

(1998) 02 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 8670 of 1995

Ram Lakhan Thakur and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 1 PLJR 844

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Chandra Mohan Jha and Shailendra Kumar Jha, for the Appellant; Binay Kumar Singh and Shravan Kumar, Rajiv Nayan Singh, Shola Sandhwar and Asit Jha for Respondent Nos. 7 to 9, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner originally filed the writ petition for direction on the Respondents to appoint them to the post of clerk. When the present writ petition was earlier taken up by this Court on 16th January 1997 this Court rejected the prayer of the Petitioners for such appointment. However when it was brought to the notice of this Court that certain other persons were also continuing in the service in an illegal manner they were ordered to be impleaded as party Respondent Nos. 7 to 9 to the present writ petition and the following order was passed.

The Petitioners seek direction for appointment to the post of Clerk on the ground that similarly situate persons have been appointed/retained.

The petitioners were initially appointed as Aichchik Karyakarta (voluntary workers) on honorarium of Rs. 50/- per month on 20.4.87. They were later engaged on daily wages basis on 15.12.90 and in course of time appointed in regular scale admissible to Class III post. After their services were terminated, they came to this Court in C.W.J.C. No. 10464 of 1993. By order as contained in

Annexure- 13 their (sic) was rejected on 22.9.94 As the grievance to the effect that similarly situate persons, who like the Petitioners had been initially engaged as Voluntary workers, later engaged on daily wages basis and appointed in the regular scale, have been retained on the post the Civil Surgeon-cum Chief Medical Officer, Madhubani, was directed to look into the matter and pass appropriate order.

In the above facts it is (sic) that so far as the relief for appropriate against class III post is concerned the same having been rejected in the previous writ petition they cannot be allowed to re-agitate the claim and to that extent the writ petition is not maintainable.

It however appears that pursuant to the latter part of the order aforesaid the Civil Surgeon terminated the appointments of certain persons on 5.5.95 vide Annexure-14. Later however orders were issued on 2.8.95 vide Annexure-17 to retain their services. Another order to which attention of the Court was drawn is one contained in Annexure-19. As regards the latter order it has been stated in the counter affidavit that the same has not been implemented. So far as the three persons mentioned in Annexure-17 are concerned, a bald stand has been taken in the counter affidavit to the effect that their cases were not similar to those of the Petitioners.

Counsel for the Petitioners drew my attention to Annexure-21 series and submitted that the stand of the Respondents is not correct. Baldeo Prasad, Umesh Prasad Singh and Umesh Narayan Sahi were also like the Petitioners initially engaged as voluntary workers and in course of time appointed in the regular scale. The submission to this extent appears to be well founded. It however appears that the said three persons have not been impleaded in this case as party-Respondents. Counsel for the Petitioners stated that he may be allowed to add them as parties. Permission is granted. Baldeo Prasad, Umesh Prasad Singh and Umesh Narayan Sahi are allowed to be added as Respondent Nos. 7 to 9.

As indicated hereinabove, it is not possible to issue direction for appointment of the Petitioners. However prima facie the appointment/continuance of Baldeo Prasad Umesh Prasad Singh and Umesh Narayan Sahi appears to be in conflict with the direction of this Court. It also amounts to violation of Articles 14 and 16 of the Constitution. I would, accordingly direct that till further orders the newly added Respondents i.e. Respondent Nos. 7 to 9 shall not be allowed to function on the post and no salary/allowance shall be paid to them.

In the meantime issue notice to the newly added Respondents to show cause why their appointments be not cancelled.

Talbana etc. must be filed within one week failing which the application shall stand rejected without further reference to a Bench.

2. The Respondent Nos. 7 to 9 as well as the other Respondents State of Bihar

and its authorities appeared and filed counter affidavit. Initially the Respondent Nos. 7, 8 and 9 filed one counter affidavit and made statement that they were appointed against Class III post after following the procedure of appointment. However the aforesaid statement having been controverted by the Petitioners the Respondents were directed to file counter affidavit/supplementary counter affidavit enclosing therein the relevant documents to show that they were appointed after following the procedure of appointment including advertisement interview selection through a Selection Committee after preparation of a merit list.

