
(2010) 08 PAT CK 0180
In the Patna High Court
Case No : CWJC No. 3405 of 2004

Sachida Nand Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2011) 2 PLJR 559

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Vide order dated 30.5.2001 issued by the Regional Deputy Director of Education, Tirhut Division at Muzaffarpur Petitioner was removed from the post of clerk who was working in the office of Sub-Divisional Education Officer, Bagaha in the district of West Champaran. He has also directed recovery of salary paid to the Petitioner because his appointment was found to be illegal, if not fraudulent as would be evident from Annexure-1 to the writ application which is the impugned order.

2. The history behind the present litigation as per the narration given in the writ application is that an advertisement was issued in the newspaper on 31.12.1992 by the Regional Deputy Director of Education (R.D.D.E.) inviting applications for appointment on the post of clerk. As per the advertisement the applications of only such persons was to be considered who were registered with the Employment Exchange. Petitioner was an applicant in response to the said advertisement which has been annexed as Annexure-2 to the writ application.

3. As per a notice issued on the Notice Board of the office of the R.D.D.E. all the applicants who fulfilled the criteria of the advertisement were asked to appear for interview on 15.4.1993. Petitioner was selected and appointed as a clerk in Government Teachers Training College, Dariyapur in the district of West Champaran. Appointment letter dated 26.6.1995 has been annexed as

Annexure-4.

4. Petitioner went to give his joining at the said Teachers Training College but his joining was not accepted as there was no vacancy in the said office. R.D.D.E adjusted and posted the Petitioner in the office of the Assistant Inspector, Basic Education, Compact Area at Brindaban situated in the district of West Champaran. The office order of such posting is Annexure-5 to the writ application. Petitioner joined the office of Assistant Inspector on 30.6.1995 and started working in the said institution. According to the Petitioner his service book was opened and benefit like GPF, GLI etc. was extended to him and deduction from his salary was being made.

5. On 8.8.1996 Petitioner came to be transferred again and was posted in the office of Sub-Divisional Education Officer, Bagaha. He joined the transferred post at Bagaha on 17.8.1996 and started working at his new place of posting. However from August, 1997 payment of his salary was stopped according to the Petitioner without any rhyme or reason. When the concerned Respondents did not respond to his request and representations he decided to file CWJC No. 11098 of 1998. That writ was for a direction of payment of his salary. Before any order could be passed in the writ application an office order No. 234 dated 18.5.1999 came to be issued by the District Education Officer, West Champaran by virtue of which not only the Petitioner but some other persons similarly appointed came to be removed from service on the ground that they were illegally appointed. This order is Annexure-8 to the writ application. The order of removal however came to be stayed by the Director, Primary Education, Bihar with a direction to the R.D.D.E., Muzaffarpur to enquire into the matter with regard to the so-called illegal appointment of the persons who were removed by the office order contained in Annexure-8. Earlier writ application filed by the petitioner for payment of salary was withdrawn with liberty to the Petitioner that in case any, kind of adverse order on the enquiry conducted by R.D.D.E. is passed, Petitioners of that writ may move this Court in accordance of law. Thereafter the impugned order dated 30th May, 2001 has come to be passed which is Annexure-1 to this writ application and under is challenge.

6. Submission of learned Senior Counsel representing the Petitioner is that the appointment of the Petitioner was made by following the procedure and there was no legal infirmity as the required process was followed by R.D.D.E. The letters of appointment and transfer orders supports the Petitioner. It is a circumstance to show that the Petitioner had been appointed by the authority by following the guidelines. He even worked at the various places of transfer satisfactorily and salary was being paid to him by the Respondents till for the first time the order contained in Annexure-8 came to be passed. Raising doubts against the said appointment now is misplaced.

7. It is also his case that in similar circumstance yet another employee, namely, Ravindra Kumar Tiwary moved the High Court and the High Court quashed the order of termination as the Respondents failed to satisfy the Court that there was

any wrong doing in appointment or the requisite rules were not followed. The said order came to be affirmed by the Division Bench in LPA as well as by the Hon"ble Supreme Court in SLA (Civil) No. 6077 of 2001. Based on the reasoning given by the learned Single Judge in the case of Ravindra Kumar Tiwary yet another writ application was allowed which was the case of Anil Kumar Jha and Ors. (CWJC No. 4815 of 1999) and the same was upheld by the Division Bench in LPA No. 371 of 2001, a copy of the said order is Annexure-12 to the writ application. Petitioner pleads that he should be similarly treated.

