

(2014) 01 PAT CK 0012

In the Patna High Court

Case No : CWJC Nos. 8623 and 14283 of 2007 and 1857, 5778, 10678 and 1126 of 2008

Rajesh Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 PLJR 324

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Amit Shrivastava, Girish Pandey, Abhay Shanker Singh, Abhay Shandar Singh and Amod Kumar Singh, Advocate for the Appellant; Rabindra Kr. Priyadarshi, Advocate for the Respondent

Judgement

Chakradhari Sharan Singh, J.—A common order dated 8.11.2006 issued under the signature of the Chief Executive Officer, Gaya Municipal Corporation, Gaya is under challenge in a batch of these six writ applications filed under Article 226 of the Constitution of India. The issues involved for the purpose of adjudication are almost common. As a matter of fact, the facts of the cases are also common for the purpose of deciding the issues involved, with minor variations, which are not of much consequence. These matters have, therefore, been heard together and are being disposed of by the common order. CWJC No. 8623 of 2007 has been preferred by Rajesh Kumar, Pankaj Kumar and Ajit Kumar whose names figure at serial Nos. 7, 9 and 3 respectively of the impugned order whereas the names of petitioners of CWJC No. 1126 of 2008, i.e. Mohan Kumar Singh and Rajeev Kumar figure at Serial Nos. 4 and 10 of the said order. Similarly, petitioners of CWJC No. 1857 of 2008, i.e., Ramesh Kumar, Raj Kumar Singh, Bal Mukund Sharma, Anwarul Haque and Sanjay Kumar-I figure at Serial Nos. 8, 5, 11, 19 and 6 of the said order. The petitioners of CWJC No. 5778 of 2008 are Sanjay Singh @ Sanjay Kumar Singh and Sanjay Kumar-II whose name is at Serial Nos. 2 and 14 of the impugned order. Jeetendra Kumar Singh, Ranjan Kumar, Nirranjan

Singh, Sanjeev Kumar and Sunil Kumar whose names figure at Serial Nos. 12, 16, 18, 17 and 13 of the said impugned order are petitioners of CWJC No. 10678 of 2008. Manoj Kumar Singh, whose name figures at Serial No. 1 of the impugned order, is petitioner of CWJC No. 14283 of 2007, whose case is slightly different on facts from other petitioners and the court will take note of such facts at appropriate place in the present order.

2. Keeping in mind what transpired in course of hearing of all these matters, before dealing with the background in which the impugned order came to be passed, I consider it appropriate to quote the contents of the said order at the very outset. The order is addressed to the petitioners and following is the content of the order:--

"Sarkari Adhiwakta ke mantavya awm karyawahi pustika me janch padadhikari ki ankit tippani ke alok me sambandhit 19/unnish karmiyon ki niyukti me vihit prakriyaon aom mapdando ka palan nahin hone ke karan nigam board ki baithak dinank 9.9.2005 me aaplogon ke niyukit ko awaidh awm aniyamit mante hua radd karne ke liya gaye nirnay ke kram me aapse prapt spastikaran santoshprad nahin hat."

3. On a careful reading of the impugned one-sentence order as quoted above, it would transpire that by this order the respondents have found the explanations, submitted by these petitioners; in connection with decision of the "Nigam Board" in its meeting dated 9.9.2005, to cancel their appointments, treating such appointments to be illegal because of noncompliance of prescribed procedure and standards for appointment of employees; not satisfactory. It would further transpire from the impugned order that the said decision of "Nigam Board" dated 9.9.05 is based on--

(a) Opinion of learned Government Pleader,

(b) Notes entered into the "minute book" by the Enquiry Officer.

4. I have taken the facts mostly from the records of CWJC No. 8623 of 2007, for the purpose of present order and shall refer to the case of Manoj Kumar Singh (CWJC No. 14283 of 2007) facts of which are slightly at variance to some extent.

5. This is to be taken note of that the order which is impugned in the present batch of writ applications has been passed in compliance of and in the light of a judgment dated 8.1.2003 passed in a batch of four writ applications which is Annexure-2 of CWJC No. 8623 of 2007. The petitioners in the present batch of writ applications were petitioners in the earlier proceedings also, except Manoj Kumar Singh, the petitioner of CWJC No. 14283 of 2007.

