
(2006) 05 JH CK 0119
In the Jharkhand High Court
Case No : WP (S) No. 2378 of 2005

Niraj Kumar Singh

APPELLANT

Vs

National Institute of Technology and Others

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Citation : (2006) 3 JCR 37

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Anoop Kr. Mehta and A.B. Mahato, for the Appellant; P.K. Prasad and M. Mishra, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard Mr. A.K. Mehta, learned Counsel appearing for the petitioner and Mr. P.K. Prasad, learned Counsel appearing for the respondent-National Institute of Technology.

2. In this writ application the petitioner has prayed for quashing the letter bearing Ref. No. NIT (EJ/467/05 dated 1.3.2005, whereby respondents have terminated the services of the petitioner.

3. The case was heard on 21.6.2005 and this Court passed the following order:

It appears that while passing the order of termination, the authority has violated the order dated 10.1.2002 passed by this Court in WPS No. 6058 of 2001 subsequently confirmed by a Division Bench of this Court in LPA No. 126/2002.

In my view, this amounts to contempt of this Court.

The authority who passes the order of termination will file counter affidavit and also file a show cause to satisfy the Court as to why the proceeding for contempt be not initiated against him.

As prayed for, put up this case after four weeks.

4. In compliance of the aforesaid order show cause and counter affidavit have been filed.

5. For better appreciation of the case, I would first like to refer the writ petition being WPS No. 6058 of 2001. Late B.P Sinha was In the employment of respondent-Regional Institute of Technology now National Institute of Technology. Late B.P. Sinha died on 31.7.1986. His widow Smt. Vidya Devi made an application before the Principal, Regional Institute of Technology for appointment of present petitioner, Niraj Kumar Singh, who is said to be the grand son of the deceased. Mr. Niraj Kumar Singh was provided temporary employment in 1987. However, on much persuasion by the widow Smt. Vidya Devi respondents after making thorough enquiry gave employment to Niraj Kumar Singh on compassionate ground in 2001. The said widow Vidya Devi then filed writ petition being WPS No. 6058 of 2001 for quashing the order dated 8.12.2001 whereby her grand son, namely, Niraj Kumar Singh was appointed on compassionate ground. She sought appointment of her son Ashutosh Kumar who was minor at the time of death of his father. Respondents appeared in the said writ petition and filed detailed counter affidavit stating inter alia that Niraj Kumar Singh was legally and validly appointed by the respondents and his appointment cannot be quashed.

5. This Court after hearing both the parties, dismissed the writ application of Smt. Vidya Devi (WPS No. 6058/2001) by imposing cost of Rs. 5.000/-. This Court held that petitioner Smt Vidya Devi made false statement and the contention of the respondents made in the counter affidavit have been conclusively proved, hence the petitioner is also liable to be prosecuted and punished in accordance with law. For better appreciation, the judgment and order dated 10.1.2002 passed in WPS No. 6068 of 2001 is reproduced herein below:

This writ application has been filed for quashing the order dated 8.12.2001 whereby one Neeraj Kumar Singh has been appointed on compassionate ground on the post of chaukidar as the husband of the petitioner, late B.P Sinha died in harness and the petitioner also sought appointment of her son, Asutosh Kumar.

Petitioner's case, as pleaded in the writ application, is that on 10.10.2001 she filed a petition for appointment of her son, Asutosh Kumar on compassionate ground as her husband died in 1986 while working under the respondents. It is stated that on 10.12.2001 the petitioner came to know that one Sri Neeraj Kumar Singh had been appointed vide order dated 8.12.2001 on compassionate ground in place of her son, Asutosh Kumar. It is contended that Neeraj Kumar Singh is the son of the cousin brother of the husband of the petitioner, late B.P. Sinha and he was appointed on compassionate ground by practicing fraud and in connivance with the staff of the Establishment Section of the Regional Institute of Technology.

When this matter was heard on 21.12.2001, Mr. Sunil Kumar Sinha, learned

Counsel appearing on behalf of the petitioner, submitted that the petitioner had no knowledge about the appointment of Neeraj Kumar Singh on compassionate ground and said Neeraj Kumar Singh, in connivance with the staff of the respondent-RIT and on the basis of the fabricated documents, got appointment on compassionate ground in place of the son of the petitioner. On the submission of the learned Counsel, this Court directed the respondents to produce the relevant records in connection with the appointment of Neeraj Kumar Singh on compassionate ground and also to file a counter affidavit. Pursuant to the said order the respondents have filed their counter affidavit stating, inter alia, that the deceased employee, late B.P. Sinha, died on 17.6.1986 and at the time of his death his son Asutosh Kumar was only one year three months old which is evident from the date of birth shown in the application filed by the petitioner. It is stated that on the death of late B.P. Sinha the petitioner herself made an application before the Principal, RIT, Jamshedpur for appointment of Neeraj Kumar Singh. In the said application, it is stated that Neeraj Kumar Singh is her grand son. A similar application was again filed on 28.1.1987 wherein the petitioner represented to the respondents that her grandson, Neeraj Kumar Singh be appointed on compassionate ground. These applications have been annexed as Annexures A and B to the counter affidavit. On the basis of such application, Neeraj Kumar Singh was provided job in the Estate Section of the Institute in the year, 1988. On 10.9.2001 the petitioner filed an affidavit stating that her grand son, Neeraj Kumar Singh who was given compassionate appointment on daily wages, be taken in regular service on account of the death of her husband. A copy of the said affidavit is annexure D to the counter affidavit. A separate affidavit was also filed by Neeraj Kumar Singh stating that late B.P. Sinha was his grand father and there is no case pending against him, nor he was convicted in any criminal case. That affidavit was filed for the purpose of confirmation of his appointment on compassionate basis. Again on 18.6.2001 the petitioner filed another application for re-employment of Neeraj Kumar Singh on the basis of previous appointment. She also stated that she is 70 years old and is not fit for service. A copy of that application has been annexed as annexure G to the counter affidavit. Similar application was again filed on 25.7.2001 a copy of which has been annexed as annexure H to the counter affidavit. On the basis of that application the Board of Governors of the respondent confirmed the appointment of Neeraj Kumar Singh. It was only, thereafter, some dispute arose between the petitioner and Neeraj Kumar Singh and the former made an application on 10.10.2001 requesting the respondents to appoint her son, Asutosh Kumar on the compassionate ground.

