
(2003) 04 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 12244 of 2002

Shibani Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0027

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 21.6.2002 (Annexure-12) whereby the service of the Petitioner has been terminated with effect from 22.6.2002.

2. Shorn of unnecessary details, facts giving rise to the present application are that the Respondent Bihar State Electronic Development Corporation (hereinafter referred to as the Corporation) issued advertisement inviting applications for appointment to various posts including the post of Receptionist-cum-Telephone Operator. The said advertisement was published in the daily newspaper "Times of India" in its issue dated 4.8.87. Petitioner offered her candidature and appeared before a selection committee consisting of Sri S.K. Ghosh, Chief of Bureau of Public Enterprises, Sri R.S. Choudhary of Government Polytechnic and two other members which was headed by the then Managing Director of the Corporation Sri S.N. Dubey. On the recommendation of the selection committee by order dated 13.11.87 Petitioner was appointed as Receptionist-cum-Telephone Operator temporarily. Petitioner in pursuance of the aforesaid order joined the service of the Respondent-Corporation as Receptionist-cum-Telephone Operator and was given all the benefits admissible to an employee of the Corporation. However, all of a sudden by the impugned order dated 21.6.2002 the service of the Petitioner has been terminated on the purported ground of the same being irregular.

3. Petitioner in the writ application had alleged mala fide against the Respondents and her assertion is that as shewed to support a lady employee of the Corporation who was subjected to sexual harassment by other employee she

had been picked up and her service terminated after a lapse of about 15 years to teach her a lesson on the purported ground of non-sanction of the post by the State Government. Respondents in the counter affidavit have denied the allegation of mala fide and their plea is that the Petitioner was appointed on a non-sanctioned post and in view of the direction of the State Government dated 20.6.2002 (Annexure-I) Respondent-Corporation had no option than to terminate her service.

4. It has been stated in the counter affidavit that in the year 1986 a proposal for organisational restructuring at the Corporation headquarter and its two subsidiaries was considered by the Bureau of Public Enterprises and after the approval of the Bureau the State Government by its letter dated 29.12.86 informed to the Corporation about its approval to the sanction of 333 posts but it did not sanction the post of Receptionist-cum-Telephone Operator. Respondent;Corporation finding that although two posts of Receptionist-cum-Telephone Operator were sanctioned for two subsidiaries Company in which incumbents are already working from before requested for sanction of the post of Receptionist-cum-Telephone Operator but its stand is that despite several reminders the State Government did not pass any order sanctioning the post.

5. It is relevant here to state that although the post of Receptionist-cum-Telephone Operator was not sanctioned by the State Government, still the same was occupied and the incumbent of the said post was promoted on 1.5.87 and on account thereof Petitioner was appointed by order dated 13.11.87.

6. It seems that the issue of purported irregular appointment in the Corporation including that of the Petitioner was raised in the State Legislative Assembly and ultimately by letter dated 22.4.93 (Annexure-D) the Personnel and Administrative Reforms Department sought explanation from the then Managing Director of the Corporation Sri. S.N. Dubey in relation to the various charges including the charge of appointment of the Petitioner on an unsanctioned post. Thereafter by letter dated 8.6.93 petition ar was asked to show cause as to why her services be not terminated as her appointment was made without the availability of a sanctioned post.

7. Petitioner filed reply dated 14.6.93 inter alia contending that her appointment was made after advertisement, followed by recommendation by the selection committee and as such her appointment is legal and against the sanctioned post. The Corporation forwarded the reply of the Petitioner to the State Government and on consideration of the same, the State Government by its letter dated 12.10.93 came to the conclusion that the appointment of the Petitioner was made on a non-sanctioned post and accordingly by letter dated 12.10.93 (Annexure-H) directed the Corporation to cancel her appointment. However, by letter dated 19.5.94 of the Deputy Secretary of the Industry Department, the order dated 12.10.93 to terminate the service of the Petitioner was directed to be kept in abeyance till final decision on the Petitioner's representation. Ultimately by letter dated 20.6.2002 (Annexure-I) the State Government wrote

to the Managing Director to take steps for termination of the service of the Petitioner in accordance with law as her appointment was illegal and irregular. In pursuance of the said order by the impugned order dated 21.6.2002 (Annexure 12) service of the Petitioner has been terminated.

8. From the pleading of the parties, it is evident that prior to the appointment of the Petitioner as Receptionist-cum-Telephone Operator another incumbent was holding that post. Said incumbent was promoted to a higher post on 1.5.87. Thereafter an advertisement was issued and published in daily newspaper on 4th August, 1987 inviting applications for appointment to the post of Receptionist-cum-Telephone Operator. Petitioner was recommended for appointment by the selection committee and only thereafter she was appointed. However, there is nothing on record which can conclusively demonstrate that the post of Receptionist-cum-Telephone Operator has been sanctioned by the State Government.

