
(2009) 12 JH CK 0031
In the Jharkhand High Court

Prashanna Kumar Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 300

Citation : (2009) 12 JH CK 0031

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ petition is to quash the office order contained in Memo No. 3342, dated 06.09.1997 (Annexure-7) passed by the Director, Land Acquisition, Rehabilitation and Water Resources Department, by which, the service of the petitioner was terminated on the ground that the Rehabilitation Officer had no jurisdiction/ authority to appoint the petitioner to the post of Chainman and, therefore, his appointment was illegal.

3. The case of the petitioner is that he was initially engaged as a Daily Wage Employee in Class - IV as Chainman by the Deputy Collector in the Land Acquisition and Rehabilitation Department. He was working in the Land Acquisition Office at Muzzaffarpur. All of a sudden, vide Memo No. 51, dated 15.09.1988 (Annexure-1), he was removed from the service with immediate effect on the ground that his service was not required. In this manner, 62 persons were removed from the service.

4. It is stated that the petitioner was subsequently appointed on the vacant post of Chainman (Class - IV) by issue of Office Order dated 29.07.1989 as contained in Annexure-3, on the basis of the fact that his services was found satisfactory on daily wage basis.

By issue of office Order No. 2113 dated 09.06.1994, a notice was served on the petitioner asking him to file show-cause as to why his services be not terminated with immediate effect. The petitioner filed his show-cause.

5. Several persons, similarly situated, filed several Writ Petitions in the High Court being C.W.J.C. No. 6880 of 1994, 6338 of 1994, 5731 of 1994 and 5829 of 1994 challenging such notices. After filing of the Writ Petitions, the respondents did not remove the petitioner from service rather, by filing counter affidavits in the writ petitions, it was stated that those persons were not going to be removed and separate individual notices would be served on them. On this basis, the writ petitions were allowed to be withdrawn with liberty to the writ petitioners to move before the appropriate forum if any final order is passed.

6. A notice was published in the News Paper on 07.10.1996 asking several employees including the petitioner to file show-cause as to why their services should not be terminated as their appointments were made by the Rehabilitation Officer, who was not empowered to make such appointment.

The petitioner filed his show-cause stating therein that he was appointed by the Establishment Committee which is a Statutory Committee to make appointment and the same was communicated by the Director (Respondent No. 3), who was also empowered to make appointment in Class - IV being head of the Department. Thereafter, by issue of Annexure-7, dated 06.09.1997, the service of the petitioner was terminated.

7. The grievance of the petitioner is that before issuance of impugned order of termination dated 06.09.1997 (Annexure-7), no hearing was given to him and the order has been passed in violation of Articles 14, 16, 21 and 300 of the Constitution of India.

According to the petitioner, CWJC No. 3345 of 1997 and other analogous cases were filed by several persons before the Patna High Court challenging the order of their termination on the same ground that the Rehabilitation Officer had no authority and jurisdiction to make such appointment. The Patna High Court, by Judgment dated 01.03.2000, quashed the termination orders and directed the respondents to consider the matter of regularization of service of such petitioners in accordance with law within a period of six months from the date of said order.

The petitioner submits that his case is squarely covered by decision of the Patna High Court dated 01.03.2000 passed in CWJC No. 3345 of 1997 which has been annexed as Annexure-9 to this Writ Petition. It is further submitted that similar Writ Petitions being CWJC No. 1452 of 2001 and CWJC No. 770 of 2001 were filed before the Patna High Court challenging the similar termination orders and in those Writ Petitions.

The Orders of termination were quashed. The orders passed in aforesaid Writ Petitions has been annexed as Annexures 10 and 11 to this Writ Petition.

It is also stated that Letters Patent Appeal filed against the aforesaid orders have

also been dismissed by the Division Bench. It is further submitted by the petitioner that since the petitioner was appointed by the Director, Land Acquisition Department, having power of appointment and, therefore, his appointment cannot be said to have been made by incompetent person.