6. The common case of all these petitioners except the said Manoj Kumar Singh, is that they were initially appointed on daily wage basis on different posts in the year 1996 and their services were regularized subsequently. Under some direction of the State Government to the District Magistrate, Gaya to constitute a committee and examine the validity of the appointment of the petitioners, a

committee was duly constituted. The committee found the appointment of these petitioners to be illegal. Further, in view of a direction issued by the State Government, in the light of the said report, to cancel all illegal appointments and promotions made after 8.8.1995, the Administrator of the Corporation terminated the services of the petitioners after giving show cause notices to them. On a plea that the State Government did not have any authority to issue such direction to the Corporation and action taken by the Corporation on such basis was illegal, this court on 8.1.2003 passed the following order:--

"It is relevant here to state that the aforesaid direction was rendered by this court in respect of the employees of the Corporation itself whose services were terminated in view of the direction of the State Government. The cases of the petitioners are covered by the decision of this court in the case of Manoj Kumar Singh (supra) and in that view of the matter, I have no option than to quash the impugned orders and direct for their reinstatement in service within seven days from the receipt/service of a copy of this order. As in the case of Manoj Kumar Singh, I decline payment of back wages to the petitioners but their continuity and seniority in service shall be maintained. I, however, give liberty to the respondent the Municipal Corporation to examine whether the initial appointments of the petitioners were in accordance with law and whether valid procedures were followed or not and if on examination of the same, it is found that the petitioners were appointed illegally, a show cause notice shall be given to them and order in accordance with law shall be passed. This exercise must be completed within a period of four months from the date of petitioners are reinstated in service."

7. As would appear from the said judgment of this court dated 8.1.2003, it was rendered relying upon the order dated 30.3.2000 passed in CWJC No. 5044 of 1999, which was filed by Manoj Kumar Singh, who is the petitioner in CWJC No. 14283 of 2007 in the present batch of cases. The operative portion of the order passed in the case of Manoj Kumar Singh, which has been quoted in the judgment of this court dated 8.1.2003, is being reproduced hereinbelow:--

"Following the aforesaid principle, this court quashes the impugned order dated 5.5.1999 as contained in Annexure-1. But this court gives liberty to the respondent Corporation to examine whether the initial appointment of the petitioner was in accordance with law and whether valid procedure was followed or not and if on examination of the same the respondent authority finds that it is not so, then he can issue show cause notice to the petitioner and then pass an order in accordance with law. As a result of quashing of the impugned order, the petitioner should be reinstated in service within seven days from the date of receipt/service of a copy of this order but he should not be paid any thing by way of back wages between the period he was terminated from service and the date of reinstatement. Of course, this court makes it clear that on reinstatement of service of the petitioner, his continuity and seniority in service should be maintained."

8. The common case of the petitioners, as pleaded in the writ applications, is, as regards facts and developments subsequent to passing of the judgment and order of this court dated 8.1.2003, that in compliance of the said order, services of these petitioners were reinstated by memo No. 106 dated 19.2.2003 (Annexure-1/A of CWJC No. 8623 of 2007). By Memo No. 293 dated 6.6.2005, the petitioners were directed to submit evidence/documents in support of legality of their appointments (Annexure-3 of CWJC No. 8623 of 2007). It is the specific case of the petitioners that they submitted the required details/documents/evidence in support of legality of their appointments, in pursuance of the above memo dated 6.6.2005. It is their further case that along with details, they also submitted documents showing advertisement in the newspaper and other relevant documents. It is further case of the petitioners that on 7.9.2005, the meeting of five members enquiry committee of Gaya Municipal Corporation was convened in the office of Chief Executive Officer, Gaya Municipal Corporation and in the said meeting, without examining the response submitted by these petitioners, remaining four members of the committee, in the absence of the Chairman of the committee mechanically came to a conclusion that the process of appointment was not correct. It is specific case of the petitioners that documentary evidence submitted by the petitioners was not at all discussed in the said proceeding dated 7.9.2005. It is further asserted in the writ applications that two out of four members of the enquiry committee did not agree to hold the appointment of the petitioners as illegal or unlawful. It is, accordingly, case of the petitioners that it was not the majority opinion of the enquiry committee that the appointment of these petitioners was illegal. It is also pleaded that subsequently on 8.5.2006, the five members enquiry committee held its meeting and came to a conclusion that appointment of five employees out of 19, whose cases were under consideration, was proper which includes the names of petitioners of CWJC No. 8623 of 2007 and CWJC No. 1126/2008. Thereafter, it is the petitioners' case that another show cause notice was issued on 17.2.2006 and a paper publication was effected in Dainik Jagran on 3.6.2006 asking the petitioners to give their reply. It is further their case that in their reply to the subsequent show cause, they specifically mentioned that they had already submitted their documents in response to the earlier show cause notice dated 6.6.2005 on 28.6.2005. They, however, supplemented their stand by submitting their reply show cause again on 14.6.2006, which is Annexure-11 to CWJC No. 8623 of 2007.

