
(2009) 11 PAT CK 0018
In the Patna High Court

Raghunandan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2009) 11 PAT CK 0018

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

J.N. Singh, J.—Heard learned Counsel for the petitioner and learned Counsel for the State.

2. In this writ application, petitioner has challenged the order, as contained in Memo No. 1509 dated 30.6.2005, passed by the then In-charge Civil Surgeon-cum-Chief Medical Officer, Samastipur, annexed as Annexure-1 to the writ application, by which services of the petitioner have been terminated with immediate effect and petitioner has been asked to show-cause as to why a police case be not lodged against him for producing a forged appointment letter. The order shows that, in compliance to the directions of the Chief Secretary, as contained in two letters, for enquiry into the validity of the appointments made after 1.1.1980, the case of the petitioner was enquired into. It mentions that the records and the documents produced by the petitioner, specially copy of the letter No. 92 dated 9.9.1991 purported to have been issued from the office of the Civil Surgeon, Madhubani, were examined. He found that the said letter was in reference to some interim orders of this Court and by it a number of incumbents, including the petitioner, were allowed to continue in service. Subsequently, an enquiry was made from the office of the Civil Surgeon, Madhubani, in respect of the said letter, and it transpired that the name of the petitioner in that letter was an interpolation. The said letter was compared with its original and it was found that, at Serial No. 18, in place of the name of the petitioner, the name of one Bachchu Tiwari was mentioned in the original letter. Thus, it was found that in

view of the said letter, the Civil Surgeon, Madhubani, had found the appointment letter of the petitioner as forged and fabricated. Therefore, by letter No. 3540 dated 9.12.2004 and again by letter No. 375 dated 7.3.2005, the Civil Surgeon-cum-Chief Medical Officer, Samastipur, asked the petitioner to show-cause which he did. The reply show-causes of the petitioner were not found satisfactory and it was held that appointment of the petitioner was forged and fabricated. Accordingly, his service was terminated from the date of issue of the order and orders were issued to the In-charge, Medical Officer, Primary Health Centre, Patori, to take steps for payment of salary of the petitioner for the period prior to the issuance of the letter, in accordance with law, and to lodge a criminal case against him for obtaining appointment on the basis of a forged appointment letter and inform him accordingly.

3. Learned Counsel for the petitioner submits that the impugned order was issued without holding a proper enquiry against him. He submits that, as the petitioner was confirmed in service, the respondents were required to first hold an enquiry against him in consonance with the provision of Article 311(2) of the Constitution of India, which requires that charges ought to have been framed against him with opportunity to show cause, and he ought to have been given an opportunity to lead evidence to repeal the charges and, thereafter, a proper report ought to have been submitted against which he could have submitted his second show-cause and, thereafter only, the Disciplinary Authority could have passed an appropriate order. In support of the said contention, learned Counsel for the petitioner referred to a Division Bench decision of this Court in the case of Ram Krishna Dubey Vs. State of Bihar and Others . He submits that against the said decision of the Division Bench State of Bihar moved the Apex Court through SLP No. 10242/2008, which stands dismissed. He submits that instead of following the said procedure, as contemplated in Article 311(2) of the Constitution of India, the respondents have only issued show-cause notices to the petitioner and, thereafter, have terminated his service. He submits that, as would be evident from his service book (Annexure-42), petitioner's services had already been made permanent. Hence, his services could be terminated only in compliance with Article 311(2), and not otherwise.

4. The second contention of the learned Counsel for the petitioner is that, Annexure-E to the counter-affidavit and Annexure-39 with the supplementary affidavit of the petitioner would show that, petitioner had filed a detailed show-cause with the respondents in respect of the validity of his appointment. He had produced a number of documents for consideration alongwith the representation, as contained in Annexure-39. However, the said representation of the petitioner, in reply to the show-cause, has been rejected by the Disciplinary Authority in one line, finding it "not satisfactory". He submits that there is no consideration at all, in the impugned order, of the materials produced by the petitioner, in respect of the validity of his appointment and, therefore, the order is clearly in violation of Principles of Natural Justice.

5. The third contention of learned Counsel for the petitioner is that the impugned order has been passed by the respondent Civil Surgeon-cum-Chief Medical Officer, Samastipur, on the basis of some findings arrived at by the Civil Surgeon, Madhubani, with regard to petitioner having obtained his appointment on the basis of a forged letter. He submits that the Civil Surgeon, Madhubani, did not give any opportunity to the petitioner before coming to that finding, which was transmitted to the Civil Surgeon, Samastipur, and accepted by him for termination of his service. He also submits that the impugned order itself shows that the entire consideration of the respondent-Civil Surgeon, Samastipur, revolved around letter No. 92 dated 9.1.1999, issued from the office of Civil Surgeon, Madhubani. The only consideration, made by the respondent-Civil Surgeon, Samastipur, was that in the said letter produced by the petitioner, the name of the petitioner was at Serial No. 18, whereas in the original letter, the name of one Bachchu Tiwari was at Serial No. 18. In this context, he submits that, the said letter was only with respect to some interim orders passed by this Court in some writ matter, in compliance to which, the incumbents were allowed to continue in services till the pendency of the writ applications. He submits that, this letter had no bearing on the validity of initial appointment of the petitioner, which was made in the year 1989 through letter No. 1326 dated 28.11.1989, issued from the office of Civil Surgeon, Madhubani. Any enquiry, in respect of genuineness of this letter, if at all made, was made behind the back of the petitioner, and the findings of the same have been accepted by the Civil Surgeon, Samastipur, for terminating his services, without affording any opportunity to him against the alleged enquiry held by the Civil Surgeon, Madhubani. He submits that, in fact, enquiry made at the level of Civil Surgeon, Samastipur, was only with regard to the genuineness of the said letter No. 92 dated 9.1.1991, and not in respect of the initial appointment letter of the petitioner, as mentioned above.

