

(1987) 07 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1308 of 1982 (R)

Satya Narayan Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3
Constitution of India, 1950 — Article 226, 227

Citation : (1988) PLJR 414

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; S.B. Gadodia S.C.I. and M.P. Sinha, J.C to S.C.I., for the Respondent

Judgement

S.B. Sinha, J.—In this writ petition the petitioners challenge the order dated 29th November, 1982 as contained in annexure 10 to this writ petition whereby and whereunder their services were terminated. The facts of the case which are not much in dispute are as follows:

On or about 20th May, 1979 an advertisement was issued by the respondent No. 2 inviting applications for appointment in the lower division clerks cum typists for filling up the vacancies in 54 posts. The manner in which the vacancies were to be filled up, has been mentioned in paragraph 7 of the writ petition. The petitioners have stated that there existed a circular dated 12th July, 1977 which has been annexed to this writ petition and marked as Annexure 2 whereby and whereunder the Govt. directed that with a view to aid the dependents of the deceased employees who had died while in course of duty, one of his dependents i.e. either the son or daughter should be given preference in the matter of appointment, if they otherwise qualify or found competent to hold that post.

2. Pursuant to and in furtherance of the aforementioned advertisement and Pursuant to and in furtherance of the aforementioned Circular the petitioners filed application for appointment in the aforementioned posts and further claimed

preference in respect thereof. The respective qualifications of the petitioners 1 to 4 have been mentioned in paragraph 11 of the writ petition which are not disputed.

3. Before the petitioners were appointed, they were asked to appear in an interview and also in a speed test in Hindi and English typewriting. The petitioners state that after the aforementioned interview took place and after they passed in the typing test held by the respondents, they were selected by the Selection Committee and in view of the fact that the Selection Committee found the petitioners fit for appointment on the posts of lower Division Clerks-cum-typists on the basis of their educational qualifications and other prerequisite qualifications, they were so appointed on the said posts on or about 26th April, 1980 by a letter as contained in annexure 3 to the writ petition.

4. From a perusal of annexure 3 to the writ application it appears that the petitioners were appointed on temporary basis and one of the conditions imposed in the said offer of appointment was that after following the prescribed procedure the petitioner's services would be regularised if they pass the typing test in Hindi at the rate of 35 words per minute. The aforementioned condition appears to be mandatory in character. It was further mentioned in the aforementioned offer of appointment that if the petitioners pass the typing test in English at the rate of 30 words per minute they would be given preference in the matter of regularisation considering the same as an additional qualification.

5. It has further been mentioned in the aforementioned offer of appointment that the petitioners would be subjected to typing test both in Hindi as well as in English every six months.

6. The petitioners have further stated that, however, their appointments were cancelled by an order passed by the Deputy Commissioner, Hazaribagh dated 29th October, 1980. This order is contained in annexure 4 to this writ application. The petitioners came to this Court by filing an application under Articles 226 and 227 of the Constitution and a Division Bench of this Court, in terms of the order as contained in annexures 6 and 7 to the writ application, quashed the aforementioned order as contained in annexure 4 as referred to hereinbefore.

7. The petitioners, however, were thereafter directed to appear for typing test in Hindi on 1.10.81 and in English on 18.6.82. The said orders are contained in annexures 8 and 9 to the writ application. The petitioners in para 27 of the writ application have stated as follows:

That the petitioners, however, appeared before the Establishment Deputy Collector Hazaribagh for a typing test but they were not treated fairly and properly by the respondent No. 3, No typewriter, in order, was provided to them. They were to show their performance on an unworkable typewriter and even sufficient time was not given to them and the typewritten material was forcibly snatched away. The petitioners protested against such an attitude of respondent No. 3 and even lodged a complaint to this effect, before the respondent No. 2

expressing their dissatisfaction and disappointment over such an attitude.

8. The petitioners have further stated in the writ application that the posts of Lower Division Clerks-cum-typists were re-designated in course of time and the same became known as Assistants-cum-typists. The petitioners, however, were not given any typing job as they were posted in the Revenue Circle Office or in the Block Development Office where even no typewriter was available.

