
(2002) 12 PAT CK 0062
In the Patna High Court
Case No : M.J.C. No. 815 of 2000

Om Prakash Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Citation : (2003) 51 BLJR 379 : (2003) 2 PLJR 1

Hon'ble Judges : Sachchidanand Jha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Shailendra Kumar Singh, for the Appellant; S.K. Ghosh, AAG II and Mayanand Jha, JC to AAG II, for the Respondent

Judgement

S.N. Jha, J.—This MJC has been filed for initiating a contempt proceeding against the opposite party for allegedly violating the order of this Court dated 17-1-1996m CWJC No. 3891/94.

2. The above said writ petition was filed by the petitioner and others for quashing an order by which their services on the post of Warder in the Central Jail Muzaffarpur had been terminated, and for a mandamus to appoint them on the post on regular basis. While dismissing the writ petition this Court directed the Inspector General of Prisons, Bihar and the Superintendent, Central Jail, Muzaffarpur to give effect to the advertisement dated 31-10-1994 by making appointment of suitable candidates as early as possible preferably within four months of the receipt/production of a copy of the order. The Court observed, "Needless to say that the cases of the petitioners will be considered in accordance with law". Earlier the petitioner had moved this Court challenging the same very order in CWJC No. 2605/92, which had been dismissed but with an observation that in case the respondents require additional extra hands of Warders, his case may be considered, if necessary by relaxing the age bar. The grievance of the petitioner is that in stated of giving effect to the advertisement dated 31-10-1994 as directed by this Court the Opposite party cancelled the

same. Further, the case of the petitioner is that they have appointed others including co-petitioner of CWJC No. 2605/92 on the post of Warder in utter disregard to the direction of this Court. The petitioner and others repeatedly represented their case for appointment but to no avail, In paras 7 and 8 of the main petition the petitioner has given names of nine such persons who have been appointed on the post of Warder. In the supplementary affidavit the petitioner has referred to letter dated 13-12-2001 of the IG (Prisons) directing the Superintendent, Central Jail Bhagalpur to consider the case of 38 persons on the post of Warder. Again in the affidavit in reply to the show cause of the opposite party, the petitioner has referred to appointment of 157 Warders in Bhagalpur Central Jail in 1998 pursuant to 1994 advertisement

3. The stand of the IG (Prisons) is that the appointment of Warders is made in Central Jails Jail-wise. The petitioner was appointed as temporary Warder in Central Jail, Muzaffarpur in the year 1984. It was later discovered that the said appointment had been made without observing the laid down formalities, and flouting all norms. In the circumstances the Department decided to cancel the appointment and the same was communicated vide letter dated 13-3-1992. Against the said order the petitioner moved this Court in GWJC No. 2605/92 and later in CWJC No. 3891/94, both of which were dismissed. In CWJC No. 3891/94 the Court directed the authorities to give effect to the advertisement dated 31-10-1994 which had been issued in the meantime. However the said advertisement was cancelled by the State Government in 1999 vide Home (Special) Department letter No. 2511 dated 9-11-1999 Fresh advertisement has been issued in 2000 inviting applications for appointment on the vacant posts of Warder in the different Central Jails. So far the petitioner is concerned by letter No. 3886 dated 19-7-2000 the IG (Prisons) directed the Superintendent, Shaheed Kudi Ram Bose Central Jail, Muzaffarpur to relax the age bar. The case of the petitioner for appointment thus is pending. No appointment has been made pursuant to the said advertisement has been made pursuant to the advertisement of the year 2000, since the proposal to make recruitment either through the Superintendent of the concerned Central Jail or through the Staff Selection Committee is pending consideration at the Government level. In view of the recent incidents of escape of prisoners from Jails the Government is thinking of evolving new method of recruitment and post young, dynamic well trained Warders and entire process of recruitment on the post of Jail Warder is thus being reconsidered.

4. The opposite party have explained the circumstances in which the persons referred to in the main petition, supplementary affidavit or reply affidavit have been appointed in different Central Jail including Muzaffarpur Central Jail.

5. The direction of this Court in the connected case was in two parts to give effect to the advertisement dated 31-10-1994 and while doing so i.e., making appointment of suitable candidates pursuant to the advertisement, consider the case of the petitioner. The Court accordingly wanted to know as to whether the

Government took a conscious decision for some good reason- to cancel the advertisement, for, while it is open to the Government/authorities to cancel the advertisement, such a decision cannot be taken arbitrarily i.e. without any reason. Shri S.K. Ghosh, learned Additional Advocate General, produced relevant part of the file containing the order of the Minister Incharge dated 20-7-1999 notings the file. The Minister stated in his minutes that attempt had been made at his level as well as at the level of IG (Prisons) to make appointments on the post of Warder but it could not be done. In 1994 advertisement was issued but not a single appointment was made. The Minister expressed the view, after discussing the matter with the officials, that there were practical and administrative difficulties in making appointments pursuant to the old advertisement. Several incidents had taken place of escape from Jails. One of the main reasons was absence of competent warders. In the circumstances he directed that old advertisement be cancelled and fresh advertisement be issued after assessing the requirement of Warders and such recruitment be made in the same manner as Constables in the Police Department.

