
(2012) 11 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 11391 of 2006

Savita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Citation : (2013) 1 PLJR 893

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Y.V. Giri, Umesh Kumar Singh, Ashok Kumar Mehta and Ashok Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—I have heard learned counsel for the petitioner as well as the State. Through this writ application, the petitioner seeks the following reliefs:--

A. A writ in the nature of certiorari or any other appropriate writ/order for quashing the order contained in memo no. 748 dt. 26.6.06 issued by the District Education Officer, West Champaran.

B. A writ in the nature of mandamus commanding the respondents for by directing them to not disturb the petitioner from working as peon in Government High School, Narkatiaganj.

C. For a direction to the respondents to pay the salary for the period petitioner has worked and for the payment of current salary during the pendency of this petition.

D. For a direction to the respondents to give all consequential benefits for which petitioner may be found entitled in accordance with law.

2. Petitioner claims to have been appointed at the post of Orderly/Peon in the High School, Narkatiaganj, West Champaran vide Annexure-1, which is an order issued by the District Education Officer, West Champaran, Bettiah on 31st

December, 1992. Thereafter, the petitioner claims to have joined there and worked for about 14 years. However, it appears that on a complaint made by the President of Yuva Kalyan Parishad, Narkatiaganj, some enquiry was made and, thereafter, the respondent no. 4 had passed an order dated 26th June, 2006, as contained in Annexure-6, terminating the services of the petitioner after recording a finding that her appointment was illegal. On 8.5.2012, an order came to be passed by this Court giving certain direction. Relevant passage of the order is reproduced as under:--

In the considered opinion of this Court Circular No. 16441 dated 3.12.1980 authorizes the Collector of the district to prepare panel as Nodal Officer of the district and to circulate it to all the district heads for making appointment on Class-IV post. Since, the services of the petitioner has been terminated only on the ground of the violation of Circular No. 16441 dated 3.12.1980, this Court would call upon the District Education Officer, West Champaran, Bettiah to file supplementary counter affidavit indicating as to in how many Government Secondary Schools in the district of Bettiah such appointment on the post of Peon has been made after observance of the panel prepared by the Collector in terms of Circular No. 16441 dated 3.12.1980.

This would be essential for examining the aspect as to whether the petitioner's services was dispensed with on account of the violation of the procedure laid down in Sewa Sharta Niyamavali, 1983 or on account of political interference made by President of Yuva Kalyan Parishad, Narkatiaganj as would be apparent from the perusal of show cause notice dated 2.6.2006 as contained in Annexure-B.

In the event District Education Officer, West Champaran, Bettiah will not find any example of appointment on the post of Peon in any Nationalized High School governed by Sewa Sharta Niyamavali, 1983 to have been made after observance of the Circular No. 16441 dated 3.12.1980, it would be also open for him to reconsider his decision as with regard to termination of service of the petitioner, who had been shown the door after 14 years of her continuation.

3. As any counter affidavit answering the issue raised in the aforesaid order of this Court could not be filed, this Court, vide order dated 26.7.2012, had given a direction to the Collector, West Champaran to enquire into the matter and file necessary affidavit in compliance of the earlier order dated 8.5.2012.

4. A counter affidavit has been filed on behalf of the District Magistrate taking a stand that the appointment of petitioner was made by the then District Education Officer in violation of the provisions contained in the Bihar Rajya Rajkiyakrit Vidyalaya (Sewa Sharta) Niyamavali, 1983 as well as the Circular No. 16441 dated 3.12.1980. It has been stated that power of the appointment under the aforesaid rule has been vested in the Headmaster of the School which is to be made after following the procedure laid down by the State Government prescribed in the Circular No. 16441 dated 3.12.1980 authorizing the Collector of

the District to prepare panel for making appointments on 4th grade posts. It has been stated that since the name of the petitioner had not been taken from such panel and the District Education Officer had usurped of the powers of the Headmaster, the concerned appointment was illegal. However, in reply to the query made by this Court, as would be evident from perusal of earlier order dated 8.5.2012, it has been categorically stated that no appointment of Peon in any Government Secondary School of the West Champaran had been made through the panel prepared by the District Committee, under the Chairmanship of the Collector in terms of Circular No. 16441.

5. This Court vide its order dated 8.5.2012 had clearly directed that if the District Education Officer, West Champaran, Bettiah will not find any example of appointment on the post of Peon in any Nationalized High School of Sewa Sharta Niyamawali, 1983 to have been made after observance of the Circular No. 16441 dated 3.12.1980, it would be open for him to reconsider the decision with regard to the termination of the petitioner who had been shown the door after 14 years of her continuation in service. Some order appears to have been passed by the District Education Officer as well as the Collector, which have been appended as Annexures-B & C, however, this aspect of the matter has not been touched by them.

