
(2010) 09 PAT CK 0086
In the Patna High Court
Case No : CWJC No. 1971 of 1999

Ram Swaroop Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 1 PLJR 143

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Annexure-8 dated 1.8.96 is the order of termination, which is under challenge in the present writ application. Petitioner terms the order of termination to be illegal, arbitrary and misplaced because he claims to have been appointed by a competent authority i.e. the Divisional Forest Officer. The post on which Petitioner was appointed was post of a Mali.

2. Contention of the counsel representing the Petitioner is that Petitioner was in service of the Respondents in one or the other capacity for a very long time. His earliest introduction to the system is evident from Annexure-11 when he came to be appointed on 4.9.1974 on daily wages as a Cattle Protector (Pashu Rakshak). It is his case that looking at his good work which he performed, the Divisional Forest Officer decided to appoint the Petitioner on the post of a Mali giving him a pay scale. This appointment came to be made on 3.11.1995 and the said order is Annexure-6 to the writ application. Petitioner joined the post and started working but he was subsequently informed that he stood terminated by the order dated 1.8.1996. Though the Petitioner has challenged the said order, by filing the present writ application but he still feigns ignorance about the existence of such an order. It is his case that the said order was never served on him and there is some indication to this extent from some of the documents which he has annexed with the supplementary affidavit. In the totality of the circumstances, the long association of the Petitioner with the department and taking a

compassionate view of the matter, he prays that he ought to be reinstated and the order of termination quashed.

3. The stand of the State in the counter affidavit is that within months of the appointment of the Petitioner, he came to be terminated. When the higher authorities came to learn that irregular appointments have been made by the then Divisional Forest Officer, just before his retirement, under what was known as Draught Prone Area Programme. No procedure for appointment was followed. It was a unilateral decision of the then Divisional Forest Officer to make the appointment in total breach of not only Articles 14 and 16 of the Constitution of India but even the laid down procedure in this regard.

4. It is also their stand that even if the stand of the Petitioner is accepted that the appointment made by the Divisional Forest Officer was within his rights and powers but the letter of appointment itself indicates that it was subject to approval by the selection board because the letter of appointment categorically states that the appointment was temporary, subject to approval by the appointment board and the Petitioner fulfilling the criteria laid down in this regard. They further contend that the office order No. 52A dated 3.11.1995 lays down procedure for such appointments but all this was given a go-by as the Divisional Forest Officer was going to retire in a couple of months time. When these facts did emerge, not only the appointment of the Petitioner but other similarly situated persons appointed by the then Divisional Forest Officer came to be terminated by different orders.

5. Counsel for the Petitioner has fairly accepted the position that there is no approval given by the board with regard to his appointment. Some time in the year 2000 the board was constituted but the board never met and took no decision. Inaction on the part of the Respondents will not stand in the way of Petitioner's continuance or his appointment being invalid in any other manner.

6. The so-called document annexed by the Petitioner with regard to the constitution of the committee is an interesting piece of document by itself. Annexure-18 is dated 14.11.2000. By the said letter the board was constituted to consider the case of the Petitioner, who was temporarily appointed in light of CWJC No. 10157 of 1997, which was filed by the Petitioner earlier.

7. Two aspects must be noted about the constitution of the so-called committee, one that there was no direction with regard to appointment of the Petitioner on the post in CWJC No. 10157 of 1997. This writ was filed by the Petitioner for a direction for payment of salary to him. There was no occasion for the High Court to give such a direction, which is evident from the order annexed. There was not even a murmur on the issue of appointment. In fact it is evident from reading of Annexure-10 that the Court was well informed about the termination of the Petitioner's service when the question of payment of wages and salary was raised by him and the Court gave no direction on the said fact.

8. The other aspect which is quite glaring is that when the Petitioner was already

terminated on 1.8.96 where was the occasion for the board to meet and consider his case for approval for continuance of the Petitioner to the appointment made by the then Divisional Forest Officer. Obviously, even the authorities have been kept in dark with regard to the actual state of affairs.

9. It cannot be a case of the Petitioner that the Divisional Forest Officer was the total monarch and he had all the authority to make appointment according to his wish and desire. Any appointment made under the State is required to satisfy the conditions laid down under Articles 14 and 16 of the Constitution of India. Obviously, the Petitioner has been obliged by an officer who imparted a parting gift upon the Petitioner just before he left the office. Such manner or method of appointment cannot be certified by the court to be legal and valid even though some kind of power was vested on the Divisional Forest Officer. In addition to that, the appointment of the Petitioners in terms of Annexure-6 was on temporary basis. If the rule or procedure has not been followed and was not approved by the concerned competent board then there is no occasion for this Court to direct continuance of the Petitioner on the post or to interfere with Annexure-8.

10. Yet another interesting aspect has emerged from the affidavit which has been tendered to the Court today, which has been levelled as a supplementary affidavit on behalf of the Petitioner. The Petitioner has procured some letters and documents to show that he is still working under the Respondents in some capacity or the other. This Court has nothing to say or comment upon such document. That by itself also is an indicator that the Petitioner is still hovering around the office in whatever capacity despite the order of termination issued way back in 1996 and some of these procured documents cannot make out a case that he was legally and validly appointed way back on 3.11.1995.

11. The writ application has no merit. It is dismissed. However, there will be no order as to cost.