8. On the other hand, a counter affidavit has been filed by the respondent Nos. to 5 stating therein that the petitioner was a Chainman working in the office of Irrigation, Medium Irrigation Projection, whose service was terminated by the Order of the Director, Land Acquisition and Rehabilitation dated 06.09.1997 (Annexure-7 to the Writ Petition). It is further stated that similarly situated persons preferred Writ Petition being CWJC No. 3345 of 1997 and other analogous cases, which was heard and disposed of by common Judgment dated 01.03.2000 (Annexure-9 to the Writ Petition), where the Patna High Court, after categorizing all the cases into the three categories - A, B and C, was pleased to quash the impugned orders of termination of the petitioners of category A and C but dismissed the Writ Petitions of Category-B. With regard to the persons falling under Category-A, the High Court gave liberty to the respondents to re-examine the matter afresh and regarding the persons falling under Category - C, directed the respondents to consider the matter of regularization of service of such petitioners.

It is further stated that against the order passed in CWJC No. 3345 of 1997 and analogous cases, a Letters Patent Appeal were filed being LPA No. 675 of 2000, 678 of 2000 and analogous cases and by Judgment contained in Annexure-A, the Division Bench set aside the Judgment passed by the learned Single Judge in the aforesaid Writ Petition CWJC No. 3345 of 1997 and analogous cases.

9. A separate counter affidavit has been filed by the Respondent No. 6 - State of Bihar controverting the stand taken by the petitioner. It is stated in the said counter affidavit that the Rehabilitation Officer was never authorized to appoint any Government servant and, therefore, since the appointment of the petitioner was made by Rehabilitation Officer and, therefore, the same was void-ab-initio and illegal and he cannot claim himself to be a retrenched staff. It is also stated that a similarly situated person filed CWJC No. 2848 of 1998 (R) Bhikhari Baitha v. State of Bihar, before this Court, which was dismissed and the case of the petitioner stands on the similar footing. By annexing Judgment of the Division Bench, passed in L.P.A. No. 693 of 2000 with analogous cases, it is stated that the L.P.A. filed by the employees were dismissed whereas, the appeals filed by the State of Bihar were allowed by Judgment dated 29.01.2003 wherein, it was held that appointment were made in violation of the Article 16 of the Constitution of India and Recruitment Rules and Procedures provided therein. It was directed that such categories of illegal appointed employees be terminated by the Department at a short notice.

10. Mr. Saurav Arun, learned Counsel appearing for the petitioner, relying on a decision of this Court in the case of Ram Pravesh Kumar (Mapak) v. The State of Jharkhand and Ors. reported in 2004 (2) JLJR 152, submitted that in this case, it

was held that the termination of the service on the ground that Rehabilitation Officer, who had appointed the Writ Petitioner, had no jurisdiction to make such appointment, has been held to be not sustainable in view of the fact that the Director, who was having the authority to make such appointment, had a tacit approval.

Learned Counsel further relied on a decision of another decision of the Single Bench of this Court in the case of Gopal Singh v. State of Jharkhand and Ors. reported in 2005 (4) JLJR 614.

11. On the other hand, Mr. Manoj Tondan, learned S.C.-II, appearing for the State submitted that the writ petitioner suppressed the fact that the Judgment and order passed in C.W.J.C. No. 3348 of 1997 and analogous cases contained in Annexure-9, passed by the Single Judge of the Patna High Court was subsequently set aside by the Division Bench of Patna High Court vide order dated 29.01.2003 in L.P.A. No. 675 of 2000 with analogous Appeals. The Judgment of the Division Bench of the Patna High Court in the aforesaid L.P.As. were not brought to the notice of this Court while deciding the writ petition of Ram Pravesh Kumar (Mapak) in W.P.S. No. 1110 of 2002 disposed of on 22.03.2004. The Judgment of the Division Bench has been annexed with the Counter Affidavit filed by the Respondent Nos. 2 to 5 as also with the counter affidavit of the Respondent No. 6 and the same is reported in State of Bihar and Others Vs. Prashant Kr. Sharma and Others

12. After going through the aforesaid Judgment of the Division Bench of Patna High Court reported in State of Bihar and Others Vs. Prashant Kr. Sharma and Others it appears that the Division Bench, in paragraph - 12 of the Judgment, formulated the questions to be decided in all those appeals as to whether the initial entry of the writ petitioners or their initial appointment were in accordance with law or not?

