

(2017) 06 PAT CK 0018
In the Patna High Court
Case No : 20408 of 2016

Shikha Rani, W/o Rajesh Kumar Sinha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-06-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 16](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 06 PAT CK 0018

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Advocate : Binoy Kumar Singh, Satyendra Krishna Prasad, P. N. Sharma

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following reliefs:

"1. That, this is an application for issuance of an appropriate writ order or direction and writ in this nature of certiorari quashing the order vide Memo No. dt. 18.11.016 by which the respondent no. -5 was pleased to terminate the petitioner from service on the ground that her appointment is irregular and invalid and further direct the respondents not to disturb the petitioner from functioning in school in question (Bankipur Girls High School.)

3. The petitioner claims to have been appointed in the year 1988. However, on the basis of an order passed in a Public Interest Litigation being C.W.J.C. No. 10002 of 2016 dated

21.10.2016, on the basis of a C.B.I. enquiry relating to appointment made of teachers from 1980 to 1988, action has been taken against the petitioner by terminating her service. The same is impugned in the present writ application.

4. Learned counsel for the petitioner submitted that she was appointed pursuant to an advertisement in the year 1988 and thereafter was transferred to various places and further that the C.B.I. enquiry was done without her participation and the reply submitted by her pursuant to the first and second show cause has not been properly considered. Learned counsel has also produced copy of order dated 17.01.2017 passed in C.W.J.C. No. 17904 of 2016 (Shanti Kumari vs. The State of Bihar & Ors .) and analogous cases as well as order dated 18.01.2017 passed in C.W.J.C. No. 14784 of 2016 (Smt. Shashikala vs. The State of Bihar & Ors .) and analogous cases, in which persons whose services have been terminated on the basis of the C.B.I. enquiry having moved this Court, the co-ordinate Bench has interfered with the same and given liberty to the Regional Deputy Director of Education concerned to proceed afresh in accordance with law and pass order after affording reasonable opportunity to the petitioner not only to file their show cause but also to justify their cases by personal hearing. Learned counsel for the petitioner further submitted that pursuant to the advertisement, interview was held and the Establishment Committee also approved of the appointment.

5. Learned counsel for the State submitted that the petitioner has not replied to the specific finding of the C.B.I. as contained in the second show cause dated 18.10.2016, which has been quoted in the said show cause and further that perusal of the order of the Selection Committee indicates that she was appointed without any interview and her appointment was totally ad hoc.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The findings of the C.B.I., as reflected in the second show cause dated 18.10.2016 reads as under:

"Although she applied for the post advertised in march 88 but her appointment has been made directly. There is no formation of any selection committee for her selection by any test or interview. Her appointment is irregular and in violation of recruitment rule of LSS teacher, she is over age. No roster clearance was obtained and reservation rules were not followed"

7. The petitioner has annexed a typed copy of the proceeding of the Establishment Committee dated 05.12.1988 which indicates that the petitioner was directly appointed on ad hoc basis by the Inspectress of the Schools and the same has been approved/ratified by the Committee. The aforesaid facts thus, clearly reveal that the petitioner was directly appointed by the School Inspectress on ad hoc basis and there is absolutely no indication of any selection process like test or interview being held and merit list prepared. In that background, the very initial appointment of the petitioner not being in accordance with law will clearly fall in the category of being "illegal" and not "irregular" and the same cannot be condoned.

8. Matters relating to public employment have to be viewed in the background of the actual exercise undergone while making such recruitment so that it is in conformity with the constitutional scheme and most importantly satisfying the requirement of Articles 14 and 16 of the Constitution of India.

9. In the present case, there being nothing to show that any Selection Committee was formed which had interviewed the petitioner or any test conducted where others also took part and a merit list was prepared, and rather there being evidence to the

contrary that the School Inspectress has directly appointed the petitioner on ad hoc basis, the Court can only presume that no such exercise had been undertaken. In that view of the matter, the Court is not in a position to compare the facts of the petitioners in the cases on which learned counsel for the petitioner has relied i.e., Shanti Kumari and analogous cases (supra) and Smt. Shashikala and analogous cases (supra).

10. For the reasons aforesaid, the writ petition stands dismissed.