
(2007) 11 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 7425 of 2000

Sanful Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Citation : (2009) 3 PLJR 832

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Pratap Sharma for the petitioner and Mr. Sunil Kumar Mandal, learned Standing Counsel No. 15 for the respondents. This writ petition is directed against the order dated 26.5.2000 (Annexure-6), passed by respondent No. 3 (The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur), whereby the services of the petitioner as a Class-IV employee in the services of the Bihar Government have been dispensed with and the salary paid to him has been directed to be recovered. The respondents have placed on record their counter affidavit and have supported the impugned action. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears that the Principal of Government High School, Kumarbag, District-West Champaran, had appointed the petitioner against a sanctioned post of Class-IV employee in the pay-scale of Rs. 155-1-160-2-190/- for the vacancy caused by the death of the previous incumbent, vide order dated 1.6.1981 (Annexure-1). The petitioner functioned as such for some time and he was confirmed with effect from 1.12.1988 by office order dated 24.2.1989 (Annexure-2), issued under the signature of respondent No. 4 (The District Education Officer, West Champaran, Bettiah). The petitioner continued to function and was paid his salary till the time he was visited with the impugned order.

2. It appears to me that the impugned order is in two parts. The petitioner's services have been dispensed with because he was appointed without

advertisement of the vacancy, without following the prescribed procedure. In view of the judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , this part of the order cannot be faulted. The second part of the order relating to recovery of salary paid to him till 26.5.2000 cannot be upheld inter alia, for the reason that he was appointed against the sanctioned post and no fraud, misrepresentation or the like is attributable to the petitioner. In the result, this writ petition is allowed in part. The first part of the impugned order whereby his services have been dispensed with is upheld. There shall, however, be no recovery of the salary paid to him till 26.5.2000.