
(2005) 09 PAT CK 0016
In the Patna High Court
Case No : LPA No. 380 of 2003

Shri J.R.K. Rao and Another APPELLANT
Vs
Shibani Choudhary and Others RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Citation : (2005) 4 PLJR 593

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : R.K. Dutta and Raj Nandan Prasad, for the Appellant; Ved Prakash, for the Respondent

Final Decision : Dismissed

Judgement

1. The Bihar State Electronics Development Corporation and its officers are in appeal against the judgment and order passed by a learned Single Judge by which it was held that the Corporation's action in terminating the service of the writ petitioner-respondent No. 1 as Receptionist-cumTelephone Operator was illegal, bad and unsustainable. Consequently, the writ petition filed by respondent No. 1 was allowed, the order of termination of her service was quashed and the Corporation was directed to re-instate her with all due benefits. The writ petitioner-respondent No. 1 was appointed as Receptionist-cum-Telephone Operator on 13.11.1987 and her service was terminated by order, dated 20.6.2002. The termination of service was sought to be justified on the ground that her appointment was made on a post that was not sanctioned.

2. In the judgment and order coming under appeal certain facts are noticed that are not in dispute. Those may be re-counted as follows. In the Corporation's headquarter the post of Receptionist-cum-Telephone Operator was earlier held by someone else. He/she got promotion on 1.5.1987 and as a result the post fell vacant. The Corporation issued an advertisement, that was published in the Times of India of August 4,1987, inviting applications with regard to several posts, including that of Receptionist-cum-Telephone Operator in the

Corporation's headquarter that had shortly fell vacant as a result of promotion given to the person occupying it earlier. The writ petitioner-respondent No. 1 was one of the applicants for the post. For appointment to the different posts candidates were selected by a five-member selection committee. The Committee was headed by the Managing Director of the Corporation (Mr. S.N. Dubey) and it included as one of its members the Chief of Bureau of Public Enterprises (Mr. S.K. Ghosh). On the recommendation of the selection committee the writ petitioner-respondent No. 1 was temporarily appointed as Receptionist-cum-Telephone Operator by order, dated 13.11.1987 and she joined on the same date.

3. The participation of the Chief of the Bureau of Public Enterprises in the selection committee is of some significance in view of the following facts and circumstances. In the year, 1986 the State Government had undertaken the exercise of organisational re-structuring at the Corporation's headquarter and its two subsidiaries. On 29.12.1986 an order was issued by the State Government by which it gave sanction with regard to 333 posts on the basis of the approval of the Bureau of Public Enterprises. The posts sanctioned by the State Government did not include Receptionist-cum-Telephone Operator for the Corporation's headquarter though for the two subsidiaries it was included in the list of sanctioned posts. Nevertheless, the Corporation not only retained the post but when it fell vacant on 1.5.1987, it went ahead to fill it up on the basis of an advertisement followed by a selection process and in that selection process the Chief of the Bureau of Public Enterprises was also one of the participants.

4. The writ petitioner-respondent No. 1 had already worked for five to six years before a question was raised in the Legislative Assembly in the year, 1993 with regard to certain allegedly irregular appointments in the Corporation, including that of the writ petitioner. In pursuance of the assembly proceeding the Personnel & Administrative Reforms Department of the Government wrote a letter, dated 22.4.1993 to the Corporation's Managing Director asking for an explanation on various charges including the appointment of the writ petitioner on the post of Receptionist-cum-Tel-ephone Operator. The matter proceeded further and on 8.6.1993 the petitioner was asked to show cause why her appointment should not be cancelled since it was made on a post that was not sanctioned. On 14.6.1993 the writ petitioner gave her reply stating what she could under the circumstances; that her appointment was made on the basis of an advertisement and after following a due selection process and, therefore, there was no reason why it should be cancelled for no fault on her part. Nevertheless, the Corporation received a direction from the State Government on 12.10.1993 to cancel the appointment of the writ petitioner. Apparently the direction was not given effect to and on 19.5.1994 another letter was received from the State Government asking that the direction to terminate the appointment of the writ petitioner be kept in abeyance till a final decision was taken on her representation. Finally, the direction to terminate the appointment of the writ petitioner came from the State Government eight years later on 20.6.2002 following which she was terminated from service with effect from 22.6.2002 by an office order issued by the

Managing Director of the Corporation under memo No. 956/02, dated 21.6.2002.

5. She then filed the writ petition being CWJC No. 12244 of 2002 challenging the order of her termination of service. The writ petition as noted above, was allowed by a learned Single Judge by judgment and order, dated April 1, 2003. This appeal is directed against that judgment.

