
(2002) 10 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 7786 of 2002

Sanjay Rai, Santosh Kumar Singh and Shakti Shankar Sinha	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Citation : (2002) 10 PAT CK 0015

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned Counsel for the parties.

2. All these writ applications have been filed for common cause as the writ Petitioners have been terminated from their services and facts involved in these writ applications are identical, therefore, they have been heard together and are being disposed of by this common order.

3. All these writ Petitioners having served under the Respondent for more than a decade, have been terminated by the impugned orders dated 11.2.2002 which have been challenged in these writ applications.

4. A common argument has been made on behalf of the Petitioners saying that the Petitioners were appointed on Class III and Class-IV posts and they continued on the posts for more than a decade and, therefore, the orders of termination are arbitrary, unreasonable and wholly without jurisdiction. Learned Counsel for the Petitioners further submitted that the Petitioners of C.W.J.C. Nos. 7786 and 7275 of 2002 were appointed on Class IV posts on the basis of their applications filed pursuant to the advertisement and they continued under the Respondents for several years whereas Petitioners of C.W.J.C. No. 9272 of 2002 was initially appointed on Class IV post and on recommendation made by the Headmaster of the school, subsequently, he was appointed on the post of Clerk by the competent authority against a vacant post.

5. In all these cases counter affidavits have been filed on behalf of the State stating therein that though the Petitioners continued under the Respondents for

some time, their appointments were found to be ab initio void as they were not appointed by the competent authority after following the procedure laid down in the law and, therefore, their services were liable to be terminated.

6. From the orders impugned dated 11.2.2002 it appears that the authorities terminated the services of the Petitioners on account of a motion made in Vidhan Parishad where several appointments made by the District Education Officer, Bhojpur was doubted and merely asking the Petitioners a show-cause as to why they should not be terminated, the impugned order have been issued in a most mechanical way and without application of mind. It is not discernible from the orders impugned that the authorities while terminating the services of the Petitioner assigned sufficient reasons disclosing as to whether the Petitioners were appointed contrary to the mandates of Articles 14 and 16 of the Constitution.

7. From the pleadings of the parties, it appears that the Petitioners were appointed on Class III and Class IV posts against a scale, and they continued under the Respondents for a pretty long time and performed their duties satisfactorily and now they have been terminated.

8. It is not in dispute that the Petitioners, some how or the other, continued under the Respondents for more than a decade and were getting a scale. There is nothing in the orders impugned or in the counter affidavit to show that the services of the Petitioners were found unsatisfactory and at any point of time they misrepresented the facts for obtaining the appointments nor they played fraud upon the Respondents in doing so. It is true that the public posts must be filled up in accordance with the mandates laid down under Articles 14 and 16 of the Constitution but in the given facts and circumstances of the cases, since the Petitioners continued on Class IV posts under the Respondents and were getting a scale for several years, in my opinion, equity demands that they should not be terminated. Even assuming that there were certain irregularities in engagement of the Petitioners on temporary basis, that could have been rectified immediately after their appointments/engagements but on the contrary, it appears that their engagement was extended from time to time giving them legitimate expectations that their services have been regularised. From perusal of the orders impugned appears to me that stereo type order have been passed without application of mind and the authorities have not even cared to scrutinise the cases of the Petitioners on merit nor they have assigned sufficient reasons for termination of services of the Petitioners.

9. From the materials on record, it appears that the Petitioners continued in service for more than ten years and now the question as to whether the Petitioners were illegally appointed, in my opinion, should not arise at this stage as it would be opposed to the principles of equity.

10. Even assuming that the Petitioners were not appointed strictly in accordance with law and their appointments may be termed as illegal, the authorities

admittedly acquiesced in the infirmities committed by them by allowing the Petitioners to Continue for more than a decade. The principle as formulated above, is no more *res Integra* and has been set at rest by the various decisions of the Supreme Court and this Court. In this connection reference may be made to the case of *Roshni Devi and Others Vs. State of Haryana and Others*, and the case of *Union of India and Others Vs. Kishorilal Bablani*, In these cases, the Apex Court observed that the persons who may not have been appointed strictly in accordance with law, have been appointed and continued in services for several years, should not be disturbed. After continuance of the Petitioners, in their respective services, now, the appointment of the Petitioners cannot be said to be violative of Articles 14 and 16 of the Constitution.

11. Certain orders passed by this Court in similarly situated cases have been brought to my notice. In C.W.J.C. 6586 of 1998 (*Sunil Kumar Singh and Ors. v. State of Bihar and Ors.*) this Court set aside the order of termination and the order passed by the learned Single Judge in case of *Sunil Kumar Singh (supra)* was upheld by a Bench of this Court in L.P.A. No. 270 of 2000. Again in the case of *Uday Prasad Singh v. State of Bihar and Ors.* (C.W.J.C. No. 15526 of 2001) similarly situated writ application was allowed and order of termination was set aside holding that the termination of services of the Petitioner was opposed to the principles of equity. In this context reference may also be made to the case of *Abhay Kumar Pandey Vs. The State of Bihar and Others*, Recently, in C.W.J.C. No. 14268 of 2001 (*Akhilesh Kumar Sinha v. State of Bihar and Ors.*) and analogous cases, a learned single Judge of this Court on 10.1.2002, considering the similar question and set aside the orders of terminating as the orders of termination were opposed to the principles of equity and acquiescence. Again, in case of *Veena Kumari Jha and Ors. v. State of Bihar and Ors.* in C.W.J.C. No. 12756 of 2000a learned Single Judge of this Court, on 19.9.2002, faced with the same situation, set aside the order of termination.

12. For the reasons and discussions aforesaid, the orders terminating the services of the Petitioners, in my opinion, are not sustainable.

13. In the result, these applications are allowed, orders impugned dated 11.2.2002 are set aside and the Petitioners are directed to be reinstated on their respective posts with all monetary benefits.

14. This order, however, shall not be a precedent for other cases as it is being passed in peculiar facts and circumstances of the cases.

15. There shall be no order as to costs.