(1993) 05 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12909 of 1992

Sheo Prasad and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 03-05-1993

Acts Referred:

Citation : (1993) 05 PAT CK 0026

Final Decision : Allowed

Judgement

U.P. Singh and Gurusharan Sharma, JJ.—These petitioners have challenged the order contained in letter issued by the under Secretary to the Government in the Water Resources Department dated 8-12-1992 (Annexure-7) addressed to the Financial Adviser-cum-Chief Accounts Officer, directing him to terminate the services of the petitioners with effect from 31-12-1992 after giving one month''s notice on the ground that their appointments are alleged to have been found illegal.

2. It is relevant to state that the Water Resources Department is new name for the erstwhile Irrigation Department which comprised of Koshi Project Department/River Valley Project Department and other. The Water Resources Department as also its predecessor departments had three separate wings, namely Engineering. Accounts and Land Acquisition and Rehabilitation. Each of the three wings was under the Control of Head of the department who, for the Engineering Wing was the Chief Engineer, for the Accounts Wing the Financial-Adviser-cum-Chief Accounts Officer and for the Land Acquisition and Rehabilitation Wing the Director Land Acquisition and Rehabilitation. In so far as the Accounts Wing is concerned, the Financial Adviser cum Chief Accounts Officer had been declared to be the Head of Department as for back as on 26th April, 1958 and the same has been reiterated even on 4-2-1992.

3. On account of existing certain vacancies in the year 1989 within the sanctioned strength of Classes III and IV posts under the Financial Adviser-cum-Chief Accounts Officer of the Water Resources Department, an advertisement

was published on 27-5-1989 inviting applications for inviting appointments to the post of Steno Typist, Typist, Store Verifier and Peon, all in classes III and IV of the State Government Service. The, advertisement was published with the approval of the Secretary to the Government in the Water Resources Department, while is evident from the letter of the then Financial Adviser-cum-Chief Accounts Officer dated 9-3-1989 and 14-6-1989.

4. On certain objections raised in respect of the aforesaid advertisement by the Employment Exchange, a query was made by the State Government to the then Financial Adviser cum-Chief Accounts Officer as to why the applications was not invited through the Employment Exchange. The Financial Adviser explained the whole situation stating that as per the policy decision of that State Government contained in their letter No. 7605 dated 15-6-1981 issued by the Department of Persnonel and Administrative Reforms, the Head of the Department could invite application directly from the candidates who were registered with the Employment Exchange and it was not necessary that the application should come through the Employment Exchange. Being satisfied with the reply, the Secretary of the Water Resources Department placed the matter before the Departmental Minister who accorded his approval on 22-8-1989 (Annexure 2) and the then Financial Advisor-cum-Officer was permitted to go ahead with the appointments.

5. In accordance with the advertisement, the petitioners alongwith others who were all registered with the Employment Exchange, made their applications for appointment to different classes III and IV post.

6. It may be mentioned that selection for appointment to classes III and IV posts is made by the Establishment Committee comprising of two Accounts Officers. One representative of the Scheduled Caste and the Financial Advisor-cum Chief Accounts Officer as its Chairman. The appointment of Typists and Steno Typists are made on the basis of a Typing Speed Test and the other classes III and IV posts are filled up on the basis of qualification, marks and experience.

7. In the present case, the Establishment Committee First, selected the candidates no appointments in the post of Peon and a merit list was prepared, Thereafter, speed test for the Typists and Steno Typists was conducted on different dates and a merit list was prepared Similarly for the post of Store verifier, the Establishment Committee prepared a merit list on the basis of Education Qualification, marks and experience (Annexure-3).

8. In accordance with the merit list, the petitioners were appointed to their respective posts vide order dated 24-12-89 and 16-1-1990 respectively. While making aforesaid appointments, reservation was done as per the existing Rules and the Terms of Advertisement and, in fact, petitioner Nos. 7, 12, 14, 38, 47 to 50, 59, 70, 71, 79, 80, 88 91, 92 and 98 are Scheduled Caste/Scheduled Tribe candidates who were appointed against the reserve quota. However, certain posts reserved under this category could not be filled up and kept vacant. Some of the appointment letters have been annexed marked Annexure-4.

