

(2010) 09 PAT CK 0180

In the Patna High Court

Case No : CWJC No"s. 13553, 13723, 13733, 13738, 13739, 14315, 14500 of 2002 and 311, 794, 1934, 1966, 3348, 6510, 6937, 7388, 7405, 7414, 7933, 8779, 9010, 9362, 9363, 9618 and 10421 of 2003

Nutan Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 929

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioners, State, Bihar State Social Welfare Board (hereinafter referred to as the Board).

2. Petitioners are the employees of the Board. They were appointed for successful execution of the scheme(s) entrusted to the Board. They are aggrieved by the order of the Commissioner-cum-Secretary of the Welfare Department contained in letter No. 1772 dated 9.8.2002, whereunder learned Secretary has communicated the direction of the State Government to terminate the services of the Petitioners in the light T5f the report of the committee constituted by the State Government under notification No. 700 dated 9.6.2001. Petitioners are also aggrieved by the order of the Chairperson of the Board dated 1.10.2002/7.11.2002/ 25.11.2002, whereunder in compliance of the instruction of the State Government contained in letter dated 9.8.2002 their services have been terminated. They are further aggrieved by the order of the In-charge Officer of the Board dated 5.5.2003, whereunder placing reliance on the instructions of the State Government contained in letter dated 9.8.2002 their services have again been terminated.

3. It is submitted on behalf of the Petitioners that Board being an autonomous institution is governed by its memorandum, articles of association as also the

Rules governing composition and functions of the Social Welfare Advisory Board (hereinafter referred to as the Rules). In terms of the provisions contained in the memorandum, articles of association as also the Rules State Government is not the competent authority to direct for termination of the services of the Petitioners. The State Government may be competent to get the affairs of the Board examined and inquired into by a committee but the report of the committee should have been forwarded to the competent authority in the Board for taking appropriate decision in the matter. Instead of forwarding the report of the committee constituted under notification of the Government dated 9.6.2001, the Commissioner and Secretary of the department communicated direction of the State Government for termination of the services of the Petitioners. Such direction is wholly contrary to the provisions contained in the memorandum, articles of association as also the Rules. In this connection, learned Counsel for the Petitioners also invited my attention to the appointment letter of the Petitioners, which has been issued under the signature of the Administrator of the scheme in which the Petitioners were appointed. It is further pointed out that as the Petitioners were appointed by the Administrator of the scheme entrusted to the Board, their services could have been terminated by the Chairperson of the Board or the Administrator of the scheme, bereft of the direction received from the State Government through Commissioner and Secretary of the Department. As according to learned Counsel, State Government and the Commissioner and Secretary of the Department does not come within the purview of the Rules governing the Board and is not empowered to issue direction for termination of the services of the employees serving the Board under the schemes entrusted to the Board.

4. Counsel for the State and the Board have opposed the submission made on behalf of the Petitioners. It is submitted by them that having learnt about the irregularities made in connection with the appointment of the employees and other staff of the scheme and the Board the State Government constituted a committee to go into the validity of the appointments in the scheme and the Board under notification dated 9.6.2001 and in the light of the report of the committee direction dated 9.8.2002 at the behest of the State Government was issued by the Commissioner and Secretary of the Department to the Chairperson of the Board to terminate the services of 53 illegally recruited employees. The Chairperson of the Board has passed order dated 1.10.2002/7.11.2002/25.11.2002 in compliance of the order of the State Government communicated through Commissioner and Secretary under letter dated 9.8.2002 for termination of the services of the Petitioners, this Court should not interfere in the matter. In this connection, further reliance is placed on the order of the In-Charge Officer dated 5.5.2003, whereunder with reference to the direction of the State Government contained in letter dated 9.8.2002, fresh termination order has been issued in case of the Petitioners.

5. Having heard counsel for the parties and having perused the memorandum, articles of association as also the Rules governing the Board, I am of the view

that the Board is an autonomous institution funded by the Central, State Government. Its affairs are conducted as per the provisions of the memorandum, articles of association and the Rules governing the Board, whereunder there is hardly any role for the State Government to issue direction for termination of the services of the illegally appointed employees of the Board. Aforesaid legal position is also found reiterated in the judgment of the Single Judge of this Court in the case of Sri Kaushal Kishore Prasad and Others Vs. Union of India (UOI) and Others as also by the Division Bench under orders dated 5.3.1993 passed in C.W.J.C No. 1808 of 1992.

6. In view of my findings above, I have no option but to quash the direction of the State Government contained in letter dated 9.8.2002 of the Secretary, Welfare Department the order of the Chairperson dated 1.10.2002/7.11.2002/25.11.2002, and the order of the In-Charge Officer dated 5.5.2003, which is accordingly, quashed and the matter is remitted back to the Chairperson of the Board to reconsider the matter in the light of the report referred to in the letter of the Commissioner and Secretary of the Department dated 9.8.2002 as also the earlier report dated 29.4.2000 of the Chairperson of the Board. On account of illegal order passed by the State Government contained in the letter of the Commissioner and Secretary of the Department dated 9.8.2002 Petitioners were deprived from rendering service to the Board/scheme in which they were appointed as also from earning their livelihood in the circumstances, I direct that entire arrears of salary be paid to them until fresh decision is taken in the matter by the competent authority in accordance with law i.e. till the date of availability of scheme which ever is earlier.

7. With the observations and direction aforesaid, all the writ applications are, accordingly, allowed.