6. A counter-affidavit has been filed in this case by the respondent No. 8. The stand of the respondent is that the documents, which were produced by the petitioner in response to the show-cause notices, were sent to the Civil Surgeon, Madhubani, for verification with regard to its genuineness. The Civil Surgeon, Madhubani, reported that the initial appointment letter of the petitioner was itself forged and, therefore, relying upon the said report of the Civil Surgeon, Madhubani, the impugned order has been passed.

7. Learned Counsel for the State has also filed a counter-affidavit of respondent No. 7 on 9. 10.2009 and, in context to that, he submitted that, in the counter-affidavit the letter No. 1326 dated 16.6.1989 has been annexed as Annexure-A, in which one Sri Arbind Kumar has been shown to have been permitted to sit in B.A. examination and the same was not in respect of the petitioner and the letter was attested by Civil Surgeon-cum-Chief Medical Officer, Madhubani. However, when confronted, learned Counsel for the State accepted that, with the counter affidavit, Annexure-A is the letter No. 92, dated 9.1.1991 and not the letter No. 1326, dated 16. 6. 1989, as wrongly mentioned in paragraph 6 of the said

counter affidavit.

8. The impugned order shows that letter No. 2753 dated 27.11.2004 of Civil Surgeon, Madhubani, fell for consideration by the Civil Surgeon, Samastipur, for passing the impugned order. The said letter has been annexed as Annexure-G to the counter-affidavit of Respondent No. 8.

9. After going through the said letter Annexure-G, this Court finds that it was only confined to genuineness of the letter dated 92 dated 9.1.1991 which was produced by the petitioner. This letter, Annexure-G, does not show at all, as to in what respect the alleged letter of appointment of the petitioner of 1989 was found to be forged. Therefore, apparently, this letter could not be a basis for holding the appointment letter of the petitioner as forged. The impugned order also mentions some enquiry made by the Civil Surgeon, Madhubani. There is no detail of such enquiry made by the Civil Surgeon, Madhubani, in respect of the appointment letter of the petitioner, in the impugned order.

10. Thus, it is clear from the impugned order that, there was no material available before the Civil Surgeon, Samastipur, at the time of consideration of the case of the petitioner, to show that the initial appointment letter of the petitioner was itself forged. Even if letter No. 92 dated 9.1.1991 was found to be forged, that itself could not be made a basis for holding the initial appointment of the petitioner as forged. It is also apparent that the replies submitted by the petitioner, and the documents produced by him therewith, were not considered by the Civil Surgeon, Samastipur, and the said replies were rejected only in one sentence, by finding them "unsatisfactory". If the documents produced by the petitioner were examined by the Civil Surgeon, Madhubani, as claimed by the learned Counsel for the respondents, and a report was submitted, the same ought to have been supplied to the petitioner, with an opportunity to him to file his reply and only then the Civil Surgeon, Samastipur, could come to a definite conclusion with regard to the validity of initial appointment of the petitioner. As noticed earlier, letter No. 1326 dated 16.6.1989 is not on record, inspite of claim made in counter affidavit of respondent No. 7. Thus, apparently, the impugned order suffers from more than one legal infirmity, and is not sustainable in the eye of law.

11. In the circumstances, the impugned order, as contained in Annexure-1 to the writ application, is quashed. Since this Court has found that the replies of the petitioner were not taken into consideration, and he was not given any opportunity in respect of the materials available against him, this Court directs the Civil Surgeon, Samastipur, to make a fresh consideration in the matter, after giving full opportunity to the petitioner, and after supplying him the documents which he intends to consider for coming to a conclusion in the matter of validity of his appointment. This exercise must be completed within a period of four months, from the date of production/receipt of a copy of this order. Since, the petitioner has alleged non-compliance of the requirements as envisaged under Article 311(2) of the Constitution of India, the Civil Surgeon, Samastipur, will be

well advised to hold a proper enquiry in accordance with law and thereafter, pass final orders. The Civil Surgeon, Samastipur, will be at liberty to reinstate the petitioner in service during this period, but petitioner will not be entitled for any payment of his salary, till the conclusion of the enquiry, within the said four months. In case, within four months, as fixed by this Court, the enquiry is not complete, the petitioner shall be entitled to all his salary.