
(2013) 07 PAT CK 0111
In the Patna High Court
Case No : CWJC No. 2801 of 2013

Shashi Kumar Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2014) 1 PLJR 171 : (2014) 2 SCT 579

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Gopal Pandey, for the Appellant; Dhurjati Kr. Prasad and Anil Kumar, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—I have heard learned counsel for the petitioners and the State and have perused the records of the cases as well as records of C.W.J.C. No. 5390 of 2007 disposed of on 16.3.2012. The petitioners seek direction to the respondents to issue appointment letters in their favour in view of the recommendation of the District Appointment Committee made vide memo no. 12M, as contained in Annexure 2, as per the decision taken by the District Level Appointment Committee in the meeting held on 10.2.2012 under the Chairmanship of the District Magistrate. Sitamarhi recommending petitioners' names requesting the Chief Engineer, Water Resources Department, Muzaffarpur (respondent no. 4) to issue appointment letters in their favour.

2. Petitioners submit that one of the persons whose name has been recommended, namely, Sharma Nand Prasad, has already been issued appointment letter and has already joined and is working under Bagmati Division No. 1, Sitamarhi, however, the petitioners' are not being issued appointment letters which is a clear cut case of discrimination.

3. A counter affidavit and supplementary counter affidavit have been filed taking identical stand. Thereafter, second supplementary counter affidavit has also been filed by Chief Engineer, Water Resources Department, Government of Bihar at

Muzaffarpur, respondent no. 4, viz. Sh. Gunja Lal Ram. A stand has been taken in the counter affidavit that the real facts were not brought to the notice of this Court while the case of aforesaid Sharma Nand Prasad was being considered in C.W.J.C. No. 5390 of 2007 which had resulted in passing of the order in his favour and eventually he had to be appointed. It has also been urged by the Executive Engineer, who had filed affidavit before the Single Bench, which was considering the case of Sharma Nand Prasad, stating that the appointment of Sharma Nand Prasad was under active consideration was not having any authority to file such affidavit. It is also submitted that answering respondent, Mr. Gunja Lal Ram, the Chief Engineer concerned has sent letter as well as reminder to the concerned for filing Letters Patent Appeal before the Division Bench of this Court challenging the order passed in C.W.J.C. No. 5390 of 2007, however, nothing has been intimated by the concerned Department till date. It is also stated that he has met the Under Secretary and Principal Secretary of the Department and had asked to give guideline in the light of the several letters written by him for moving further by filing Letters Patent Appeal. It appears that he is making a complain in paragraph no. 10 of the counter affidavit that the Under Secretary and the Principal Secretary of the concerned department are not listening to him and paying any heed to his letters. The second supplementary counter affidavit has also been filed on behalf of the said Gunja Lal Ram, respondent no. 4, the Chief Engineer making a statement that the appointment of the aforesaid Sharma Nand Prasad was made under the direction of this Court after approval of the competent authority. A stand has been taken that proper number of working days was not calculated by earlier Executive Engineer who has given undertaking that the matter of appointment was under active consideration and, thus, he has sought explanation from the said Executive Engineer as to why the departmental proceeding be not initiated against him. Later on, according to him, it has also been found that the list sent by the Executive Engineer was based on fictitious calculation of working days. However, from the counter affidavit and second supplementary counter affidavit filed on behalf of the respondent no. 4 it appears that it has not been controverted that the petitioners are also on identical footing to the aforesaid Sharma Nand Prasad who has already been appointed, whereas, the petitioners are yet to be given appointment letters.

4. I have perused the records of the C.W.J.C. No. 5390 of 2007 which was filed by the aforesaid Sharma Nand Prasad. It appears from the order dated 3.11.2011 passed therein that the aforesaid Sharma Nand Prasad had earlier preferred C.W.J.C. No. 5292 of 2004 which was permitted to be withdrawn in the light of the statement made by the Executive Engineer, Bagmati Division No. 1, Sitamarhi stating that the cases of 127 muster roll workers were under active consideration for regularization. However, it was claimed by the Sharma Nand Prasad that the persons below in the list of 127 muster roll workers to the petitioner were regularized ignoring the petitioner. Again an affidavit was filed by the respondent no. 4 (Executive Engineer) stating that the consideration of

appointment of the aforesaid person was still under active consideration. It appears from Annexure-C appended with the supplementary counter affidavit filed by respondent no. 6, the Executive Engineer concerned that the District Level Appointment Committee had rejected the claim of the aforesaid Sharma Nand Prasad as well as one Tej Naraiyan Jha on the ground that the aforesaid persons have not completed 240 days of continuous service in the preceding five years prior to the cut-off date 11.12.1990. The learned Single Judge vide order dated 12.12.2011 has held that rejection has been made after having undertaken before this Court that the petitioner's case was under active consideration for appointment on Class-IV post in the light of the services rendered by him earlier. It has further been held that the authorities were ill advised to reject his case on the basis of Circular Letter No. 639 dated 16.3.2006 which was not even in existence on the date on which the earlier counter affidavit was affirmed. Accordingly, the rejection of case of Sharma Nand Prasad passed by the District Selection Committee contained in Annexure-C was quashed and a direction was made to the Committee to reconsider the case of the petitioner. However, when nothing was done thereafter by the authorities, the District Magistrate was directed to appear in person. The District Magistrate eventually appeared on 3.2.2012 after several indulgences having been granted for which he was warned to be careful in future. Thereafter, learned Single Judge directed the District Magistrate, Sitamarhi and the Chief Engineer, who was not obeying the recommendation of the District Magistrate to appear personally. Both of them finally appeared along with the decision of the District Level Appointment Committee as well as appointment letter having been issued by the Chief Engineer issued in favour of Sharma Nand Prasad appended with their respective counter affidavits.