6. Thus, in my opinion, the order dated 8.5.2012 has not been fully complied by the authorities concerned. That apart, though a statement has been made in paragraph-7 that the petitioner's name does not figure in the panel list since no requisition for vacancy on the post of Peon was made by the concerned School, however, it has not been stated anywhere in the counter affidavit that the petitioner's appointment was made on a point (sic--post?), which was not sanctioned. It has also been stated in the aforesaid paragraph of the counter affidavit filed by the District Magistrate that none of the Schools of the District have made any appointment after observance of the concerned Sewa Sharta Niyamawali, 1983 or the Circular No. 16441 through the panel prepared by the District Committee under the Chairmanship of the Collector. However, it has also not been stated anywhere that at the relevant point of time not a single appointment except that of petitioner was made in any Government Secondary School of the District. From the aforesaid discussion it can be inferred that not a single appointment including that of the petitioner was made after observance of the relevant rules.

7. Thus, in view of none of the appointments having been made after following the due procedure and, in the absence of any categorical statement in the counter affidavit that all such appointments have been cancelled, it appears that only the petitioner has been singled out and has been ousted from service, perhaps in view of some political interference as has been noted in the order dated 8.5.2012. The authorities concerned, though have reconsidered the issue of termination of the petitioner but the direction of this Court, that in the absence of any other example of appointment on the post of Peon made by the

Government Schools following the Sewa Sharta Niyamawali, 1983 and after observance of Circular No. 16441 dated 3.12.1980 the matter of petitioner should be reconsidered, does not appear to have been followed in the aforesaid order.

8. Learned counsel for the petitioner has placed reliance upon a decision of this Court rendered in Ram Pramod Rai and Others Vs. The State of Bihar and Others, . In the aforesaid case, this Court had come to the conclusion that appointment of similarly situated persons were not questioned whereas the appointment of petitioner in the year 1982-83 was held to be illegal and terminated on the ground as they were appointed without following the due procedure. Thus, the order of termination was quashed.

9. In the present case also, the counter affidavit filed on behalf of the District Magistrate clearly indicates that none of the Schools had observed and followed the procedure of Sewa Sharta Niyamawali, 1983 and had appointed any persons from the panel prepared by the District Committee in observance of the Circular No. 16441 dated 3.12.1980.

10. In another decision a Division Bench of this Court in The State of Bihar and Others Vs. Krishna Prasad Srivastava and Another, has upheld the order of the Single Bench setting aside the order of termination applying the principle laid down by the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Coming to the case in hand, as it is not stated by the respondents that no other appointment except the petitioner was made at the relevant time and it is also admitted that none of the Government Schools have made appointment from the panel prepared by the District Committee, in the considered opinion of this Court, the petitioner cannot be singled out for such treatment. That apart, while considering the matter of the petitioner, it has not been found by anybody that she had obtained the employment by playing some fraud or on doing some forgery. The appointment has been found to be illegal only on the ground that due procedure of law had not been followed. It has not been stated anywhere in the counter affidavit that the appointment of petitioner was not made on a sanctioned post. The Apex Court, while dealing with the issue of regularization of the daily wagers in Uma Devi (supra) has observed that if the persons worked from several years continuously and appointment was found to be irregular and not illegal, in that case, steps for their regularization can be taken.

11. In State of Karnataka and Others Vs. M.L. Kesari and Others, , the Apex Court has further clarified the issue and has held that regularization can be given effect with regard to the employee concerned who had worked for more than 10 years or more on a sanctioned post without the benefit or protection of the interim order of any court or tribunal. It has further been held that, if the appointments are not made or continued against sanctioned post or where the persons appointed do not possess the prescribed minimum qualification, the appointment will be considered to be illegal but where the person employed

possessed prescribed qualification and had worked against sanctioned posts but had been selected without following the procedure laid down for selection, that would be considered to be irregular appointment and would be fit to be regularized. The authorities concerned, while passing the impugned order or thereafter, the subsequent orders, as contained in Annexures-B & C to the counter affidavit filed on behalf of the District Magistrate, do not appear to have considered the aforesaid aspect also.

12. As a result, the impugned order dated 26.6.2006, as contained in Annexure-6, as well as the subsequent orders, as contained in Annexures-B & C appended with the counter affidavit filed on behalf of the District Magistrate, are set aside and the respondents are directed to take back the petitioner in service. Petitioner would be entitled for payment of salary for the worked period but she would not be entitled for the salary for the period she had remained terminated or had not worked. However, for the purpose of service conditions such as promotion or seniority etc. even the period of termination would be considered as continuous service. Accordingly, this writ petition stands allowed.