9. On 22.8.2013, a counter affidavit was filed on behalf of respondent No. 3, Municipal Commissioner, Gaya Municipal Corporation, sworn by him. The answering respondent took a plea in the counter affidavit that the State Government had imposed ban on appointments in the Corporations, including Gaya Municipal Corporation in the year 1995 itself vide letter dated 8.8.1995 and despite such communication by the State Government the petitioners were illegally appointed on daily wage basis and subsequently they were appointed by different orders against relevant rules and provisions for such appointments. It is

further plea in the counter affidavit that the employees of Gaya Municipal Corporation who were involved in illegal engagement of these petitioners, have been proceeded departmentally and criminal action has also been initiated against them. It has also been stated in the counter affidavit that no notice inviting applications for appointment on daily wage basis was published in the newspaper, to counter the assertion made by the petitioners. It is the case of respondent No. 3 that pursuant to order of this court dated 8.1.2003, a committee was constituted and the committee submitted its report on 8.5.2006. It is further case of the Corporation that the said report was placed before the Board of the Corporation on 9.9.2005. For the benefit of quick reference, paragraph 14 of the said counter affidavit is quoted hereinbelow:--

"14. That in the aforesaid regard it is further submitted that after receipt of the order passed in the aforesaid CWJC the Chief Executive Officer of the Corporation placed the matter before the Board of the Corporation and in the meeting of the standing committee held on 10.10.2003 a five men committee was constituted to scrutinize the appointments of 19 persons. The committee submitted report on 8.5.2006. The Chief Executive Officer placed it before the Board of the Corporation in its meeting held on 9.9.2005 who discussed the matter in its entirety and after considering all the pros and cons resolved that the appointments of 19 persons were illegal and the Chief Executive Officer was directed and authorized to take proper action against the 19 employees."

10. It has further been stated in the counter affidavit, dealing with averments made in the writ petitions, that show cause and notices were issued to all the 19 persons pursuant to the court's order but 11 out of them refused to receive and as they managed the Postal Department, A/D was not returned, therefore, notices were published in Dainik Jagran, a Hindi Daily, in pursuance whereof the petitioners filed their show cause reply. It is the case of the respondents that Annexure-4 of the writ petition (CWJC No. 8623 of 2007), through which the petitioners had filed documents in support of validity of their appointments were in fact never submitted and it is an afterthought.

11. On 23.10.2013 this court passed the following order:--

"Let the original record of the concerned meeting dated 9.9.2005 of the Board and 7.9.2005 of the committee constituted for the concerned purpose be produced on the next date of hearing."

12. Thereafter, a supplementary counter affidavit was filed again sworn by Mr. Daya Shanker Bahadur, Municipal Commissioner, Gaya, respondent No. 3. Paragraphs 6 and 7 of the said supplementary counter affidavit read as follows:--

"6. That as far as the original record of committee report dated 7.9.2005, is concern it is submitted that photocopy of the report has already been annexed by the petitioners and the answering respondent is also accepting the same hence it is an admitted document. The original copy of the report dated 7.9.2005 is not being located in the office of Corporation. However it is being traced out in

the establishment section of the Corporation and it will be produced as soon as it is traced:

7. That the decision of the Board of Corporation dated 9.9.2005 was confirmed and approved in subsequent meeting of the Board dated 28.11.2005 and demand of the two members was rejected. Hence any report subsequent of report dated 7.9.2005 is meaningless and has got no relevance."

13. It has been stated in paragraph 8 of the supplementary counter affidavit that committee had submitted its report on 7.9.2005 and not on 8.9.2006 as wrongly typed in paragraph 14 of the counter affidavit.

14. On 16.12.2013 another supplementary counter affidavit came to be filed, paragraph 4 of which reads as follows:--

"4. That in the continuity of the earlier counter affidavits it is submitted that the original copy of the enquiry report dated 7.9.2005 is not available in the office of answering respondent, however photocopy/true copy of the said report has been traced out and the same is being brought as record."

15. Alongwith the said supplementary counter affidavit photocopy/true copy of the said enquiry report dated 7.9.2005 has been brought on record by way of Annexure-G.

16. Annexure-G apparently contains the proceeding of the committee constituted pursuant to order of this court. This, thus, is an admitted position that original enquiry report is not there with the respondent No. 3. Paragraph 8 of the 2nd supplementary counter affidavit, which is the verification portion reads thus:--

"8. That the annexure is true/photocopy of their respective original."