6. this Court cannot sit in appeal over the decision of the Minister. If for five years appointments could not be made and in the meantime realising the difficulties the Department decided that a new methodology to be evolved for recruitment in accordance with the present requirement, the decision cannot said to be arbitrary- in writ jurisdiction and muchless in contempt jurisdiction of this Court.

7. The case of the petitioner, however, is that appointments have been made not only pursuant to 1994 advertisement but also otherwise. Learned Addl. Advocate General explained that appointment on the post of Warder is made in Central Jails Jail-wise. Though a consolidated advertisement was issued, it was made clear in the advertisement that the application was to be submitted before the Superintendent of the concerned Central Jail, who is the appointing authority of the post. The petitioner was a candidate for the post in the Central Jail, Muzaffarpur and his case cannot be considered elsewhere. Appointments were made pursuant to 1994 advertisement in Bhagalpur Central Jail but no appointment was made in Muzaffarpur Central Jail. Subhash Shukla and Birendra Shukla, referred to in para 8 of the main petition, are working as contingent staff as Ambulance Driver and Tractor Driver respectively- the former since 1994 and 1999 respectively. As regards Bhagalpur appointment, he submitted, they were made by the Superintendent contrary to the directive of the Department, without following the procedure and they were accordingly cancelled. Some of the persons aggrieved came to this Court in different cases. In one such case, CWJC No. 1956/99, this Court by order dated 10-4-2000 quashed the order and directed the Home Commissioner to consider their cases. The Home Commissioner by a detailed order dated 21-8-2000 reiterated the earlier order of cancellation. However the said order has been stayed by this Court in CWJC No. 8629/2000 and that is how they are continuing on the post. As regards others, learned Addl. Advocate General explained that 69 surplus Warders of Ranchi

Institute of Neuro- Psychiatry and Allied Science (RINPAS) (earlier known as Rajendra Mental Asylum, Knake) have been absorbed in different Jails-eight of them in the Central Jail, Muzaffarpur-pursuant to letter dated 31-12-1997 of the Health Department, in the light of direction of the Supreme Court.

8. In retrospect, it would appear that the grievance of the petitioner enumerates from the fact that he had not been appointed for last ten years. This Court did not give any clear direction for his appointment in the connected case but, nonetheless, made observation that his case may be considered while giving effect to the advertisement of 31-10-1994. That advertisement stands cancelled. Though fresh advertisement has been issued the same has not been given effect to and the petitioner has thus been made to wait for so many years. However the grievance really enumerates from the fact that while he has not been appointed, others have been appointed.

9. From the facts noticed hereinabove however it is clear that the surplus Warders of RINPAS constitute a different category and they have been absorbed in different Central Jails as a result of the direction of the Supreme Court. So far as the appointments in Bhagalpur Central jail are concerned the clear stand of the opposite party is that they were illegally made in violation of the directions and prescribed norms and accordingly cancelled. Some of them are continuing pursuant to the interim order of this Court and, therefore, the petitioner cannot make any grievance on that score. As a matter of fact, having regard to the terms of advertisement the petitioner can hardly make any grievance of appointment in another Central Jails, In Clause 10 of both 1994 and 2000 advertisements there is a clear condition that the applicant could submit application for only one Central Jail and that such application was to be submitted by registered post only with the superintendent of the Concerned Central Jail, for which he is applicant. The petitioner not being a candidate for appointment in Bhagalpur central Jail he cannot make any grievance in the eye of law even if appointments had been made in Bhagalpur Central Jail.

10. Thus only two cases- those of Subhash Shukla and Birendra Shukla- remain who have been appointed albeit in different manner and circumstances in Muzaffarpur Central Jail. While the former is getting monthly salary of Rs. 3698 (at the minimum of the scale pursuant to some order of this Court), the latter has been working on daily wage @ Rs. 75 per day. It was submitted that if these two persons can be allowed to work as contingent staff, the petitioner too could be given similar treatment. The argument is attractive but it would be difficult to issue any direction in the present proceeding. The order in the connected case was to make appointment of suitable candidates while giving effect to the advertisement of 31-10-1994 and, therefore, no direction can be issued for appointment of the petitioner alone, in whatever form. That may result in discrimination between similarly situate persons. Nevertheless if Subhash Shukla and Birendra Shukla were otherwise similarly situate as the petitioner herein, there can be little justification to employ them alone. It is not possible to issue

any direction with respect to these two persons as they are not party to the present proceeding. That is beyond the scope of the present proceeding too. In the circumstances, I would direct the IG (Prisons) to consider the circumstances in which they were appointed. If he comes to the conclusion that the appointments (Presumably made at the level of the Superintendent, Muzaffarpur Central Jail), was not proper it will be open to him to take such action against them, as may be deemed fit and proper in accordance with law after giving opportunity of hearing.

11. With the above observations and direction that MJC is disposed of.