
(1999) 04 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 2127 of 1992 (R)

Nirmal Mahato

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Citation : (1999) 2 BLJR 1399 : (1999) 9 PLJR 657

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

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has prayed for quashing the order dated 10.3.92 (Annexure 2) passed by the Deputy Commissioner, Giridih for appointment of IVth grade employees including respondent Nos. 5 and 6 ignoring the case of the petitioner who claims to be senior to respondent Nos. 5 and 6.

2. The facts of the case lie in a narrow compass. The petitioner's case is that he was appointed on casual basis on 5.5.83 and he was shown at serial No. 3 in the attendance register. It is stated that in the year, 1987-88 a panel was prepared of the daily wages employees and the petitioner was put at serial No. 53 in the said panel. Subsequently in the year, 1989 a large number of vacancies for the post of peons in different offices with the district of Giridih arose and an advertisement was made on 11.1.89 inviting applications for appointment on the post of IVth grade employees. Pursuant to that advertisement the petitioner along with other persons including respondent Nos. 5 and 6 applied and after following the due process of appointment, a panel was prepared for appointment of IVth grade employees. In the said panel, the petitioner was put at serial No. 72 while respondent Nos. 5 and 6 were shown at serial Nos. 73 and 74 respectively. The said panel of 1989 was challenged by the petitioner by filing CWJC No. 1756/89R on the ground that one Dilip Kumar was illegally shown above petitioner although he was junior to the petitioner. The writ application

was ultimately permitted to be withdrawn with the observation that since the panel of 1989 was prepared after due advertisement and after calling applications, the same should not be disturbed. The grievance of the petitioner is that in the year, 1991-92 a panel was again prepared on the basis of the panel of 1989 wherein the corresponding serial Nos. of 1989 panel was also mentioned. In 1991-92 panel, the petitioner was placed above respondent Nos. 5 and 6. A copy of the said panel has been annexed as Annexure 1 to the writ application. But, the respondents ignoring the afore-mentioned panel, recommended for appointment of respondent Nos. 5 and 6 on the post of grade IV ignoring the case of the petitioner.

3. A counter-affidavit has been filed by the respondent-State in which although the facts as stated by the petitioner so far as preparation of 1989 panel is concerned, have been admitted but it was stated that on the basis of a letter dated 5.3.91, the panel prepared in 1991-92 was corrected and respondent Nos. 5 and 6 were placed at serial Nos. 9 and 10 and the petitioner's position was shifted to serial No. 22. A copy of the corrected panel has been filed and annexed as Annexure C/ 1 to the counter-affidavit.

4. On the other hand, the respondent No. 6, in his counter-affidavit, virtually admitted the facts stated in the writ petition but his claim is based on the fact that the petitioner was appointed on casual basis in the year, 1983 while respondent No. 6 was appointed on casual basis in the year, 1982 and, therefore, the respondent No. 6 was senior to the petitioner. No counter-affidavit has been filed on behalf of respondent No. 5.

5. I have heard Mr. R.N. Sahay, learned Counsel appearing on behalf of the petitioner, Mrs. I. Sen Choudhary S.C. appearing on behalf of the State and Mr. M.K. Sinha, learned Counsel appearing on behalf of respondent No. 6. As noticed above, admittedly in the year, 1989 applications were invited by an advertisement for appointment in Class IV post and pursuant to that the petitioner along with others including respondent Nos. 5 and 6 applied and after following the due process of appointment, a panel was prepared. In the said panel of 1989 admittedly, the petitioner was put above respondent Nos. 5 and 6. That panel was challenged by the petitioner on the ground that one Dilip Kumar Singh, junior to the petitioner in 1987-88 panel, was placed above him. That writ application was permitted to be withdrawn with the observation that 1989 panel cannot be disturbed. It is also admitted fact that in 1991-92, fresh panel was prepared on the basis of 1989 panel in which the petitioner was again put above respondent Nos. 5 and 6 and in that panel the corresponding serial numbers of 1989 panel was also mentioned. But, however, the respondent-State's case is that on the basis of a letter of the Chief Secretary, Govt. of Bihar, some correction was made in the said panel by which respondent Nos. 5 and 6 were placed above the petitioner. A copy of the said panel has been annexed as Annexure C/1 to the counter-affidavit.