9. Suddenly, the petitioners were confronted with a show cause notice asking them to explain as to why their services be not terminated on the ground that their appointment was illegal. It was pointed out that the then Financial Adviser cum-Chief Accounts Officers had no authority to make appointments and the same was made without following the policy of reservation. The petitioners filed their reply to the show cause establishing that the grounds stated in the notice were non-est. It was indicated that Financial Adviser-cum-Chief Accounts Officer was Head of the Department vested with all the powers of the Head of the Department under the Service Code. Financial Rules and other Rules and Regulations including the power to make appointments. As a matter of fact all the appointments to classes III and IV posts is the Accounts Wing of the Department had all through, since the year 1958, been made by the Financial Adviser-cum-Chief Accounts Officer and that most of classes IK and IV employees on the rolls as of todays had been appointed by the Financial Adviser-cum-Chief Accounts Officer only (Annexure-6.

10. As regards reservation it was asserted that the then existing Rules were fully complied with and as a matter of fact the petitioners at serial Nos. 7, 12, 14, 38, 47 to 50, 59, 70, 71, 79, 80, 83, 91 and 92 were appointed in their reserved quota alone. In so far as the appointment of the petitioners is concerned. It was strictly against the vacant posts within the sanctioned strength. If some others had been appointed without there being any vacancy then it was the look out of those persons and the respondents, with which the petitioners are not concerned in any manner. The petitioner were appointed pursuant to the advertisement as contained in Annexure-1 and, admittedly, the advertisement inviting applications for appointment had tacit approval of the Departmental Minister and the Secretary to the Government.

11. Even though, the grounds for termination of Services of the petitioners were non-est, without considering any one of the points raised by them, the direction contained in the impugned letter dated 8-12-1992 (Annexure-7) was issued under the signature of the under-Secretary to the Government addressed to the Financial Adviser-cum-Chief Accounts Officer to terminate their services after complying the provisions of Section 25F of the Industrial Disputes Act.

12. It was demonstrated from the impugned letter itself that none of the points raised by the petitioners in their reply to the show cause were considered, The impugned order is a non-speaking order. The petitioners have fully, established that the grounds mentioned in the impugned letter as well as in the notice to show cause were non-at and the petitioners'' appointment is not contrary to any Rules or Regulations. The duty to give reason is one of the fundamental Rules of Law and is an integral part of the rules of natural justice. The State Government was fully aware about the appointments in question and, as a matter of fact, the advertisement inviting applications had been issued with the prior approval of the State Government and the appointments were made in accordance with merit and selection was made by the prescribed Establishment Committee. The notice

to show cause in the present case was only a post decisional hearing which would not subserve the principles of natural justice. The respondent State bad already arrived at the finding, behind the back of the petitioners, that their appointments were illegal and had been made by the then Financial Adviser cum-Chief Accounts Officer for her personal gains.

13. In the counter affidavit filed on behalf of respondent No. 4 i.e. Financial Adviser-cum-Chief Accounts Officer of the Water Resources Department, an attempt has been made to state that the Financial Adviser, at no point of time, from its very inception was vested with the powers of appointment in its independent capacity nor this power has been conferred today. This averment in para 3 of the counter affidavit, has not been affirmed in accordance with Order XIX, Rule 3 of the Code of Civil Procedure. In the case of The State of Bombay Vs. Purushottam Jog Naik, , it was laid down:

Verification should invariably be modelled on the lines of Order XXIX, Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.

In the present case, we find that the verification of the affidavit produced here is defective. Further, it has not been stated in unequivocal and clear terms as to who was the appointing authority and there is no positive statement to this effect. As against this, in so far as the authority of Financial Adviser-cum-Chief Accounts Officer to make appointments to classes III and IV is concerned, it may be indicated that the signatory of the impugned letter as well as the Joint Secretary of the State Government had recorded this fact as back as on 1-12-1990 and the same had been reproduced in para 13 of the Writ application. As a matter of fact, all the appointments to classes HI and IV posts in the Accounts Wing of the Department had all through, since the year 1958, been made by the Financial Adviser-cum-Chief Accounts Officer and that most of classes III and IV employees on the rolls as of today had been appointed by the Financial Adviser cum-Chief Accounts Officer only.

14. In this view, the impugned order contained in letter No. 3764, dated 8-12-1982 issued by the Under-Secretary to the Government in the Water Resources Department, addressed to the Financial Adviser-cum-Chief Accounts Officer, Water Resources Department, directing him to terminate the services of the petitioners, is quashed and the application is allowed. There shall, however, be no order as to costs.