17. The case of Manoj Kumar Singh, petitioner of CWJC No. 14283 of 2007, as has been noted above, is that he had earlier approached this court by filing CWJC No. 5044 of 1999 and the order passed by this court dated 30.3.2000 has been quoted in the beginning of the present order, in his case, pursuant to order of this court, the Corporation had taken, a conscious decision way back in the year 2003 itself by an order dated 30.6.2003 that the petitioner would continue in service treating his initial appointment to be legal and valid. The order dated 30.6.2003 passed by the Chief Executive Officer, Gaya Municipal Corporation has been annexed as Annexure-8 to the present writ application. The said Annexure-8 has not been denied by the Corporation in the counter affidavits.

18. Mr. Amit Kumar Shrivastava and Mr. Abhay Shanker Singh, learned counsels appearing on behalf of the petitioners have challenged the action of the respondents in issuing the impugned order mainly on the following grounds:--

(i) The impugned order is non-speaking and it does not reflect any application of mind and is, therefore, had being in violation of principles of natural justice.

(ii) The documents/annexures brought on record even by respondent No. 3 do

not demonstrate consideration of the show cause replies/representations filed by the petitioners and the impugned order has been passed, in fact, without considering the reply/documents submitted by these petitioners in support of legality of their respective appointments.

(iii) A false statement has been made in the counter affidavit that the petitioners did not submit any representation as contained in Annexure-4 of the writ application.

19. It has been submitted that stand of the respondents that petitioners had not filed documents/explanation is falsified from plain reading of Annexure-G to the second supplementary counter affidavit, which contains the proceeding book of the five members enquiry committee. It has also been submitted that it would be evident from the proceeding dated 15.7.2005 that the petitioners had in fact submitted their show cause and documents/evidence in support of their cases, which were there on record before the enquiry committee on 15.7.2005. Learned counsels for the petitioners have also referred to, in this regard, the legal opinion of Government Pleader, which has been brought on record by respondent No. 3 by way of Annexure-G, to contend that the documents/evidence were there before the enquiry committee and learned Government Pleader has noticed this fact specifically in his opinion.

20. Mr. R.K. Priyadarshi, learned counsel appearing on behalf of respondent No. 3, Municipal Commissioner, Gaya Municipal Corporation, on the other hand, justifying the action of termination of services of the petitioners, has placed heavy reliance upon the counter affidavit and supplementary counter affidavits filed on behalf of the answering respondents to contend that pursuant to the order of this court, enquiry committee was constituted, which submitted its report finding the initial engagement of the petitioners illegal and in contravention of the statutory provisions. He has drawn my attention to final decision taken by the Board vide agenda No. 12 in a meeting held on 9.9.2005 (Annexure-E of CWJC No. 8623 of 2007). He has also drawn my attention to the fact that the decision of the Board of the Corporation as taken on 9.9.2005 was subsequently confirmed and approved in a meeting held on 28.11.2005. He has reiterated the stand taken in the counter affidavit that no show cause reply/document/evidence was filed by the petitioners in support of their case, as asserted in the writ applications, being Annexure-4 to the writ petition. He has submitted that such documents have been brought on record in the present case solely for- the purpose of developing a case in the present writ applications and it is an afterthought. He reiterates that the State Government had restrained the Corporation from making" any appointment by letter dated 8.8.1995 and any engagement made thereafter by the Corporation without following the procedure prescribed was invalid and it was rightly held so by the committee constituted for this purpose in the subsequent decision of the Board.

21. The dispute regarding procedure adopted by the Corporation, in the light of the order of this court, revolves around two factual aspects. Firstly, whether the

petitioners had submitted any reply/document/evidence in support of their claim before enquiry committee submitted its report as claimed by them in the writ petition, by way of Annexure-4. Secondly, whether there has been application of mind by the respondent authorities, before reaching to a conclusion that initial engagement of these petitioners was illegal.

