
(2007) 07 PAT CK 0029
In the Patna High Court
Case No : CWJC No. 11379 of 2006

Saheb Dayal Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Citation : (2007) PLJR 279

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Five persons in order of seniority from the post of Seasonal Water Rent Collector had to be picked up and appointed as Permanent Water Rent Collector. Petitioner was, accordingly, one of the five persons appointed and now after nine years, his appointment has been cancelled which has brought the petitioner to this Court. State has appeared and filed a counter affidavit to which a rejoinder has been filed. With consent of parties, this matter has been heard for final disposal at the stage of admission itself. It appears that earlier several persons were recruited on seasonal basis for doing the work of collection of water rent. Government took a decision to make permanent appointments. The decision was that all the seasonal workers would be clubbed together and their seniority determined. The five senior persons would, accordingly, be appointed in the five posts available for the said purpose. Pursuant thereto, a Selection Committee was set up and selection made. Five persons were selected and in order of seniority, petitioner was fourth. Respondent No. 6 Ram Nath Singh was not in the list. He protested to the authorities. Unfortunately, even though his protest was belated, having been made nine years after appointments were made, it was entertained by the authorities. Matter was examined. It was found that he was the senior most Seasonal Water Rent Collector. He was wrongly excluded. Authorities then refixed the seniority. Accordingly, the person who was fifth in the original seniority list,

petitioner being fourth, would now be required to move out and, accordingly, his appointment was required to be cancelled. In normal course of events, there was no fault on part of the petitioner. Even under the revised group, petitioner would be the fifth person and, thus, his appointment was not liable to be interfered with. But, as strange events took place, it was petitioner who was dismissed to make way for respondent No. 6. A strange plea has been raised in the counter affidavit by the State. It is stated that as there were only five posts, only five appointments could have been made now under the revised list, the last person (not the petitioner) had to be dismissed. But, the said person had since superannuated and was unavailable for dismissal, therefore, the axe must fall on the petitioner though petitioner is not to be blamed. This is what brought the petitioner to this Court.

2. Having considered the matter, to my mind, what the authorities now intend to do is wholly impermissible. If the authorities had made a fair selection on day one, petitioner would still get his appointment as he was the fourth person. If having made the five appointments with wrong seniority, had the authorities immediately corrected the same, again the petitioner would not have been effected. Now the last person, who was wrongly included and whose inclusion was faulty having superannuated, the fault for which he had to be dismissed is now being shifted to the innocent petitioner who has committed no fault. In other words, for fault/default on part of the authorities, the petitioner is being sought to be punished by the dismissal. The answer to this, in the words of Chief Justice Chagla, is thus: "But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the department wants to benefit from and wants to take advantage of its own fault. It is an elementary principle of law that no person-we take it that the income tax Department is included in that definition-can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

In my view whatever may be the position, the petitioner, as indicated above, could not be and ought not to be dismissed, for he had committed no wrong. The wrong, if any, was committed by the authorities and the person wrongfully included was the person who was allowed to superannuate without any action taken. In such circumstances, I hold that the order dismissing the petitioner without there being any fault on part of the petitioner is wholly illegal, arbitrary and capricious and cannot be sustained. It is, accordingly, quashed. The said order purports to be an order in pursuant to CWJC No. 7910 of 2003. In my view, the said judgment does not say or direct that even if petitioner was not at fault and if the appointment of the petitioner was not wrong, he should be dismissed to make way for any person. Annexure-1 being order dated 28.4.2006 of the Secretary, Water Resources Department, Government of Bihar, Patna, as

communicated by Memo No. 316 dated 29.4.2006, is quashed. The writ application is allowed. The petitioner would, thus, be deemed to be reinstated with all consequential benefits.