
(2004) 07 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 1677 of 20011

Prakash Ratan Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Citation : (2004) 3 PLJR 688

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Purushottam Kumar Jha and Chakrapani, for the Appellant; JC to SC 3 for State, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties and considered the counter affidavit filed on behalf of the State.

2. This writ application is directed against the order, issued vide memo No. 39 dated 11.12.1998, as contained in annexure 11, whereby and whereunder regularisation of the Petitioner on the post of Accounts Clerk has been cancelled.

3. It is submitted by learned Counsel for the Petitioner that the Petitioner initially was appointed on daily wages vide memo No. 2810 dated 31.12.1976 and thereafter he was made permanent in the work charged Establishment on 15.5.1989 along with several other persons and during his tenure the authorities used to take works of Accounts Clerk from the Petitioner and as there was vacancy of Accounts Clerk, the name of the, Petitioner was adjusted against the vacant post of Accounts Clerk by the Electrical Superintending Engineer, Patna Circle, Respondent No. 3, awaiting approval of the pet Engineer vide order, as contained in annexure 8 thereafter the adjustment of the Petitioner against the vacant sanctioned post Recounts Clerk was approved by the Chief Engineer Respondent No. 2, vide order feted 11.11.1998, which has been cancelled by impugned order dated 11.12.1998 Baryon the ground that the post of Accounts

Clerk was not vacant in regional office at Bhagalpur. It is further submitted by learned Counsel for the Petitioner that in the year 1997 three posts of Accounts Clerk were vacant in the regional office of the Electrical Energy Department, Bhagalpur. Hence the Petitioner was adjusted against the vacant post of Accounts Clerk. It is also submitted that no opportunity, whatsoever, was given to the Petitioner before cancellation of the order of regularisation.

4. JC to SC 3 with reference to the counter affidavit tried to impress upon the Court that the Chief Engineer was not the competent authority, and, therefore, the order of regularisation of the Petitioner was cancelled.

5. From the order impugned, it appears that the order of regularisation of the Petitioner has only been cancelled on the ground of non-availability of sanctioned vacant post of Accounts Clerk. No other reason has been given in annexure 11 nor it is submitted by JC to SC 3 that the post was not vacant at the relevant time. Had it been so that the Chief Engineer, who has approved the regularisation of the Petitioner, was not competent, this ground could have been shown in the impugned order, as contained in annexure 11. Moreover, at the face of the material on record, wherefrom it is manifest that in the year 1997 three posts of Accounts Clerk were lying vacant in the Regional Office, Bhagalpur, the authorities could not have cancelled the regularisation of the Petitioner. So far the question of giving an opportunity of hearing to the Petitioner before issuance of the order impugned is concerned, nowhere it is stated in the counter affidavit that any opportunity, whatsoever, was given to the Petitioner to explain as to why his regularisation should not be cancelled.

6. Considering the facts and circumstances of the case, it is held that the order impugned, as contained in annexure 11, is not sustainable in law.

7. In the result, this application is allowed and order impugned, as contained in annexure 11 is set aside.

8. No order as to costs.