
(2008) 04 PAT CK 0081
In the Patna High Court
Case No : LPA No. 368 of 1998

Ram Avtar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 3 PLJR 172

Hon'ble Judges : Shiva Kirti Singh, J; Kishore K. Mandal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh & Kishore K. Mandal, JJ.—Heard learned counsel for the appellants and learned counsel for the State. This letters patent appeal is directed against the order of the learned single Judge dated 6.9.1996 whereby the writ petition bearing C.W.J.C. No. 3583 of 1996 was dismissed with a finding that petitioners had been given opportunity of hearing before the Committee looking into nature of their appointments which is alleged to be fraudulent and de hors the rules of recruitment and against the requirements of Articles 14 and 16 of the Constitution of India. Another finding of the writ court is that on facts the petitioners' appointment has rightly been found to have been made de hors the rules of recruitment and against the requirements of Articles 14 and 16 of the Constitution of India. The petitioners preferred a review petition to raise certain fresh contentions including a contention that the Chief Medical Officer-cum-Civil Surgeon, Bhojpur had not been validly appointed to that post and was not entitled to act as Civil Surgeon and as appointing authority who could terminate the service of the petitioners. The order dated 20.2.1998 dismissing the review application bearing Civil Review No. 282 of 1997 has also been challenged in this letters patent appeal.

2. On behalf of appellants/writ petitioners it was submitted that since the Civil Surgeon, Bhojpur was not properly holding that post therefore, he had no

jurisdiction to pass the impugned order of termination contained in annexures-1 and 2. It has further been submitted that the opportunity given to the appellants/writ petitioners some of whom appeared before the enquiry, was not adequate and sufficient. The next contention is that the enquiry report suffers from error and it could not be presumed that the order showing appointment of the petitioners by way of adjustment contained in annexure-3 is a forged or fraudulent document only because such order was not found issued from the concerned office as per issue and dispatch register maintained in usual course of business in the concerned office. It was submitted that appellants/writ petitioners had entered into service on the basis of annexure-3 on 6.7.1987 and they have been removed by the impugned orders dated 19.3.1996 and 22.3.1996 (annexures-1 and 2 to the writ petition) after about 9 years and hence on account of such delay the petitioners deserve to be retained in service on the ground of equity or at least no recovery should be made from them of wages they have received for rendering actual service.

3. On behalf of State it has been submitted that the facts have been correctly appreciated by the writ court which has come to a finding that requirements of natural justice stood satisfied because not only notice was given to the appellants but two of them had also appeared before the concerned enquiry committee but they failed to produce any document in defence of their case that they have been validly appointed. It was further submitted that a bare perusal of the so-called order of appointment contained in annexure-3 would show that writ petitioners were shown to have been appointed by way of adjustment of seasonal Sprayers into regular cadre of Class-3 employees and this was done without any advertisement and de hors the rules of recruitment. He further pointed out that even in the writ petition the petitioners have failed to claim and substantiate that they were seasonal or daily wages employees of the department or had ever worked in the past. We find that no previous order relating to engagement of the petitioners as seasonal employees have been annexed nor such pleadings are available in the records of the writ petition. On a consideration of the relevant facts and circumstances, we find that the writ court rightly did not allow collateral challenge to the appointment or authority of the Civil Surgeon in a writ proceeding which was mainly against a declaration that petitioners had been illegally and fraudulently claiming appointment to Class-3 posts in the concerned department/office under the State Government. The law is well settled that orders of authority or Tribunal cannot be assailed through collateral challenge to constitution or appointment of the concerned authority or the tribunal. Even if found to be illegally appointed or constituted its order or judgments remain valid under the de facto doctrine.

4. However, other points or even the aforesaid points have no relevance or substance in this case because the law is now well established that an illegal appointees cannot claim to continue on grounds of equity or by alleging irregularity in the Enquiry and no writ will be issued to perpetuate the continuation of a person in public employment, if it has been found through a fair

enquiry or trial that his entry is de hors the rules of recruitment and against the requirements of Articles 14 and 16 of the Constitution of India. Reference, in this context may be made of Constitution Bench of judgment of Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

5. It will be useful to refer to a judgment of the Supreme Court in the case of R. Vishwanatha Pillai vs. State of Kerala reported in AIR 2004 SCW 419 only to highlight the well recognized principle that a person who seeks equity must come with clean hands. In the aforesaid judgment Supreme Court has reiterated that principle and has clarified that he, who comes to the court with false claims, cannot claim equity nor the court would be justified to exercise equity jurisdiction in his favour. In paragraph 19 of that judgment it has further been highlighted and emphasized that equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing fraud. No sympathy consideration can come to his rescue. The facts of each case may vary but the principles of equity remain the same. On that principle petitioners do not deserve any equity. In the facts of the case we find no good ground to interfere with the order of the writ court or the order passed in review which have the affect of dismissing the writ petition of the appellants. We find no merit in this appeal. Hence, it is dismissed.

There shall be no order as to costs.