
(2002) 03 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 7646 of 2000

Ramashankar Pandey

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Citation : (2002) 2 PLJR 499

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Petitioner before this Court is an employee of the Bihar State Scheduled Caste Co-operative Development Corporation Limited ("the Corporation", hereinafter). He was holding the rank of Clerk-cum-typist and was posted as Incharge District Executive Officer, Branch Office, Katihar, when by an office order issued by the Corporation's Administrator under his memo No. 1549, dated 8.8.2000 he was reverted to the post of peon. The order of reversion is passed on the ground that his promotion from the post of peon to the rank of Clerk-cum-typist was on the basis of a fake order in the sense that the promotion order was non-existent. It is this office order passed by the Administrator that comes under challenge in this writ petition.

2. Before proceeding to take note of the relevant facts of this case, it may be noted here that the appointments and promotions made in the Corporation, specially the appointment and promotion of the present Petitioner have been attracting the attention of the members of the Legislative Assembly and on more occasions than one questions were raised in the Assembly in connection with the Petitioner's appointment as peon and later his promotion to the post of Clerk-cum-typist. On the last occasion question relating to the Petitioner's appointment and promotion were raised by a member in the 138th sessions of the Assembly. The member's questions were sent to the Corporation's Administrator for preparing the answers which the Government might give in the

house. A copy of those very questions were served upon the Petitioner along with letter No. 1462, dated 25.7.2000 issued by the Administrator directing him to show cause why he should not be reverted to the post of peon. It is important to note here that neither in the show cause nor in the questions raised by the member of the Assembly there was any indication that the Petitioner's promotion was bad because it was based on a fake order, in the sense that the promotion order was not in existence in the office of the Corporation.

3. The questions that had come to the Corporation were four in number. The first question was whether the appointment of the Petitioner on the post of peon was made without following the rules regarding issuance of advertisement etc. The second question was whether the Petitioner was given promotion on the cadre post of Clerk-cum-typist even before completing the qualifying period of eight years and only on completion of three years" of service and disregarding the rules of reservation and even without regularising him in service. The third question was whether the Petitioner was given promotion from the post of Clerk-cum-typist without verifying his degree which was in violation of the provisions of the Bihar Service Code. The fourth question was, in case the answers to the first three questions were in the affirmative, whether action would be taken against the officer responsible for giving promotion to the Petitioner and whether the Petitioner would be reverted to the post of Peon, and if not then why not?

4. To the show cause notice, dated 25.7.2000 the Petitioner gave his reply on 2.8.2000 whereupon the Administrator passed the impugned order, dated 8.8.2000.

5. According to the Petitioner, an advertisement was issued by the Corporation on 3.7.1983 for appointment against twenty posts of peon. The Petitioner was one of the applicants in response to the advertisement. He was called for an interview by letter, dated 18.7.1983 and on being selected along with others he was appointed as peon by office order No. 132, dated 27.7.1983. It is further the case of the Petitioner that the Corporation was set up in January, 1979 and for the next several years no detailed rules were framed for appointment, promotion etc. of its employees. In the absence of any rules the matter of recruitment, promotion and other similar issues were governed by the resolution, dated 5.1.1979 passed by the Corporation's Board of Directors.

6. It is stated on behalf of the Petitioner that he was promoted as Clerk-cum-typist by office order No. 4 issued by the Managing Director of the Corporation under his memo No. 33. 20.5.86 (copy at Annexure 2). Following the promotion he was required to join in the Corporation's branch office at Giridih and he joined there on 24.5.1986. The District Executive Officer, Giridih gave intimation in this regard to the Managing Director by his letter No. 20, dated 24.5.1986 (copy at Annexure 3). Later on, by office order No. 258, dated 5.12.1987, five Clerk-cum-typists were transferred from one place to another. In the transfer order (Annexure 4) the name of the Petitioner figured at serial No. 2 and by this order he was brought to the Patna, branch of the Corporation. In the order of transfer

the transferees, including the Petitioner, are referred to as Clerk-cum-typists. There are a number of other materials and documents on the basis of which the Petitioner tries to support to his claim that he was promoted as Clerk-cum-typist by the Corporation's Managing Director then in office in the normal course of administration.

7. Having regard to the order that propose to pass in this case, it is not needed to go into the details of each materials documents relied upon by the Petitioner in support of his claim. Suffice it to note that the sum and substance of the controversy in this case is whether the Petitioner's promotion from peon to the post of Clerk-cum-typist was made in reality or whether he was working in the Corporation as Clerk-cum-typist, then as Law Assistant (later re-designated as Assistant Law Officer) and then as Incharge District Executive Officer of a branch office of the Corporation, for a period of sixteen years, on the basis of a fake order of promotion in the sense that order was not in existence in the office of the Corporation.

8. It is important to bear in mind that the dispute, as it is presented before this Court in this case, is not whether the promotion given to the Petitioner was legal, valid and regular and whether the Petitioner was given promotion following the relevant rules including the rules of reservation and after taking into consideration all the eligible candidates. But the dispute is whether the promotion is non est because there is no order of his promotion in existence in office. If the dispute was about the validity of the promotion in the sense of observance or failure to observe the relevant rules then the considerations would be different and in that case the lapse of the long period of time may also have to be taken into account. But in the case of a dispute, as it appears to be in this case, that in reality there was no promotion because the order of promotion relied upon by the Petitioner was fake and it had no existence in the office of the Corporation, the considerations will be quite different and in such a case even the long lapse of time may not be a relevant consideration.