6. At the time of hearing of this writ application at the admission stage, the

correction made in 1992 panel was seriously challenged by the petitioner on the ground of mala fide and, therefore, while admitting the writ petition the following order was passed on 24.6.93:

This application will be heard. Issue notice to respondent Nos. 5 and 6 through ordinary mode as also through registered post with A/D, requisites, etc. for which must be filed by Monday, failing which this application as against respondent Nos. 5 and 6 shall stand dismissed without further reference to a Bench.

It is desirable that this case be heard expeditiously. Accordingly, we direct the office to list this case for hearing before an appropriate Bench as the first case subject to part heard, if any, on 1st September, 1993 under the order of the Hon"ble C.J.

The register in question which was kept in sealed cover shall once again be kept in sealed cover and be produced before the learned Single Judge hearing this application.

7. During the course of hearing, the register which was kept in sealed cover in the custody of the Registrar has been unsealed in the open Court. Annexure C/1 which is said to be corrected panel dated 25.2.92 has been compared with the original which finds place at page 40 of the register. It appears that this corrected panel consists of six pages. At the bottom of the 6th page some of the officers have signed giving date as 8.4.91 but the Deputy Commissioner has not signed the said corrected panel. There is one more endorsement as appears at the bottom said to be of some officer who has written that he did not agree with the said corrected panel. As stated above, the original of Annexure C/1 consists of six pages but only above the first two pages have been filed by respondent-State making it Annexure C/1 and the relevant page mainly the last page has not been annexed. I, therefore, must hold that either C/1 is a fabricated document or the respondents have concealed and suppressed the facts from this Court or have filed with mala fide intention to mislead and misguide the Court for coming to a correct and just decision in this case.

8. From a perusal of the register, it appears that in the corrected panel the names of respondent Nos. 5 and 6 were inserted at serial Nos. 9 and 10 by renumbering the entire panel and the name of the petitioner was put at serial No. 20. The mala fide of the respondents-State is further evident from the fact that the corresponding serial number of 1989 panel has been given as serial No. 72 so far as the petitioner is concerned and serial Nos. 73 and 74 so far as respondent Nos. 5 and 6 are concerned. It is, therefore, evident that the names of respondent Nos. 5 and 6 were illegally inserted by the respondents in order to give employment to them ignoring the case of the petitioner who was admittedly above respondent Nos. 5 and 6 in 1989 panel, as also in 1991-92 panel. One more fact is also apparent from the register that no fresh corrected panel was prepared but in 1991 panel the names of respondent Nos. 5 and 6 were inserted

at Serial Nos. 9 and 10 and there is no signature of any of the respondents including the Deputy Commissioner either in the inserted portion of the panel of certifying that the panel was corrected by taking a decision unanimously.

9. The counter-affidavit was filed by one William Toppo, Executive Magistrate who was posted in the Collectorate of Giridih. It does not appear from the counter-affidavit as to on whose behalf it was filed. I am, therefore, of the definite opinion that the order of the Deputy Commissioner recommending the names of respondent Nos. 5 and 6 for appointment ignoring the case of the petitioner is illegal, arbitrary, capricious and mala fide. Mr. R.N. Sahay, learned Counsel for the petitioner, submits that the petitioner has been still continuing in service as casual employee while respondent Nos. 5 and 6 have been given regular appointment in 1992. Although it is a fit case where the appointment of respondent Nos. 5 and 6 should be declared as illegal and is liable to be cancelled but in view of the fact that they have been continuing for the last seven years, it is desirable for the ends of justice that the petitioner should also be provided employment forthwith with all seniority and other benefits.

10. This writ application is, therefore, allowed and a rule nisi is issued directing the respondents particularly respondent No. 2, the Deputy Commissioner, Giridih to recommend for appointment of the petitioner and to give him appointment in grade IV post with all seniority to that of respondent Nos. 5 and 6 with effect from the date of their appointment. This order and direction must be complied with by the respondents as expeditiously as possible and preferably within a period of one month from the date of receipt of a copy of this judgment. Let the original register be kept on record.