

(2006) 05 JH CK 0069

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 5155 of 2000 (P)

Ramadhar Singh

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 409, 420, 468

Citation : (2006) 3 JCR 445

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : V.P. Singh, for the Appellant; S.P. Roy and P. Modi, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.

Heard.

The amendment is allowed. The prayers made in paragraph 4 of the Interlocutory application are added in the prayer portion.

I.A. No. 1131 of 2006 is disposed of.

C.W.J.C. No. 5155 of 2000

1. Petitioner has challenged the appellate order dated 22.3.2000 as contained in Memo No. 41/PS dated 22.3.2000 (Annexure-1), passed by the Secretary to the Government, Planning & Development, Bihar, Patna affirming the order bearing No. 407 dated 28.10.1999 (Annexure-2), passed by the Director, Planning Division (Statistical and Evaluation Department), Government of Bihar, Patna, by which he was dismissed from service and order was passed for recovery of emoluments received by him.

2. Petitioner's case is that he was appointed after due selection and he joined his

post on 11.7.1990. After eight years, the department dismissed him from service on the alleged ground of impersonation. By letter dated 15.12.1998 (Annexure-3) he was asked to produce certain documents. He could not produce the receipt of application, admit card mark-sheet and letter of recommendation issued by the Board (Bihar Subordinate Service Selection Board), though he produced letter of interview and the letter of appointment. It is submitted that usually the said documents such as receipt, admit card, mark sheet, recommendation letter and envelopes are not preserved and accordingly they could not be produced by the petitioner. Thereafter, the impugned action was taken on the ground that the photographs affixed in the application form filed before the Board and the photo graph of the person working, were different. It is submitted that changes in the photograph is bound to happen in a span of ten years. It is further submitted that provisions of article 311 of the Constitution of India was not followed, before removing petitioner.

3. According to the respondents, when it was detected that one Sunil Kumar was an imposter, a complete screening was done. It was found that 22 persons, including petitioner, were impostors. Petitioner and others were asked to appear before the Director of the department, with all the original papers. But inspite of sufficient opportunity, petitioner failed to prove that he was not imposter. It is also stated in the counter affidavit that a departmental proceeding/ criminal case for the charge of defalcation was initiated against petitioner.

Following portion of the judgment, reported in R. Vishwanatha Pillai Vs. State of Kerala and Others, was referred.

Where an appointment in a service has been acquired by practicing fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

It was also submitted that in that case, dismissal of employee, after twenty seven years of service was upheld when it was found that employment was obtained by practicing fraud.

4. In this writ petition, this Court cannot decide the aforesaid disputed questions of fact. The only thing which can be seen is whether petitioner was given opportunity to prove his case?

5. By letter dated 15.12.1998, petitioner was asked to produce all original papers regarding his appointment, such as-receipt of application to Board, adm. it card, mark sheet, letter of recommendation, letter of interview and eligibility certificate. On 4.1.1999, petitioner produced letter of interview and letter of appointment, and about other papers he said that they are not available. He was given another chance to produce all the required documents on 12.1.1999. Petitioner was also asked to produce envelopes of the said two documents, produced by him. On 12.1.1999, when he did not appear, two registered letter dated 20.1.1999 and 19.6.1999 were sent at his correct addresses. Ultimately a press notice was published on 27.6.1999 asking him to appear with all original

papers, failing which he would be removed from service. In spite of all this, petitioner chose not to appear. By a legal notice (Annexure-7) petitioner asked the department to recall the said press notice dated 27.6.1999 and stop departmental proceeding till conclusion of the criminal cases initiated against him (Tamar P.S. Case No. 80 of 1997 dated 25.10.1997 u/s 409 IPC and Rajnagar P.S. Case No. 24 of 1994 dated 7.5.1994 under Sections 468/420/409 IPC). Ultimately, by the impugned order dated 28.10.1999, petitioner was removed from service, as he failed to appear and produce the required original papers. Moreover, from the available records, it was found that the photograph of "Ramadhar Singh" affixed on the application form forwarded by Board, was not matching with the photograph of the person working as "Ramadhar Singh". It was found that petitioner had obtained employment by practicing fraud. Accordingly, he was removed from service and order for recovery of emoluments received by him was also passed. Against the said order, petitioner filed appeal through a lawyer who also on the dates fixed for hearing went on filing time petitions through others. Thus, neither the petitioner nor his lawyer chose to appear before the appellate authority. The appellate authority after calling for parawise comments from the directorate and the relevant file, considered the case. He also verified the photograph affixed on the application form made before the Board and the photograph of the petitioner in his file and found that they were of different persons. The appellate authority made the photocopies of the said photograph as part of his order. He found no reason for interfering with the order-dated 28.10.1999. The appellate authority also made strong observations about non-institution of criminal case against the petitioner.

6. In the circumstances, it cannot be said that petitioner was not given sufficient opportunity. Petitioner's explanation that he could not appear due to paucity of money as he was not paid subsistence allowance, is not acceptable. In such circumstances, where the appointment of petitioner itself, was found void being based on fraud, it was not necessary to hold a departmental proceeding for removing him. I do not find any error in the procedure adopted by the respondents, There is no reason to interfere with the impugned orders. Accordingly, this writ petition is dismissed. However, there will be no order as to costs.