5. From the counter affidavit as well as the earlier orders passed in the aforesaid case it does not appear that the Chief Engineer has raised the issue of completion of lesser working days by the concerned petitioner. I have already noticed that a decision taken by the District Level Appointment Committee vide resolution dated 29.12.2009 on similar ground, as contained in Annexure-C, to the third supplementary counter affidavit filed on behalf of respondent no. 6 in C.W.J.C. No. 5390 of 2007, was already quashed and set aside by the learned Single Judge vide order dated 12.12.2011 passed in the aforesaid case. In the counter affidavit the Chief Engineer has taken a stand that the appointment letter was not issued after recommendation of the District Level Committee because that was not within his knowledge. It has been stated in paragraph no. 6 thereof that due to inadvertence the appointment letter could not be produced by the Chief Engineer on earlier occasion. The District Magistrate has also filed the affidavit clearly stating in paragraph no. 4 thereof that in view of the compliance of the Court order dated 12.12.2011, a District Level Committee under his Chairmanship has considered the case of the petitioner afresh and recommended for his appointment alongwith others. It has further been stated in paragraph no. 5 that due to inadvertence and under wrong understanding the case of the

petitioner was rejected on the earlier occasion which has been subsequently reconsidered. Both paragraph nos. 4 and 5 of the aforesaid counter affidavit are being reproduced as under for better appreciation:--

4. That after quashing of Annexure-C of the counter affidavit and in compliance of the Hon''ble Court order dated 12.12.11, a District Level Committee under the Chairmanship of the deponent considered the case of the petitioner a fresh and recommended him for appointment alongwith others.

5. That at this stage the deponent states before the Hon''ble Court that inadvertence and under wrong understanding earlier the case of the petitioner was rejected which was subsequently reconsidered and recommended petitioner for being appointed to a Class-IV post.

(emphasis mine)

6. Thus, it appears that Mr. Gunja Lal Ram in the aforesaid case had personally appeared and filed affidavit but had never raised any issue that the petitioner of that case was not having requisite days and years of continuous working, therefore, he would not be entitled for appointed. In fact, in view of the order dated 12.12.2011 already having been passed quashing such rejection on the identical ground, it was actually not open for him to take such stand in view of the fact that the order dated 12.12.2011 was not challenged by the respondents by filing any appeal etc. In above view of the matter, since the same Chief Engineer, viz. Gunja Lal Ram having personally appeared and accepted the order and produced appointment letter in favour of Sharma Nand Prasad, vide order dated 16.3.2012, the writ petition was disposed of.

7. Now a stand is being taken by the same officer, viz., Gunja Lal Ram, i.e., respondent no. 4 that the District Level Committee has not taken correct stand. In my opinion, once he had accepted the recommendation of the District Level Appointment Committee and allowed the appointment of the Sharma Nand Prasad and has not been able to produce anything on record making a distinction or difference between the petitioners and the aforesaid Sharma Nand Prasad, such stand now cannot be allowed to be taken by him specially when the earlier decision of Selection Committee based on identical issue was set aside by the Single Bench of this Court vide order dated 12.12.2011 passed in earlier C.W.J.C. No. 5390 of 2007 and thereafter the Selection Committee has categorically stated in the subsequent recommendation that its earlier order was inadvertently passed due to wrong understanding of law. A stand has been taken by him that he has already recommended for filing of Letters Patent Appeal is also baffling as actually the aforesaid respondent no. 4 himself has produced appointment letter on affidavit of Sharma Nand Prasad before the Single Bench in the aforesaid case, and on that the writ petition was disposed of, thus, no ground would be available to him now for challenging such order. However, he has already stated in paragraph no. 8 of the second supplementary counter affidavit that appointment of the aforesaid Sharma Nand Prasad was made under the direction

of the District Establishment Committee, Sitamarhi. He himself even complains that Under Secretary and Private Secretary of the concerned department has not given any heed of his request to challenge the order concerned by filing Letters Patent Appeal and thus, that has admittedly not been filed as yet. It is apparent from paragraph no. 4 of the counter affidavit filed by the District Magistrate, Sitamarhi in the earlier writ petition that, in view of the order of the learned Single Judge dated 12.12.2011, a District Level Committee under his Chairmanship considered the case afresh and recommended for appointment of Sharma Nand Prasad alongwith others. Once such recommendation was made in view of the direction of this Court, it would not be open for the Chief Engineer to question that after accepting the recommendation and issuing appointment letter in favour of one person from the list. Learned Single Judge, vide the order dated 12.12.2011 passed in C.W.J.C. No. 5390 of 2007, has noticed in clear terms that the case of Sharma Nand Prasad is covered by the circular letter dated 3.12.1980, 26.5.1987 and 25.4.1997 and, as such, the earlier proceeding of the District Level Committee rejecting the claim of the aforesaid Sharma Nand Prasad vide resolution dated 29.12.2009 was quashed and a direction was given for fresh consideration. That order was never challenged by any authority.

8. Thus, a stand taken by the concerned respondent not only appears to be incorrect but also lacks reasonableness and fairness. In fact, respondent no. 4 has filed affidavit taking a stand contrary to his affidavit that had been filed in the earlier writ petition. Accordingly, the writ petitions succeed and it is held that there would be no reason for the authority concerned, in view of the aforementioned facts and circumstances of the case, refrain itself from issuing appointment letters in favour of petitioners in view of the recommendation made by the District Level Committee as the department cannot discriminate among the persons who have been recommended for regularization. Let the consequential step of issuance of appointment letter be taken immediately by the authority concerned.