
(1991) 04 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 2062 of 1989

Prithwi Nath Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1991

Acts Referred:

Citation : (1991) 04 PAT CK 0014

Final Decision : Allowed

Judgement

U.P. Singh, J.—By the impugned order contained in Annexure-"1" services of these petitioners have been terminated on the ground that their appointments were irregular.

2. The petitioners were validly appointed by the Respondent No. 3, the appointing authority, and they completed three years of service in Class III and Class IV in various Health Centres. Some of them were already confirmed on the post held by them. Petitioners 1 to 11 are Class III Government Servants, and 12 to 18 are Class IV Government Servants. In pursuance of advertisement issued from time to time, the petitioners submitted their applications and were appointed to different categories of posts in the scale of pay as mentioned in paragraph 4 of the writ application. They continued as such uninterrupted for long three years without any complaints against them. As alleged in the impugned order. it was pointed out by the respondents, that the appointment of these petitioners were not made in consonance with some orders of the Department of Personnel and Administrative Reforms and that formed the basis for termination of the service. As against this, the petitioners have affirmatively asserted that they were validly appointed by a competent authority in pursuance of the advertisement issued from time to time and they continued as such for long three years and some of them had also been confirmed in the post. It is contended that at no stage they were afforded any opportunity to demonstrate that the allegations as such were totally misconceived. The petitioners were also members of the State Provident fund and right from the beginning of their

appointment the Provident Fund contribution in accordance with the statutory rules are being deducted from them. Their names were also included in the Group-Insurance Scheme and necessary contributions are being deducted from each month. They were also granted annual increments in accordance with the service condition.

3. It is now stated for the first time in the counter-affidavit that the appointments were irregular, on the basis of some enquiry held behind the petitioners' back, to which the petitioners were never made party. In the counter-affidavit it is alleged that the Civil Surgeon cum-Chief Medical Officer, Siwan had made illegal appointments of these petitioners, who has now retired, and that the Government is taking suitable action against him. A very strange stand has been taken in the counter-affidavit that the appointing authority, who is vested with the power to appoint Class III and Class IV employees, shall not make such appointment/promotion before two years of his date of retirement without obtaining written prior permission from the Director-in-Chief, Health Services/Health Commissioner and the contention raised is that on such prior permission was obtained in making these appointments by the then Civil Surgeon, Siwan it is further submitted that after some assembly question by one M.L.A. an enquiry was made and then it revealed that all the appointments made in 1985 by the then Civil Surgeon was made in complete disregard of the rules and procedures prescribed under Annexures "A" and "B" of the counter-affidavit. It has not been specifically stated in the counter-affidavit as to which of the condition or the procedure prescribed under these annexures "A" and "B" were not followed. The averment is quite vague and the petitioners were not obliged to file any reply to these vague allegations. As to which statutory provision or procedure prescribed for selection (blurred) such appointments were violated is also not categorically and specifically stated in the counter-affidavit. Thus, it is obvious that even today in this Court, respondent-State was not in a position to, point out as to which particular procedure in making such appointments were not followed or as to which particular condition in the matter of such appointments were not followed. The impugned order is silent and the petitioners were kept in dark and were suddenly confronted with the impugned order of termination when they had almost completed more than three years of service in their posts unblemished by any complaints against their services.

4. Is the case of *Om Prakash Narayan and Ors. v. State of Bihar and Ors.* 1990 (2) BLJ 707 it was held by this Court that:

It would amount to negation of the principles of natural justice, if a person, who has been serving in a job for long years and to his must be has been validly appointed he cannot be suddenly thrown to gallows without being afforded a reasonable opportunity to show as to how his appointment, in the service is irregular or illegal. If the employee is not allowed to know the cause before he is thrown out of service, no one in the service would be safe. Nothing would be more harsh, unjust and unfair to an employee, who having served for long years

is suddenly faced with an order of termination stating that his appointment is illegal or irregular. True it is, that he would not have a right to hold the post if his appointment is irregular or illegal, but, before, arriving at such a decision, there must be an act of fair play and the employee concerned must be allowed to know and be confronted with the situation so that he can go out of the job being satisfied that he had been illegally or irregularly appointed. It cannot be left to the appointing authority to take a sudden unilateral decision without affording a reasonable opportunity to the employee concerned, who may, perhaps, legitimately persuade the appointing authority and establish that his action is mala fide, arbitrary and/or illegal. It would be dangerous to grant legal sanction to such unilateral decision of the appointing authority. Who shall be free to be a judge of his own act, in determining that one point of time the person concerned was validly appointed and yet at another point of time the same appointing authority shall turn back and unilaterally decide that how the said appointment is illegal or irregular. His power may be unquestionable but abuse of power must be checked up and before arriving at such a conclusion, it would be necessary in the interest of justice, equity and fair play that the person concerned, is afforded reasonable opportunity to know how his appointment was illegal or irregular and, may be, that even after such reasonable opportunity afforded to the person concerned to establish it otherwise, the appointing authority may arrive at the same conclusion. But, in any case, natural justice cannot be denied to him.

Now in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, , the Supreme Court was also of the view that before canceling the appointments the persons concerned should, have been given an opportunity of bearing. It was held:

It is well-settled that no order to the detriment of the appellants would be passed without complying with the rules of natural justice.

5. In the circumstances, therefore, on this short ground alone I set aside the impugned order of termination of service contained in Annexure-1 and it is directed that the Secretary (Health), Government of Bihar or the person nominated by him should give an opportunity of hearing to the petitioners, and thereafter give a finding as to whether the petitioners were validly appointed. They shall be entitled to their salary and other consequential benefits in accordance with the condition, of service. This application is accordingly allowed but without cost.