

(2011) 11 PAT CK 0113

In the Patna High Court

Case No : CWJC Nos. 11730, 14502, 14519, 14547 14670, 14746, 14760, 14763, 14809, 14823, 14825, 14854, 14862, 14864, 15040, 16261, 16263, 17681 and 10255 of 2009

Mithilesh Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0113

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. In all these writ application, there is a common feature, namely, all of them were allegedly appointed by Civil Surgeon-cum-Chief Medical Officer, Madhubani on different Class-III and IV posts and were posted in the same Primary Health Centre, Ghoghardiha and have eventually been also removed from service under the order of Civil Surgeon, Madhubani holding their appointment letter to be itself forged and fabricated.

3. Mr. Ajay Kumar Chakraborty, learned counsel for the petitioners, while assailing the common order of termination of service of the petitioners, would submit that the findings given by the authority, namely. Civil Surgeon-cum-Chief Medical Officer, Madhubani in the impugned order that the appointment letters of the petitioners were forged, would not inspire much confidence in view of the fact that the petitioners had continued in service for a long spell of time.

4. Learned counsel for the State have however explained that all the petitioners were given notice and/or opportunity to file their show-cause reply and also produce their original appointment letter on a number of occasions but they did not avail such opportunity and in fact did not produce their original appointment letter due to fear of being prosecuted in a criminal case for staking their claim of continuation in service on a forged document.

5. Mr. Chakraborty, in reply however, would assert that it is absolutely incorrect

to say that the appointment letters of the petitioners were forged letter and according to him, the authorities themselves are now trying to evolve some sort of excuse for removing the petitioners from service. He has also submitted that all the petitioners are still prepared to produce their original appointment letters and if the same is examined by the competent authority, it would become clear that such allegations were unfounded.

6. In the considered opinion of this Court, when the petitioners had failed to produce their original appointment letter before the competent authority, they cannot be allowed to assail the reason for termination of their service as non est. Thus, they can also not complain violation of principle of natural justice, inasmuch as, they themselves did not avail the opportunity given to them. Moreover, the plea of long continuation in service is a plea of equity but, forgery, being a fraud played upon the authority, would vitiate everything and such detection of fraud at any stage and taking action thereafter cannot be faulted either in fact or in law.

7. Admittedly the ground on which such termination of service of the petitioners has been made is only the forged nature of their appointment letter. Such fraudulent appointments in fact could confer no right in the petitioners and also involving complicated question of fact as with regard to the genuineness or otherwise of their appointment letters cannot be gone into by this Court within the limited parameters of Article 226 of the Constitution of India, as had been held by a Full Bench of this Court in the case of Rita Mishra and others and 12 Other cases Vs. Director, Primary Education, Bihar, and Others, which has been also approved by the Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, wherein it was held that:--

15.....Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no

appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah vs. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab. TC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra vs. Director, Primary Education, Bihar*. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do

not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.

(Underlining for emphasis)

8. Normally, having held that the petitioners" forged appointment letter had conferred them no right to continue in service specially when they had also deliberately withheld the most important evidence and in fact despite opportunity given to them had not produced even their original appointment letter, this Court, in normal course, ought to have dismissed all these writ applications by drawing adverse inference against them.

9. Mr. Chakraborty, however, has submitted that the petitioners should be given one more opportunity, inasmuch as, they are confident that they can still produce their original appointment letter to dispel the doubt of the authorities that they are forged letters. He has in this regard also submitted that since such findings of forgery has been arrived at by the Civil Surgeon of the district, an enquiry in this regard should be entrusted by this Court to a higher authority. This Court, in order to do complete justice between the parties, would give the petitioners a further but last opportunity to produce their original appointment letters before the Director-in-Chief, Health Services who thereafter shall examine all the relevant aspects including the issue as to whether the appointment letters of the petitioners were themselves forged and/or their appointment letters were issued after undergoing prescribed procedure by the competent authority ensuring substantial compliance of the mandate of Articles 14 & 16 of the Constitution of India as laid down by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and in the case of State

of Bihar Vs. Upendra Narayan Singh and Others,

10. These writ applications are, accordingly, disposed of with a liberty to the petitioners to file their individual separate representation giving full details of their manner and continuation of their appointment within a period of three months from today, which must be accompanied by their original appointment letter, whereafter, the Director-in-Chief of the Health Services will individually examine each and every case separately and would record his specific findings with regard to the alleged forgery in their appointment letter. He would also at the same time look into all other relevant aspects relating to the mode and manner of appointment and continuation of the petitioners in service and pass a reasoned order while disposing of the representation of the petitioners.

11. It is, however, made clear that if the appointment letters of the petitioners are not produced by them and/or are found to be forged, there would be no question of their being reinstated in service but, if their appointments are found to be merely irregular, they would be entitled for reconsideration of their cases for reinstatement in service alike 91 others, who were also reinstated in service by the Director-in-Chief in his order contained in Memo No. 117 dated 20.9.2007 passed in view of the order of the Division Bench of this Court dated 26.6.2006 in LPA No. 946 of 2003 The State of Bihar and Others Vs. Purendra Sulan Kit and Others etc. etc.,

12. Such an exercise, however, must be completed by the Director-in-Chief within a period of six months from the date of filing of the representation by the petitioners enclosing their original appointment letter and a copy of this order.

13. With the aforementioned observations and direction, all these applications are disposed of.