6. Mr. R.K. Dutta, counsel appearing for the Corporation submitted that the appointment of the writ petitioner-respondent No. 1 was made against a post that was not sanctioned and that was sufficient legal justification for the termination of her service. In support of his submission Mr. Dutta relied upon three Supreme Court decisions in (i) Ashwani Kumar and Others Vs. State of Bihar and Others, , (ii) U.S.P. Srivastava Vs. Vinoba Bhave University and Others, and (iii) Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, .

7. I am completely unable to accept Mr. Dutta's submission and it appears to me that the decisions relied upon by him have no application to the other facts of the case. In Ashwani Kumar the Supreme Court examined issues arising from large scale irregular appointments made in the Tuberculosis Eradication Programme at the instance of one Dr. A.A. Mallick who was a Deputy Director in the Health department of the Government Mr. Dutta relied upon para 12 of the judgment but just before that the decision considered the first issue with regard to the legality and validity of the appointments of Class III and IV employees in the scheme and came to find and hold as follows:

"It appears that Dr. Mallick suffering from wrong notions of power and authority under the said Government Resolution and without bothering to find out whether there were vacancies or not under the Scheme indulged in self-help to recruit as many Class III and Class IV employees as suited him and the result was that he loaded a dead weight of burden of these employees on the State exchequer by resorting to a completely unauthorised exercise. The State authorities were justified in refusing to release salaries for paying this unauthorised army of staff which represented a host of unwelcome guests. They were all persona non grata and were not employees in the real sense of the term. It must, therefore, be held that the appointments of 6000 employees as made by Dr. Mallick in the Tuberculosis Eradication Scheme were ex facie illegal. As they were contrary to all recognised recruitment procedures and were highly arbitrary, they were not binding on the State of Bihar."

(emphasis added)

8. In the case in hand the fact situation is totally different.

9. The case of U.S.P. Srivastava (supra) was under certain provisions of the Bihar State Universities Act that have got no application to the present case and similarly the decision in Sanjay Kumar (supra) was in a case of disputed seniority in a totally different set of facts and law.

10. The three decisions relied upon by the counsel are of no help to the

appellants in the present case.

11. Frankly, the stand of the Corporation appears quite anomalous to the court. It was the Corporation that issued the advertisement inviting applications for the post. It was the Corporation that subjected the candidates to a selection process and appointed the writ petitioner-respondent No. 1 on the basis of the recommendation made by the selection committee. And after fifteen years it turns around to say that she must get out because in appointing her it had acted contrary to the direction of the State Government by which posts were sanctioned for the Corporation following its organisational re-structuring. The stand taken by the Corporation is plainly unreasonable, unfair and unjust. It is not the case of the Corporation that the appointment was bad on account of any misrepresentation of fact by the writ petitioner or that she was shown any undue favour by the selection committee or anyone else. No fault attaches to her and yet she is asked to go after fifteen years because others in authority had acted wrongly. One fails to see how a candidate for appointment is supposed to act in the situation. Indeed it cannot be suggested that on coming across an advertisement for a post the prospective candidate should first ascertain whether the advertised was post duly sanctioned or not and in case he fails to do so before making the application he should raise this question before the selection committee and in any event get himself fully satisfied on the basis of documents produced by the employer before submitting his joining report. Though no blame can attach to the writ petitioner, yet Mr. Dutta stated that she was not completely resourceless. He alluded to the fact that on a representation made by her the Government issued the letter, dated 19.5.2004 asking the earlier direction to cancel her appointment to be kept in abeyance and the matter rested at that stage for six years before the final direction came on 20.6.2002. In my view such an insinuation is completely without any basis and on the facts presented before the court it can never be said that the action of the State Govt, in staying its earlier direction to cancel her appointment was under any influence from her.

12. Mr. Dutta further submitted that it was erroneous to allow protection to the writ petitioner-respondent No. 1 on the ground that she had continued in appointment for fifteen years because the fact that her appointment was made on an unsanctioned post was made known to her in 1993 itself when she was asked to show cause vide letter, dated 8.6.1993. I do not find any substance in this submission too. It is true that on 8.6.1993 the writ petitioner was asked to show cause why her appointment should not be cancelled because it was made against a post that was unsanctioned. She resisted the proposed action by pointing out that she was appointed on the basis of an advertisement and following a selection process and hence, there was no reason for terminating her service. I fail to see how anyone else could have responded otherwise in her place. On a careful consideration of the materials on record and the submissions made by Mr. Dutta I find myself in complete agreement with the view taken by the learned Single Judge. In the facts of the case no other view seems to be possible. I find no merit in this appeal. It is accordingly dismissed.

Rekha Kumari, J.

I agree.