3. In the counter affidavit and supplementary counter affidavit filed on behalf of the Incharge Civil Surgeon Madhubani (Respondent No. 3), it is stated that the Respondent Nos. 7, 8 and 9 were appointed illegally without following the procedure of appointment and so after giving proper notice to them, their services have already been terminated by one order No. 289 dated 9th February, 1998.

4. In the supplementary counter affidavit filed on behalf of the Respondent Nos. 7 to 9, they have stated that in pursuance of an advertisement (Annexure-A) published in the newspaper "Times of India" on 14th September 1989 the Petitioners applied for appointment against one or other Class III posts. Thereafter they were called for interview through notice published in the Notice Board on 30th December, 1989 where in after they were appointed.

5. The counsel appearing on behalf of the Respondent Nos. 7 to 9 further submitted that as the legality of appointment of the Respondents 7 to 9 was pending consideration before this Court the Respondents should not have come out with the order of termination dated 9th February, 1998 and should have awaited the decision.

6. From the pleading made by the Respondent Nos. 7 to 9, I find that though they are in position to show that an advertisement was published in the newspaper but they have failed to show that other procedure for appointment to the posts concerned were followed in their cases. Admittedly no interview letter was issued to them. Though an advertisement was published in the newspaper on 14th September, 1989 calling for application from eligible candidates for appointment against different Class III posts irrespective of their place of residence without any notice to candidate of other places a purported selection took place. This according to me is not permissible being violative of Article 14 of the Constitution of India.

7. This apart, there is nothing on the record to suggest that some sort of selected list was prepared by the Selection Committee and a merit list was prepared before the appointment of the Petitioners.

8. However as the appointments of the Respondent Nos. 7 to 9 have already been cancelled by one order dated 9th February, 1998, no further order is required to be passed in this case with respect to them such order being legal.

9. The other grievance of the Petitioner as. was recorded by this Court by its earlier order dated 16th January, 1997, was that a number of persons whose services were terminated on 5th September, 1995 being illegal they were reinstated subsequently on 2nd August, 1995. List of 138 such persons was enclosed by the Petitioners with the writ petition.

10. In the supplementary counter affidavit and show cause filed in the analogous contempt petition the present Civil Surgeon has stated that after the order of termination dated 10th July 1995 the then Civil Surgeon Dr. Irkush Topno issued various orders of reinstatement However those orders of reinstatement were not given effect in many of the cases. Out of total 138 persons whose services were terminated, 79 persons were allowed to be re-instated. But recently when the present Civil Surgeon cum-Chief Medical Officer came to know of the same, issued show cause notice to each of the 79 such illegal appointees and after hearing them services of 40 persons have already been terminated by another order No. 291 dated 10.2.1998. It is stated that with regard to rest of the 39 persons no final order has been issued as they have intimated that their cases are pending before this Court. It is further stated that the appointment of another Shri Anirudh Prasad having been found illegal his service has also been terminated by one order dated 9.2.1998 after giving notice to him.

11. In view of subsequent development as taken place as recorded above no further order is required to be passed in the present case. However this order will not stand in the way of the Petitioner and/or the contesting Respondents in their future appointment. If any one or order Petitioner or contesting Respondent applies for appointment in future the Respondents will consider their cases in accordance with law. It is further matte clear that if one or other Petitioner or contesting Respondent become over age in the meantime they will consider their cases for relaxation of age. It is expected that the vacant post will be filled up by the Respondents, in accordance with law on an early date preferably within a period of six months.

12. The writ petition is accordingly dismissed and the proceeding for contempt initiated against the contemner is dropped. The Contempt Petition thus stands disposed of.