
(2007) 08 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 451 of 2006

Md. Aslam Ansari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Citation : (2007) 4 PLJR 279

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the State. This application has been filed by the petitioner for quashing the order of termination issued by the Commandant, B.M.P. 13, Darbhanga, dated 10.12.2002, contained in Memo No. 2898.

2. The petitioner was appointed as Tailor Constable on 12.10.1992. His claim is that his appointment was made on the recommendation of the Selection Committee constituted by the then Commandant B.M.P. He was declared successful in all tests. Petitioner's further case is that there is no prescribed procedure for appointment of Tailor Constable and Police Manual Rules 661, 662 and 663 without application only when appointment is going to be made against a large number of vacancies. In case of five or less appointments, in the light of the Government Department Letter No. 8167, dated 21.6.1976, there is no need of advertisement. Lastly it has been contended that termination of service after ten years is against the principle of equity, as such, impugned order be quashed.

3. Counter affidavit has been filed on behalf of the Commandant, B.M.P. 13, Darbhanga, respondent No. 6, controverting the statement of petitioner. It has been stated that order of termination has been passed in pursuance of the direction of Home Secretary, Government of Bihar, and the Deputy Inspector General of Police (Human Rights), Bihar, Patna. The Commandant, B.M.P. has

passed an order of termination following all formalities and the order is in accordance with law. The petitioner against this order preferred an appeal, which has also been rejected.

4. In the counter affidavit further it has been stated that petitioner was appointed without following the procedure laid down in Police Manual Rules 661, 662 and 663 which are applicable in the appointment of Tailor Constable. The procedure for appointment of Constable and Tailor Constable are similar as their service conditions are similar. The pay scale of Tailor Constable and Constable is same, both have to undergo same basic training after appointment and have to clear by passing all refresher courses. The Tailor Constable also have to handle weapon like L.R., A.K. 47, Insas rifle and Grenade etc. Only difference is that Tailor Constable get extra Rs. 20/- as tailor allowance every month. So far constitution of Selection Committee by Commandant, B.M.P. is concerned, he has no authority to constitute any committee for appointment of Tailor Constable. He neither can directly appoint a Tailor Constable. Petitioner was appointed on 10.12.1992 without any recommendation of duly constituted Board by competent authority. Post of Tailor Constable is a Class III post and appointment has to be made following provision under Police Manual rules.

5. Considering the submissions and pleadings of the parties, I find that petitioner was appointed on the post of Tailor Constable in special circumstance by the then Commandant, B.M.P. 13, Darbhanga, on the direction of the Director General of Police. This appointment was made without following the provision for appointment of Constable/Tailor Constable under Police Manual. The Commandant had no authority to appoint Tailor Constable. Only a duly constituted Board could have recommended for appointment. The vacancies were not advertised as provided under Rules 661, 662 and 663 of the Police Manual. All these provisions were ignored in case of petitioner's appointment. Subsequently, when large number of such illegal appointments were noticed then on the direction of Home Secretary, Government of Bihar, and the Deputy Inspector General of Police (Human Rights), Bihar, notices were issued to illegally appointed persons by the Commandant, B.M.P. Notice was also issued to the petitioner asking him to submit his explanation against termination of service. Petitioner filed his show cause which was considered by Commandant, B.M.P. 13, Darbhanga. Show cause was found unsatisfactory and, thereafter, by order, dated 10.12.2002, vide Memo No. 2898 and Force Order No. 1427/ 2002 petitioner was terminated from service. An appeal was also preferred by the petitioner which is rejected by a reasoned order.

6. Petitioner has placed reliance on a series of unreported decisions whereby termination orders have been quashed considering length of service. Length of service can not be a deciding factor for making an illegal appointment legal. Petitioner has not been able to show that appointment was made following procedure prescribed for the appointment of constable.

7. In support of this contention that advertisement of vacancy for appointment

as provided under Police Manual Rule is not required, reliance has been placed on a decision reported in 2001(4) PLJR 245 (Abhay Kumar Rai & Ors. vs. The State of Bihar & Ors.). In this decision it has been held that in case of five or less vacancies advertisement is not required. Only by calling names from Employment Exchange but following other formalities like, reservation, roster clearance, physical fitness test etc., if appointment is made, it is not illegal.

8. What I find that there is no averment in the writ application that what was the total vacancy and also that names were called from Employment Exchange before issuing order of appointment. This decision has no application in the case of the present case.

9. Termination order was passed only after giving opportunity to the petitioner for explanation which was required considering length of service. I find no illegality in the impugned order. This application is dismissed.