9. Mr. Shyama Prasad Mukhorjee appearing on behalf of the Petitioner submits that the appointment of the Petitioner was made following the procedure known to law and as such the service of the Petitioner cannot be terminated in the manner in which it has been done. He emphasises that in response to the advertisement the Petitioner offered her candidature which was considered by the selection committee and on its recommendation the Petitioner was appointed. Mr. R.K. Datta appearing on behalf of the Respondent-Corporation and its officers submits that as the Petitioner's appointment is on unsanctioned post, the very appointment is illegal and hence the Respondent-Corporation had no option than to terminate her service, when it was so directed by the State Government. In support of his submission Mr. Datta has placed reliance on a judgment of the Supreme Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain and Ors. and my attention has been drawn to paragraphs 7 and 8 of the judgment which read as follows:

7. It may be pointed out here that the Appellant-Corporation is a government company fully financed by the State Government and that being so the Government would be very much concerned to see that any project which is not economically beneficial for the Corporation and which is likely to result in any loss should not be given effect to. The Government, therefore, would be justified in issuing instructions that no appointments of any staff in connection with the said project will be made without the approval of the Board of Directors of M.P. Hasta Shilpa Vikas Nigam Limited and passed the order to that effect which has been filed as Annexure-B in this appeal. But it appears that the High Court ignored the said order of the State Government while observing that no material (sic) in support of the contention that the Government has issued instructions not to make appointment was produced by the Appellant.

8. It is noteworthy that Shri K.P. Thakur, the then Managing Director himself was retiring on 31.7.1989 and in hot haste he issued the orders of appointment of the Respondents on 6.7.1989 and 8.6.1989 in spite of the instructions of the

State Government to the contrary. In these facts and circumstances the impugned order passed by the High Court quashing the termination of service of the Respondents cannot be sustained.

10. Mr. Datta points out that a person appointed on an un-sanctioned post has no right to continue on the post and the Respondents did not err in terminating her service. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Ashwani Kumar and Others Vs. State of Bihar and Others, and my attention has been drawn to the following passage from paragraph 12 of the judgment, which is as follows:

So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the concerned candidate is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility. It would amount to decorating a still-born baby. Under these circumstances there was no occasion to regularise them or to give them valid confirmation.

11. Having appreciated the rival submission, I find substance in the submission of Mr. Mukherjee. Person appointed to the post of Receptionist-cum-Telephone Operator was promoted on 1.5.87. Thereafter an advertisement was issued in the daily newspaper "Times of India" in its 4th of August, 1987 issue. Petitioner offered her candidature. Her candidature was considered by a selection committee which recommended for her appointment. Thereafter she was appointed by order dated 13.11.97 and worked uninterruptedly till the order of termination. By order dated 12.10.93 the State Government directed the Managing Director of the Corporation to terminate the Petitioner's service which was later on kept in abeyance and again the State Government by letter dated 20.6.2002 asked the Corporation to terminate the Petitioner's service and thereafter the impugned order has been passed. Thus the Petitioner continued in service for about 15 years uninterruptedly although the post of the Receptionist-cum-Telephone Operator being unsanctioned came to its notice in the year 1993. Petitioner's appointment cannot be said to have been made throwing the entire procedure to wind. In such a situation when the incumbent had continued on the post for about 15 years I am of the opinion that the Petitioner's service cannot be terminated in the manner done by the Respondents.

12. Referring to the authorities of the Supreme Court on which Mr. Datta has placed reliance, I am of the opinion that the same are clearly distinguishable. In the case of Devendra Kumar Jain (supra) the appointment was made by the Managing Director in hot haste, a couple of weeks prior to his retirement in spite of the instruction of the State Government not to make any appointment and the

successor Managing Director terminated the service made on 6.7.89 and 8.6.89 on 31.7.89 i.e. within few weeks. In the background of the aforesaid fact the Supreme Court found the termination valid in law which is not a situation here. Here the incumbent had continued for a long time and her appointment was made after advertisement and recommendation by the selection committee, and that too on a post which was held by some other person before.

13. In the case of Ashwani Kumar and Ors. (supra) the question was as to whether direction for regularisation of service can be granted when the post is unsanctioned. Here the Petitioner is not seeking regularisation but is aggrieved by termination of her service and as such decision has no bearing in the present case.

14. In the result, the application is allowed, the impugned order terminating the service of the Petitioner dated 21.6.2002 (Annexure-12) is quashed and the respondents are directed to reinstate the Petitioner forthwith with all consequential benefits.