From the entire facts stated in the counter affidavit which is supported by documents, it is prima facie, clear that the petitioner has made false statements in paras 8 and 9 of the writ application. This is very serious matter. If the contention of the respondents made in the counter affidavit is conclusively proved, then the petitioner shall be liable to be prosecuted and punished in accordance with law.

So far the claim of the petitioner for appointment of her son, Asutosh Kumar, on compassionate ground is concerned, the same is misconceived. Admittedly, petitioner's son was born in 1985 and the husband of the petitioner died in 1986. In other words, in 1986 when the petitioner's husband died, her son was a minor aged one year three months. After attaining majority i.e. after 18 years, no appointment can be given to the petitioner's son on compassionate ground. So far that relief is concerned, the writ application is dismissed.

Before parting with the order, I must observe that the respondent-RIT would be at liberty to proceed against such persons who have made false representation and filed false affidavit.

Since I am *prima facie*, of the view that the instant writ petition is frivolous, the petitioner is saddled with cost of Rs. 5000/-.

6. The writ petitioner, Smt. Vidya Devi challenged the said order by filing Letters Patent Appeal being LPA No. 126 of 2002. The appeal was dismissed on 11.7.2002 by the Division Bench by passing the following order:

After hearing Mr. D. Jerath, learned Counsel for the appellant, we feel disinclined to interfere with the judgment under appeal particularly in view of the fact that in 1986 when the husband of the appellant died, her son Ashutosh Kumar was only about a year old, and therefore, he could not have been given employment on compassionate ground. The appeal, is accordingly, dismissed. However, in the facts and circumstances of this case, the directions contained/observations made in para 6 of the judgment under appeal are deleted from the judgment. Similarly, the order of Rs. 5000/- (Rupees five thousand) saddling the appellant-petitioner with costs is also modified with the direction that the dismissal of the writ application shall be without the costs.

The appeal is dismissed. No order as to costs.

7. The validity of appointment of Niraj Kumar Singh thus attended finality and he has been working since 1988.

8. One Mr. Mithilesh Kumar filed writ petition being WPS No. 3222 of 2000 seeking direction for compassionate appointment on the ground that his father died in harness on 5.1.1988. The writ application was withdrawn on 21.9.2000. said Mithilesh Kumar again filed a writ petition being WPS No. 680 of 2002 seeking same relief on the ground that many persons, whose father died, have been recently given employment. Learned Single Judge of this Court by order dated 24.1.2002 again dismissed the writ application but made some observation that if one or other persons have been given appointment after long delay i.e after 12 years, then petitioner may bring it to the notice of the Principal of the Institute who will take care. The said Mithilesh Kumar again filed contempt petition being Contempt Case (C) No. 866 of 2002 stating that respondents did not take any step inspite of the order passed in WPS No. 680 of 2002. Learned Single Judge disposed of the contempt petition by order dated 7.3.2003 on the

basis of the show cause filed by the respondents wherein it was stated that they will enquire the case of those who had been illegally appointed.

9. At this stage, it would be mention here that there is no direction of learned Single Judge to enquire into the legality and validity of appointment of Niraj Kumar Singh. It is also worth to be mentioned here that appointment of Niraj Kumar Singh was challenged and finally appointment of Niraj Kumar Singh was declared valid by this Court in WPS No. 6058 of 2001 and the said judgment and order was affirmed by a Division Bench of this Court. The order of the learned Single Judge and the Division Bench has been quoted hereinbefore.

10. In spite of the aforesaid facts, respondents on the basis of order passed in contempt case terminated the services of the petitioner by order dated 1.3.2005 without initiating any disciplinary/departmental proceeding although petitioner continued in service for the last 15-16 years. In fact, by terminating the services of the petitioner, the respondents have flouted the judgment passed by the learned Single Judge and affirmed by the Division Bench of this Court.

11. Considering the entire facts narrated herein above, I am of the view that the contention of the respondents in the counter-affidavit filed in this case cannot be appreciated. Prima facie it appears that while that passing the order of termination, respondents have in facts ignored the judgment and order passed by the learned Single Judge and affirmed by the Division Bench of this Court.

12. However, before passing appropriate order, I direct respondent Nos. 2 and 3, namely, Director, National Institute of Technology, Jamshedpur and Registrar, National Institute of Technology, Jamshedpur to appear in person before this Court on 16.5.2006.

13. Let this case be listed on 16th May, 2006. On that day, these two officers shall appear in person and file show cause, if so desire, on the question of final order that may be passed against them.