9. It is now proposed to briefly examine the stand of the two sides on this dispute and the materials on the basis of which the two sides try to support their respective stands. From the materials on record it appears that the two sides are primarily relying upon two sets of evidence. According to the Respondents the internal set of evidence (or rather the lack of it) shows that office order no 4 said to have been issued by the Managing Director under his memo No. 33, dated 20.5.86 was a fake and it had no existence in the Corporation's office.

10. In the counter affidavit filed on behalf of the Respondents, it is stated that order No. 4, under memo No. 33, dated 20.5.86 was not to be found in the Corporation's office at Patna or in its branch office at Giridih. Further, the office order and the memo did not find any mention in the despatch register. The despatch register showed that office Order No. 4 was issued on 10.1.86 and not on 20.5.86 and memo No. 33, dated 20.5.86 did not relate to the promotion of the Petitioner but was on an altogether different issue. The Respondents,

therefore, inferred that the so called promotion order was a fake and for all this time (fourteen years) the Petitioner was enjoying the benefits of promotion on the basis of a fake order.

11. The Petitioner takes the stand that the inference arrived at by the Respondents is quite unfounded and he relies upon materials which can be described as the external set of evidences. These include:

(i) The answers that were sent to the concerned Government Department by the Administrator of the Corporation on 24.7.89 for being placed in the Assembly in reply to questions (raised by another member) regarding the validity of the Petitioner's appointment and promotion. In the answers, dated 24.7.89 the promotion given to the Petitioner was justified by stating that the promotion was given before the provision of qualifying period was introduced by the Board of Directors.

(ii) The counter affidavit filed on behalf of the Corporation in CWJC No. 9843 of 1996 filed by one Daroga Rai in which the promotion given to the present Petitioner was one of the issues in dispute. The Corporation in para 5 of its counter affidavit not only accepted the promotion given to the Petitioner from the post of peon to the rank of Clerk-cum-typist but also fully justified it.

(iii) The Petitioner's application for promotion, dated 1.2.1986 (copy at Annexure 13) and the letter, dated 1.2.1986 by the Dist. Executive Officer, Giridih branch by which he forwarded the Petitioner's application to the Managing Director. These two letters find mention in the office order No. 4 by which, according to the Petitioner, he was given promotion as Clerk-cum-typist.

12. Apart from relying upon the aforesaid materials in support of his claim that he was duly allowed promotion, the Petitioner tries to assail the conclusion derived by the Respondents that this letter was nonexistent on the basis that it does not find any mention in the despatch register. It is suggested that there may be more than one despatch registers in the office or that the despatch register was not being maintained properly and all orders, memos and communications did not get routed through the despatch register. In order to discredit the evidence of the despatch register the Petitioner brings on record a number of documents which it is not needed to be considered in detail at this stage.

13. The object and purpose of taking note of the respective stands of the parties and briefly indicating the material facts and circumstances relied upon by them in support of their respective stands is simply to show that it is not a case where the fakeness of the order is apparent on the face of the record or where it would not be possible for anyone to doubt or dispute that the order of promotion was in fact nonexistent, fake or fraudulent. Any such findings would require much investigation of facts taking into consideration a number of materials, facts and circumstances relied upon by the Petitioner. In these circumstances, it was incumbent upon the concerned authority to give the Petitioner a clear notice

plainly indicating that his promotion in the rank of Clerk-cum-typist was on the basis of a fake order which had no existence in reality. The Petitioner should have been given an opportunity to place all materials before the authority issuing such a notice and then the concerned authority should have recorded a finding after taking into consideration the materials relied upon by the Petitioner.

14. I must note here that Mr. Shyama Prasad Mukherjee, learned Senior Counsel appearing for the Corporation, submitted that if it was established or if the court was satisfied that the promotion order was in fact fake, then the question of giving any show cause notice to the Petitioner would not arise. The proposition stated by Mr. Mukherjee does not apply in the facts of this case. As noted above, it is clearly a case where the Corporation's allegation that office order No. 4 issued by the Managing Director under memo No. 33, dated 20.5.1986 had no existence in reality cannot be accepted without further investigation of facts and the investigation of facts could only be made by the competent authority after giving due notice to the Petitioner, in clear terms. As that was not done in this case, I find it difficult to sustain the impugned order, dated 8.8.2000 issued by the Administrator.

15. I am supported in the view taken by me by an order passed by a division bench of this Court in *Ruplal Rajak v. State of Bihar* and Ors. 1991 B.R.L.J. 165. In this order, it was observed as follows:

In our opinion, the Petitioner was promoted and he was allowed to function up-till-now. The principle of natural justice should have been followed before the impugned order was passed on such allegation. Accordingly we set aside the order of demotion and the direction for recovery of excess amount.

16. The impugned order, dated 8.8.2000 is accordingly set aside; as a result the consequential order passed by the Dist. Magistrate, Katihar under his memo No. 2054, dated 8.8.2000 also falls to the ground.

17. The Administrator of the Corporation, however, will be at liberty, if he thinks the facts and circumstances of the case so warrant, to proceed against the Petitioner in accordance with law after giving due notice to him as indicated in this order.

18. It is made quite clear that this Court is not expressing any opinion on the merits of the respective stands of the parties. And the impugned order has been set aside on the sole ground that it was passed without giving the Petitioner an opportunity to show cause.

19. In the result, this writ petition is allowed.