8. Counter affidavit on behalf of the Respondents State has come to be filed by R.D.D.E. of Tirhut Division of Muzaffarpur (Respondent No. 3) . His stand in the counter affidavit is that large scale illegal appointments came to be made on Class-III and Class-IV posts at a given time frame without following the procedure for recruitment and in an illegal manner. When this fact came to the knowledge of the Director, Secondary Education, Bihar he ordered an enquiry into the bona fide of such appointments and it was during the course of enquiry that the case of the Petitioner also came to be looked into. Appointments made in the year 1995 by the then so-called R.D.D.E. which included the Petitioner was without any advertisement, the so-called interview, preparation of a panel and so-called roster clearance based on reservation policy. The procedure for appointment has been laid down in detail by the Department of Personnel and Administrative Reforms in its circular dated 3.12.1980.

9. Petitioner and some other persons were appointees of one Bhola Ram who was the District Education Officer at Muzaffarpur. For brief period of one and half months he was made the Incharge R.D.D.E. with no formal posting as R.D.D.E. and taking advantage of the short time frame, all these illegal appointments came to be made by the said District Education Officer.

10. It is the contention of the State that the so-called advertisement issued in Annexure-2 is a sham because the said advertisement was issued by the then R.D.D.E., Muzaffarpur, namely, Sri Keshev Tripathi inviting applications for preparation of a panel for appointment on the post of clerk against future vacancies which were to occur in subordinate offices and Government Project High Schools. But taking advantage of the so-called advertisement which had been issued in some local newspaper, not even having any circulation worth the name, that too published on 31.12.1992, the appointments in the year 1995 came to be hurriedly made by said Bhola Ram. There are neither any records available in the office of the deponent which would show the process or the procedure followed in making such appointments or any chit of paper to support the story of the Petitioner with regard to advertisement, interview, preparation of a panel etc. etc. The stand of the Petitioner that a notice in the local office was fixed on 25.3.1993 fixing 15.4.1993 as the date of interview makes the claim of the Petitioner suspicious because if the interview was held and panel prepared in the year 1993 then how come the Petitioner came to be appointed only on 26.6.1995 after lapse of more than two years of the said interview. The validity

of a panel is for a year. Therefore, the claim of the Petitioner that the appointment made in the year 1995 was based on the interview held in the year 1993 is also a circumstance which casts serious doubt about the validity of the appointment. In fact, taking advantage of the earlier advertisement made for Project Schools the said Bhola Ram had made these appointments illegally when he was asked to officiate as R.D.D.E. for a month and half.

11. It was in this circumstance that the Petitioner was issued notice and he was directed to produce all supporting evidence and materials before the R.D.D.E. on various dates fixed. Petitioner avoided appearing before the authority from May 2000 to October 2000. Finally 6.11.2000 was fixed on the request of the Petitioner to place his case but even on this date he chose not to show up. Based on the show cause and the documents annexed by him the Respondents came to a considered opinion that the Petitioner was not legally appointed on the post and therefore the order of termination contained in Annexure-1 came to be issued. The Respondents have done no wrong in removing an employee who has been illegally appointed by a person not even competent to do so.

12. Learned Counsel for the State has relied on the order passed in LPA No. 74 of 2006 which is dated 31.8.2009. In identical situation the matter was gone into deeply by learned Division Bench and taking note of various orders passed by the High Court in some of the cases including the case of Ravindra Kumar Tiwary it held that the order of dismissal by the Respondents was not worthy of interference as there is circumstance to show that the appointments were made illegally by fraudulent means and order of dismissal passed in such circumstance did not merit interference.

13. Instances of illegal appointments having been made by certain persons working in the Education Department and posted in the field, is not new in the State of Bihar. There are many instances of such kind which had come to the notice of the High Court in the litigations brought before it. Such appointments have been made for consideration and by giving complete go-bye to all procedures established in this regard. There have been instances where based on pleadings of such cases Courts have intervened but the question which still remains is whether the Court ought to take a humanitarian consideration in the matter of such appointments even when it is prima facie shown that the method or methodology adopted in such appointments is not above board. It is not the duty of the High Court to come to the rescue of such persons who have gained employment in active league of the persons who make such illegal appointments and burden the State with such kind of employees by their continuance.

14. Further the present writ application is not one of those cases where the Petitioner has worked for many a decades and the order of removal was sought to be passed on the ground of illegal appointment at a belated stage. The existence of the Petitioner under the State lasted only between 26.6.1995 till 30.5.2001, besides this the appointment of the Petitioner came under clout when he came to be removed in the year 1999 itself and when his salary was stopped

in the year 1997.

15. The so-called assertion of the Petitioner that the process of selection and appointment was adopted by the erstwhile R.D.D.E. stands belied in view of the narration of facts and events made in the counter affidavit of the State. If the above facts are further read in the light of the decision rendered in LPA No. 74 of 2006*, a copy of which is on record, there is no occasion for this Court to interfere with Annexure-1.

16. This writ application is dismissed being devoid of merit.