The Division Bench noticed the fact that the learned Single Judge had observed in his order that the initial entry of all the Writ Petitioners was bad but further observed that in Category - "A" cases, the State did not apply its mind because the petitioners of all those four writ petitioners were possessing the orders of appointment. In the cases falling under the Category - "C", the learned Single Judge observed that the appointments were made by Rehabilitation Officer but the said Officer was not authorized to issue the appointment orders. However, in some of the letters of appointments, it contained the statements that the appointments were made on temporary/ adhoc basis as per the order of the Director. The learned Single Judge also observed that the initial appointments were issued with specific approval by the competent authority or the Director General approved the said appointment by extending the period of appointment, pursuant to which, the petitioners in those cases continued in service for a long period.

13. The Division Bench, on consideration of entire facts and after discussing a

number of Judgments, set aside the Judgment of the learned Single Judge passed in the aforesaid Batch of Writ Petitions. The Division Bench has held that in the administrative area, oral approvals for confirmation have no legs to stand. When an order of appointment is to be issued by a competent officer, then he is not competent to issue such an oral order. The State cannot be asked to produce such an order specially in a case where it has come out with a specific plea that neither there was an approval nor a consent. In the administrative field, there is nothing like a tacit order indirect or half hearted consent. Even if under the cover of protection of extension order, the petitioner continued in service but they were not treated as duly appointed temporary employees. When the appointment were admittedly illegal, bad and contrary to the settled norms then any plea by anybody that it was with the approval or an assumed tacit approval would not better the case of the respondents.

The Divisional Bench further held that if the appointment itself is in infraction of the Rule or in violation of the provisions of the Constitution, such an illegal cannot be cured nor the services can be regularized. There would not arise any occasion for regularizing the appointment of an employee whose initial entry itself is tainted and is in total breach of requisite procedure of recruitment.

An illegal stay in service howsoever long would not make the same legal. Long stay of an incumbent in an establishment/ office would not make his stay justifiable. Any protection in the name of stopper or mercy would be adding premium to illegality and would be in violation of principles of justice, fair play and good conscience.

14. From the orders passed by this Court in W.P.(S) No. 1110 of 2002 [Ram Pravesh Kumar (Mapak)], it appears that while deciding the said Writ Petition, the Judgment passed in C.W.J.C. No. 3348 of 1997, passed by Single Bench of the Patna High Court was relied by this Bench. The Judgment passed by the Division Bench of the Patna High Court setting aside the orders passed in C.W.J.C. No. 3348 of 1997 was not brought to the notice of this Court. Since the said Writ Petition No. 1110 of 2002 was decided only on the basis of the Judgment passed by the Single Bench of the Patna High Court in C.W.J.C. No. 3348 of 1997 and, therefore, the same would be of no help to the petitioner since the order of the Single Judge of Patna High Court in C.W.J.C. No. 3348 of 1997 was overruled by the Division Bench and this fact was not brought to the notice of this Court while deciding the said writ petition.

Moreover, in the said case, the writ petitioner was subsequently promoted to the post of "Amin" by the Director and, therefore, in such a situation, it was held that the Director had the tacit approval of appointment of the writ petitioner whereas, in the present case, there is no such fact and, therefore, on this ground also, the order passed in the case of Ram Pravesh Kumar (Supra) does not help the present petitioner.

15. Same is the fate of the orders and Judgment passed in other Writ Petitions

either of this Court or of the Patna High Court, which was either passed prior to the Judgment passed by the Division Bench on 29.01.2003 or even thereafter, without noticing the said Judgment of the Division Bench of Patna High Court in the aforesaid Letters Patent Appeal.

16. This Writ Petition is fully covered by the Judgment/ Order passed by Division Bench of the Patna High Court in L.P.A. No. 675 of 2000 and analogous cases on 29.01.1993 reported in State of Bihar and Others Vs. Prashant Kr. Sharma and Others . Accordingly, I hold that the petitioner is not entitled to any relief as claimed by him.

17. For the reasons stated above, I do not find any merit in this writ petition. Consequently, this writ petition is hereby dismissed. However, in the facts and circumstances there shall be no order as to costs.