
(2010) 11 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 11365 of 1996

Priya Kant

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0033

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Petitioner came to be appointed on Class-III post of clerk in terms of the appointment letter dated 30th January, 1992. This recommendation was made because the father of the Petitioner died-in-harness and the appointment came to be made under compassionate head. Appointment letter has been annexed by the Petitioner as Annexure-1 to the writ application. Clause-8 of the appointment letter clearly states that the appointee must acquire typing skill within one year of the date of the appointment. This clause or condition was part and parcel of conditions which were laid down by the Respondents while making appointment of Petitioner on the post of clerk.

2. On 1.10.1996 Petitioner was relegated to the post of peon since he failed to pass the typing test held on three occasions which are 8.3.96, 14.6.96 and 2.9.96. Obviously such an order was not liked by the Petitioner and he rushed to the Court challenging the impugned order contained in Annexure-2.

3. Learned Senior Counsel contends that the order contained in Annexure-2 amounts to reversion and this cannot be allowed without there being disciplinary proceeding in this regard or without there being anything held out against the Petitioner on a proceeding initiated as reversion has been held to be punishment. In support thereof reliance has been placed on a decision rendered in the case of P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, . Emphasis is on paragraph-8 of the said decision which is quoted hereunder: .

Para-8: The expression "reduction in rank" in Article 311(2) has an obvious reference to different grades in service. Whenever there is a reduction in rank it implies reversion from a higher post to a lower post. Reversion from a higher post to a lower post may be under exigencies of situation or by way of punishment. The expression "reduction in rank" occurring in Article 311(2) covers only such reversions which are by way of punishment. The expression "reduction in rank", within the meaning of Article 311(2) as the expression itself suggests, means reduction from a higher to a lower rank or post. But whether in this process an officer can be reduced from a higher rank or a post to a rank to which he never belonged and to a post which he never held? If the power to reduce an officer by way of punishment to a rank which was never held by such officer is conceded, then a person directly appointed as Upper Division Clerk cannot only be reverted to the post of Lower Division Clerk, but even to the post of a Peon; an Engineer to the post of a Fitter, a Headmaster of a School to the post of an Accountant or Clerk in the said School. As such even while imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent officer concerned, from which he had been promoted to the post from which he is being reverted. If such an officer had not held that post or was not member of that cadre then he cannot be reverted to a lower cadre to which he did not belong or to a lower rank which he did not hold at any stage."

4. According to the Senior Counsel the substantive appointment of the Petitioner even though it was on compassionate ground was on Class-III post. He should not have been relegated to a Class-IV post in this manner. He also places reliance on two other decisions of this Court wherein the issue was whether the services of certain persons could be terminated for failing to pass typing test conducted by the Respondent State. In those cases Rule 148 of the Bihar Board's Miscellaneous Rules was an issue. While interpreting the said Rule and the power of the Government to make amendment to such Rule, the Court came to a conclusion that a Rule made under Article 309 of the Constitution of India cannot be amended by inserting a correction slip by way of executive instruction and therefore it was held that the subsequent amendment making it mandatory for having a typing skill was misplaced and the services could not be terminated. Taking analogy of said two decisions submission of learned Senior Counsel is that the Petitioner was not required to have typing skill or pass the test.

5. There is no dispute that the Petitioner was appointed because his father died-in-harness. He has no constitutional right to demand appointment under the State in breach of Articles 14 and 16 of the Constitution of India but since there is a policy which permits such appointments therefore Courts have been indulgent in matters of such appointments. These are special provisions formulated to give some kind of relief to the family which came in distress due to unforeseen circumstances, where the bread earner of the family dies prematurely while still in service. Appointments are to be made on Class-IV post. But there have been instances where certain persons have been given

employment even on a higher post, which is Class-III post provided they had necessary requisites, skills and competence to hold that position. Validity of such appointment is another issue.

6. The Court categorically records that there is no rule which has been brought to my notice which would show that a ward of an employees who dies-in-harness, has a right to be appointed on a Class-III post under compassionate appointment head.

7. The appointment letter of the Petitioner categorically indicates that the Petitioner had to pass or acquire the typing skill within one year of such appointment. The Petitioner had worked for almost four years before the typing test was conducted. He had been granted three opportunities to qualify but since he failed to do so the basic ground on which the Petitioner could hang on his post by virtue of higher qualification or skill did not exist. In other words the initial recommendation for appointment on Class-III post on the claim of the competence of the Petitioner seems to be misplaced and the Petitioner, therefore at best was entitled for appointment on Class-IV post alone.

8. Since it is a case where the Petitioner had been offered conditional appointment on Class-III post on compassionate ground and he having failed to acquire the skill, which was expected of him as per the appointment letter, which was readily accepted by the Petitioner as far back as on 30th January, 1992, the Court is not enthused by the submission of the Petitioner that the Respondents cannot insist on the Petitioner to acquire typing skill now, in terms of Rule 148 of the Bihar Board's Miscellaneous Rules or that a departmental proceeding was required to be held before he could be reverted.

9. Reading of Annexure-1 would show that the Petitioner's appointment was a conditional appointment and this conditional appointment was accepted by him without, any objection or without any murmur. If that was the position then it will be unfair to allow the Petitioner to challenge the letter of appointment or its conditions now merely because the Petitioner failed to acquire the skill which was expected of him in terms of the letter of appointment at the threshold.

10. None of the decisions above relied by the Petitioner in the present case have applicability in the given facts and circumstances. The reasons for appointment of the Petitioner on the post of peon afresh by virtue of Annexure-2 are attributable to him and not to Respondents. It is not a case where any interference is required in any manner.

11. This writ application has no merit and it is dismissed. However, there will be no order as to cost.