition has been heard for its final disposal at this stage itself. Counter affidavit and rejoinder thereto are on record. Mr. Ashok Kumar Singh, learned Senior Counsel appearing in support of the writ petition raises a short issue. He submits that petitioner who was appointed as Compiler, pursuant to his success through Bihar Public Service Commission (in short B.P.S.C.) in 1992, was terminated by order dated 13.4.1999, being the order of the Director, Planning Department in the Directorate of Statistics and Evaluation, on the ground of alleged impersonation and that petitioner's name did not exist in the verification list of B.P.S.C. He challenged this before this Court and the matter was remanded for detailed representation and consideration before the Director. It was further observed that if upon reconsideration, it is found that there was need to recall the dismissal order, the Director shall pass such order within the time specified therein. This was the order dated 2.12.2004 passed in C.W.J.C. No. 4684 of 1999. Pursuant thereto, petitioner filed his representation. After hearing the representation, by the impugned order, as contained in Annexure-1, being the order dated 20.8.2005, though the Director clearly given a finding that the charges of impersonation or other irregularity in seeking employment could not

be established, petitioner would be reinstated with immediate effect as a fresh appointee. The grievance is that this order in effect makes the initial order of dismissal bad. If that be so, then the petitioner cannot be treated as new appointee rather it would be reinstated with all consequences.

2. On the other hand, learned counsel for the State submits that petitioner cannot be given either continuity or wages for the period during which he remained dismissed on the principle of no work no pay and secondly because the position was brought about by his own conduct.

3. Having considered the matter, in my view, the writ petition must succeed. From the order as contained in Annexure-3 being the dismissal order and the order ordering his reinstatement as contained in Annexure-1 being the order dated 20.8.2005, it is clear that the authorities have found that the charge on which he has been dismissed could not be established. The case of impersonation and other wrong alleged could not be established. It is because of that the dismissal order was recalled and he was directed to be appointed again.

4. In my view, this clearly shows that the initial order of dismissal was not sustainable. If that be so, why should the petitioner suffer for a wrong dismissal order having been set aside subsequently? So far as the State's plea of no work no pay is concerned, the matter has been settled by the Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., and, in particular, what is stated therein in paragraph-7 thereof, which is quoted hereunder--

.....The normal rule of "no work no pay" is not applicable to cases such as the person one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.....

5. Thus, the plea of "no work no pay" were used by the State as against the petitioner. So far as the second plea of the State is concerned, it was because of the act of the petitioner that he suffered also does not hold water. State is supposed to act in a non-arbitrary manner. The very fact that subsequently it was found that the order of dismissal could not be sustained shows that the first order of dismissal was not based on correct facts and was not the proper order to be passed. If that be so, then even though the petitioner was willing to continue in service, he was dismissed on insufficient grounds, it is well settled that if a person is made to suffer because of wrong order, on the order is set aside equities must be restored.

6. Thus, I have no option but to allow the writ petition and Annexure-1 being order dated 20.8.2005 of the Director in so far as it directs that petitioner would be deemed to be freshly appointed with effect from the date of order is set aside. It is instead directed that the petitioner would be reinstated in service with effect from the date of his dismissal with all consequential benefits including continuity of service and pay. It would be the responsibility of the Director to ensure due

compliance within a period of two months from the date of production of a copy of this order before him. Accordingly, the writ petition is allowed.