22. From Annexure-G to the second supplementary counter affidavit, it is evident that the show cause and other documents filed by the petitioners, at least 15 in number, were there on record before the enquiry committee on 15.7.2005. From the legal opinion of learned Government Pleader, which is part of Annexure-G brought on record by respondent No. 3, also it appears that show cause and documents were filed by these petitioners in support of their claim of legality of their initial engagement. Statements made in paragraphs 15 and 16 of the counter affidavit, in this regard, in my opinion, appear to be false. From Annexure-G which, according to counter affidavit and supplementary counter affidavits, contains the report of the enquiry committee dated 7.9.2005, it appears that case of the petitioners had not at all been considered and representation of the petitioners and the documents submitted by them were also not considered. Further, in spite of order. dated 23.10.2013, original records of the concerned meeting dated 9.9.2005 of the Board and 7.9.2005 of the committee has not been brought on record. On the one hand Municipal Commissioner, Gaya Municipal Corporation, Sri Daya Shanker Bahadur has stated in the counter affidavit in paragraph 4 that original copy of the enquiry report dated 7.9.2005 is not available in his office and photocopy/true copy of the said report has been traced out, which has been brought on record by way of Annexure-G, in paragraph 8 of the second supplementary counter affidavit, however, he has stated that the said annexure is true copy/photocopy of "its original". These two statements are contradictory. When original document was not available in his office, he could not have stated on oath that the said annexure was photocopy/true copy of its original. This court. deprecates the conduct of the Municipal Commissioner, Gaya Municipal Corporation in filing the misleading counter affidavit/supplementary counter affidavit, containing false statements, which is apparent on face of it.

23. On the basis of pleadings in the writ applications as well as in the counter affidavit/supplementary counter affidavits and the rejoinders thereto, I have no hesitation in holding that there has been complete non-application of mind by the respondents while considering the legality of the initial appointments of the petitioners pursuant to order of this court dated 8.1.2003 passed in CWJC No. 5837 of 2000 and other analogous cases. This is apparent from the proceeding dated 9.7.2005 by the committee, constituted under the orders of this court, that the enquiry was conducted in perfunctory manner and in fact there was no enquiry at all. The stand of the answering respondent that there was no document submitted by these petitioners for consideration before the enquiry committee is contrary to record. It is evident from Annexure-G and the legal opinion of learned Government Pleader, Gaya, which is part of Annexure-G, that

all these petitioners had filed their explanations along with documents to the Corporation, which were there on record before the committee also.

24. I find force in submission on behalf of the petitioners that the impugned order, dated 8.11.2006, which has been quoted at the outset does not reflect any consideration or application of mind. It is trite law that it is incumbent upon the authorities to pass a speaking and reasoned order even in administrative matters. In the present case, authorities were in fact in quasi-judicial role acting in terms of the orders of this court to decide whether initial appointments of these petitioners were legal or not. A right to reason has been held to be an indispensable part of sound system of judicial review by Supreme Court, in case of *State of West Bengal Vs. Atul Krishna Shaw and Another*, . Reason is heart beat of every conclusion and in absence of reason an order becomes lifeless, as has been held by the Apex Court. Necessity and purpose of recording reasons has been reiterated and emphasized by Supreme Court in case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others*, in following words:--

"The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

25. This is shocking and surprising that in spite of repeated orders of this court, the original enquiry report and proceeding of the Board has not been traced out.

26. In view of the facts and circumstances, as pleaded and taken note of, I am constrained to hold that the enquiry conducted by the enquiry committee constituted pursuant to order of this court dated 8.1.2003 is totally perfunctory and not an enquiry at all. Any decision taken on such basis including the decision of the Board as well as the impugned order cannot be sustained and are, accordingly, quashed. The impugned order is not sustainable also on the ground that it is non-speaking and unreasoned.

27. This court deprecates the conduct of the deponent of the counter affidavit and supplementary counter affidavits in making false statement that the petitioners did not file any explanation/show cause/document for consideration/scrutiny by the enquiry committee. This stand has been falsified by the contents of the Annexure-G, brought on record by way of second supplementary counter affidavit. I would have ordered for proceeding against him on the charge of perjury, but I am leaving him with note of caution that such conduct on his part may lead to serious consequences. These writ applications are, accordingly,

allowed and the impugned order dated 8.11.2006 is set aside. The respondent No. 3 is directed to proceed afresh by constituting an enquiry committee afresh in accordance with direction given earlier by this court in its order dated 8.1.2003 passed in CWJC No. 5837/2000 and other analogous cases. The respondents are further directed to consider the case of Manoj Kumar Singh, petitioner of CWJC No. 14283 of 2007 separately, keeping in mind earlier decision of the Corporation in this regard as contained in the order dated 30.6.2003 which has been annexed as Annexure-8 to writ petition filed by him which has not been denied. The petitioners are directed to be reinstated in service within one week from the date of production/communication of this order. The petitioners will -be entitled to their current salary on regular basis since the date of their joining, pursuant to the order of this court. The petitioners will, however, not be entitled for any back wages as there is no averment in the writ applications that they were not engaged elsewhere for the purpose of their livelihood. However, in the peculiar facts and circumstance of these cases, as has been noted above, I consider it appropriate to impose cost of Rs. 10,000/- to be paid to each of the petitioners by the Corporation. Such payment should be made within a period of three months from today.