9. Thereafter, by the impugned order dated 20th November, 1982 as contained in annexure 10 to the writ petition the petitioner's services were terminated as they allegedly failed to fulfil the conditions imposed in the offer of appointment as contained in annexure 3 to the writ application.

10. Mrs. M.M. Pal, learned counsel appearing on behalf of the petitioners submitted that the action on the part of respondent No. 3 is wholly arbitrary and mala fide in view of the facts and circumstances mentioned in the writ petition as referred to hereinbefore. Learned counsel further submitted that the very fact that the petitioners were found eligible for being appointed before the offers of appointment were issued to them, the question of their services being terminated for not passing Hindi or English typing tests does not arise.

11. Mr. Gadodia, learned Standing Counsel No. 1 appearing on behalf of the respondents has taken me through the contents of the purported counter affidavit wherein it has been emphasised that the petitioners' services have been terminated only for the reason that they had failed to pass the Hindi typing test held for that purpose.

12. The petitioners do not deny that they have not been able to pass the test in Hindi typing held by the respondents. The petitioners, however, state that the aforementioned orders have been passed only because this court quashed the order passed by the Deputy Commissioner, Hazaribagh whereby and whereunder their appointments were cancelled. Learned counsel further submitted that the entire action appears to be wholly arbitrary inasmuch as the very fact that the petitioners were not given any typing job for a long time as it was thought not necessary to take only typing works from the petitioners. Learned counsel further submitted that in the event the petitioners' services were required only for the purpose of typing job, they could have been provided with such typing job and would not have been posted in the Circle Office or in the Block Development office where, as stated herein before, no typewriter either in Hindi or in English was available.

13. The counter affidavit which has been filed on behalf of the State, is not in accordance with law. The deponent of the counter affidavit who is an assistant working in the office of the respondent No. 3, has verified the statements made therein on the basis that the same are derived from the records maintained in the office of the deponent. Neither any re-cord has been annexed with the counter affidavit nor the learned counsel appearing on behalf of the respondents has been able to produce the records before me, when asked for. The deponent

of the counter affidavit also did not disclose as to how he became aware of the facts of the case. He also did not state as to whether he had any personal knowledge with regard to the subject matter of this writ petition. It is now well settled principle of law that an affidavit in support of a writ petition or a counter affidavit must be in terms of or analogous to the provisions of Order 19 rule 3 of the Code of Civil Procedure.

14. The deponent of the counter affidavit was merely an assistant. Therefore, it cannot be expected that he was maintaining any record in respect of the petitioners. The importance of verification in support of the statements made in the affidavits have been emphasised in various decisions. Reference in this connection may be made to (1909) ILR 37 Calcutta 259 , The State of Bombay Vs. Purushottam Jog Naik, , The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . A.K.K. Nambiar Vs. Union of India (UOI) and Another, , Virendra Kumar Saklecha Vs. Jagjiwan and Others, and various other decisions referred to in a recent decision of the Supreme Court in Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, .

15. In view of the fact that the counter affidavit has not been verified in accordance with law nor the relevant records have been produced before me, the counter affidavit is fit to be ignored and the statements made in the writ petition have got to be accepted as correct.

16. Apart from the facts stated in the writ petition, it appears that the petitioners have not been treated reasonably. The very fact that the condition of proficiency in typing imposed in the offer of appointment, clearly established that the need resulting in appointment of the petitioners and others was the typing job. The statements made in the counter affidavit even accepted for a moment to be correct but still then, the statements made in para 21 of the writ petition, have not been controverted. It was not expected of the petitioners to pass the test of typing as they were not given any typing job for a period of one and half years. Such an attitude on the part of the respondents, to say the least, appears to be unreasonable. Before the petitioners were asked to appear in the typing test, it was expected of the respondents that they would provide some typing jobs to the petitioners.

17. In view of my findings aforementioned, the impugned order as contained in annexure 10 to the writ petition cannot be sustained. However, it is not the case of the petitioners that their services have been regularised. It is, therefore, made clear that before their services are regularised, the respondents would be at liberty to insist upon the petitioners' passing the typing test in Hindi at the speed of 35 words per minute. With the observations mentioned hereinbefore, this writ petition is allowed but, in the circumstances of the case, there will be no order as to costs.