
(2007) 02 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 3861 of 2003

Mukesh Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Citation : (2008) 1 PLJR 770

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Mukesh Thakur, for the Appellant; Jawed Akhtar Khan, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the counsel appearing for the State. All five petitioners, in this application, are aggrieved as they have been terminated from their services on the ground that they were not appointed by the competent authority and due process for appointment was not followed. Petitioners have prayed for quashing the orders, contained in memo Nos. 157, 155, 160, 158 and 161, dated 9.8.2002, issued under the signature of Joint Director of Agriculture Institute, Bihar, Purnea, whereby they have been terminated from the posts of Jute Extension Supervisor. Petitioner No. 5 was a Peon in the office of the Assistant Jute Development Officer, Katihar. He has been terminated by order, contained in memo No. 161, dated 9.8.2002, issued by the same authority. Petitioner's case is that they were earlier appointed on temporary basis by the Deputy Director of Agriculture, Jute, Samastipur, Bihar. Subsequently an advertisement was published in the Hindi daily newspaper "Navbharat Times" on 7.8.2004 vide advertisement No. 1/94 and pursuant to the said advertisement they were allowed to continue against the sanctioned vacant post, the Joint Director, Agriculture, Jute, Bihar, Purnea, by his order, dated 31.1.2000 being the competent authority confirmed their appointment from the date of their appointment. Subsequently, the Joint Director, on the direction of

the Director, Agriculture, has terminated the petitioner's from their service though their appointments were confirmed considering the status of their appointment they could not have been terminated simply by issuing show cause notice against them.

2. Counter affidavit has been filed on behalf of the Director, Administration Department of Agriculture, Government of Bihar where it has been admitted that an advertisement was published inviting applications for appointment on the post of Jute Extension Supervisor, but petitioners' appointments were not made on the basis of such advertisement rather they were appointed in the year 1993 itself by the Deputy Director of Agriculture, Jute, Samastipur, Bihar, who was not competent to make any such appointment. The counsel for the State has also submitted that the appointment of the petitioners were not made following the procedure for appointment of Class III posts. The Department of Personnel and Administrative Reforms vide letter No. 3/M-1097/90.K-6, dated 1.1.1993, has given a direction for appointment on the post of Class III employees. These appointments can only be made through a competitive examination to be conducted by the Bihar Public Service Commission and only on recommendation of the Bihar Public Service Commission appointment can be made by the Joint Director, Agriculture, Jute, Purnea. In case of the petitioners, neither procedure was followed nor the competent authority has issued the appointment letters, petitioners have rightly been terminated from their service after issuing show cause notice and assigning proper opportunity.

3. On the last occasion, the counsel appearing for the respondents was directed to seek specific instruction regarding the authority competent to appoint employees on Class III post in the Agriculture Department. The instruction is received by the counsel for the State that Joint Director of Agriculture, Jute, Bihar, Purnea, is the competent authority for appointing on Class III post. Annexure 4 is the order, issued by the Joint Director, Agriculture, Jute, Bihar, Purnea, confirming the appointment of the petitioners from the date of their appointment on these posts, in this view their appointment has been made by a competent authority. Petitioners remained in service since 1993 and after so many years same authority, who has confirmed the appointment, has issued the termination letter on the ground that it was not made by the competent authority. The ground which has been assigned for terminating the petitioners from their service is not sustainable in view of the order contained in Annexure 4, by which the Joint Director, Agriculture, Jute, Bihar, Purnea, has confirmed the appointment of the petitioners on their post right from the date of their appointment.

4. I find that the orders, impugned, contained in Annexure 1 series is fit to be quashed. Respondent No. 4 is directed to reinstate the petitioners forthwith on their post. Let them discharge their duties on their post. So far the payment of salary and other allowance are concerned, since petitioners were illegally terminated from their service, they are entitled for their salaries as well as other

allowances for discharging duty on the post of Jute Extension Supervisor. The arrears of salary and other allowances as well as the consequential benefits for which the petitioners are entitled must be allowed to them within six weeks from the date of production/communication of the order.

5. Accordingly, this application is allowed. Let a copy of this order be handed over to J.C. to S.C. XVII.