

(1992) 04 PAT CK 0031

In the Patna High Court

Case No : C.W.J.C. No. 2950 of 1990 (R)

Raj Kishore Kumar Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0031

Judgement

B.C. Basak, C.J., S.N. Jha and N. Roy, JJ.—Inasmuch as this writ application can be disposed of on a very short point, it is not necessary for us to go into the larger issue as to whether the principle of natural justice would apply where the initial appointment has been made in violation of Article 16 of the Constitution of India for the simple reason that in the present case upto now there has been no formal order of termination of service. In this context, reference may be made to the decisions of the Supreme Court in H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, and Shrawan Kumar Jha and others Vs. State of Bihar and others, .

2. Accordingly, we pass the following order. There is no formal order of termination as yet. The petitioners, who are five in number, must be given a personal hearing for showing cause as if it is intended to terminate their reason as to why their appointments shall be terminated on the ground that such appointment was irregular on illegal on any ground. This decision must be taken by the Health Secretary, Government of Bihar, Patna, personally inasmuch as there seems to be some doubt on the question as to who is the appropriate authority. Accordingly, the Secretary is directed to decide as to whether the appointment of the petitioners was legal or illegal or regular or irregular and he shall pass a "speaking order" i. e., an order giving reasons. He will take into consideration all relevant facts. Such decision has to be passed after giving a personal hearing to the petitioners and the department concerned. This decision is to be taken and such "speaking order" passed and communicated to the petitioner by 31st May, 1992. If no such decision is taken within such time, then the services of the petitioners shall not be terminated on the ground that their

appointment was illegal or irregular.

3. After such decision is taken, the further question as to what salary is to be paid and for which period, shall be decided on the basis as to the period for which they had actually worked irrespective of the question of the validity of their appointment.

4. Let it be recorded that except to the extent indicated above, we have not gone into merits of the case. Particularly we have not gone into the question whether initial appointment was made irregularly or illegally. We have also not gone into the question whether petitioners had actually done any work and if so, for which period.

5. This writ application is disposed of accordingly.

Let copies of this order be given to be parties.