
(2002) 09 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 6628 of 2002

Rabindra Pratap Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Citation : (2002) 4 PLJR 865

Hon'ble Judges : Shashank Kr. Singh, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherjee, Arvind Ujjwal and Shanti Pratap, for the Appellant; V.N. Sinha and S.C. Jha, for the Respondent

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—Petitioner is aggrieved by Annexure-1, by which in view of direction of this Court Jo L.P.A. 1511 of 1995 dated 27.6.1996, his services have been terminated by order dated 13.5.2002, as his appointment was made without following any rules and procedures, and as such, the State Government has come to the conclusion that services of the persons whose names were given in Annexure-1 be dispensed with forthwith.

2. Contention on behalf of the Petitioner is that one Kapileshwar Sharan Jamuar and another came to this Court by filing C.W.J.C. No. 238 of 1992. A Bench of this Court while disposing of the aforesaid writ application by its order dated 31 "October, 1995 came to thei conclusion that the writ Petitioner's services were terminated on 31. October, 1991 after they have been working on their respective posts for eight and half years and 12 and half years, respectively. Both the writ Petitioners were appointed without any advertisement. They were appointed against class-3 post. Order of appointment of Petitioner No. 1 stated that he was appointed for six months only. However, such stipulation was not in appointment letter of the Petitioner No. 2. However, in their appointment letters, one fact was clear that when regular selection process was to be conducted, the Petitioner must get their appointment confirmed by appearing in a regular

selection process, otherwise, their appointments were not to be continued. Petitioner No. 1 services was also terminated but he was again given appointment in the year 1983. In the year 1988 an advertisement was made in daily newspaper "Aaj" for regular selection process. Petitioners' admitted case was that they did not apply for appointment pursuant to the said advertisement. Prior to terminating their services they were also given show cause notice to show cause as to why their services be not terminated. In the said show cause also they did not state as to why they did not apply pursuant to the advertisement published in the daily newspaper. In view of these facts, the Court found that order of their termination could not be disapproved.

3. The said writ Petitioners preferred an appeal by filing L.P.A. No. 1511 of. 1995 which was disposed of on 27.6.1996 affirming the order of the writ Court, but in view of the stand of the Petitioners that similarly situated persons have not been touched, the Court observed that if such other persons were also there, they should also be dealt with in accordance with law.

4. The stand of the Petitioner in the present case is that the Petitioner was appointed on a leave vacancy on a sanctioned post in the year 1973. By annexure-2 he was allowed to continue till further orders. Subsequently, his services have been regularised. His order of appointment was not conditional though it has not been denied that he had not been appointed through a selection process, but it has voluntarily been argued that he was not similarly situated as the writ Petitioners of C.W.J.C. No. 238 of 1992, as he has put in 28 and half years of service. The relief given to the writ Petitioner of the earlier case that he can appear before the authority and in case of regular appointment his case be considered for appointment after relaxing the age bar, again holds no good for the present Petitioner as virtually he has reached the age of superannuation after putting 28 and half years of service.

5. In the facts of the case, this Court is of the view that if the department so wished they may have proceeded against the Petitioner, but they cannot take shelter under the order of this Court in L.P.A. No. 1511 of 1995 dated 27.6.1996. In view of the facts as stated above, the Petitioner of the present case cannot be said to be similarly situated as the writ Petitioners of

C.W.J.C. No. 238 of 1992.

6. In view of the facts as stated above, this Court is inclined to quash Annexure-1 so far it relates to the writ Petitioner. If the Petitioner has been removed from service, he be reinstated forthwith. The Respondents, if they so wish, may proceed against the Petitioner, in accordance with law.

7. This writ application is allowed.