

(1993) 07 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 1886 of 1993 (R)

Shyam Kishore Prasad

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 19-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0010

Final Decision : Dismissed

Judgement

Nagendra Rai and Lok Nath Prasad, JJ.—Heard the learned Counsel for the petitioner and learned Counsel for the University. With the consent of the parties, we are disposing of this application at the admission stage itself.

2. The petitioner has filed the present writ application for quashing the notification dated 17-4-1993 (Annexure-8) issued by the order of the Vice-Chancellor, Ranchi University whereby direction has been given to terminate the services of the persons who have been appointed solely on the ground of being wards or retired working employees of the University as well as the order of the same day issued by the Registrar, Ranchi University (respondent No. 3) giving effect to the aforesaid decision of the Vice-Chancellor and terminated the services of the petitioner and five others (Annexure-9) who were appointed solely on the ground of being wards of retired/working employees of the Ranchi University.

3. According to the petitioner, on 16-7-1981 it was decided in the meeting held between the Vice-Chancellor on one hand and delegates of 3rd and 4th wage employees of the Ranchi University on the other hand that at least one ward of the employees of the University should be appointed in the University service on their retirement or on their death while in employment provided the wards are otherwise qualified for the post. The decision arrived at the meeting has been annexed as Annexure-1 to the writ application. In pursuance of the aforesaid decision, the syndicate of the University took a decision in its meeting held on 20-10-1982 that the wards of the retired employees of the University should be

given a job on their retirement. A copy of the aforesaid decision has been annexed as Annexure-2 to this writ application.

4. Admittedly, the father of the petitioner was an employee of the University who retired as Sectional Officer on 30-9-1982. The petitioner applied for his appointment to the vacant and sanction post of U. D. Assistant in the University on the ground that he being a ward of retired employee and on 26-4-1984 vide Annexure-3 he was appointed to the post of Routine Clerk. According to the petitioner since then he was continuously working on the said post and he was also made permanent employee. In this connection, he has referred to several documents appended with the writ application. While he was working as employee of the University, the impugned order has been passed terminating his services

5. Learned Counsel for the petitioner assailed the orders contained in Annexures-8 and 9 on three grounds. Firstly, he submitted that he has been in employment since 1984 and his services has been terminated without raving an opportunity of hearing to him secondly, he submitted that the decision was taken by the syndicate vide Annexure-2 to give employment to the wards of the University employees on their retirement and the said decision cannot be annulled by the Vice-Chancellor. Thirdly he submitted that the petitioner has remained employment for about 9 years and asking him to go out of employment at this moment will cause irreparable loss to him which will amount to miscarriage of justice.

6. Learned Counsel appearing on behalf of the University repelled all the submissions advanced on behalf of the petitioner and submitted that admittedly the appointment of the petitioner was made solely on the ground of being ward of a retired employee. The appointment on the ground of descent only is unconstitutional. His appointment is void and non-est from the very inception and in such cases the petitioner cannot cry for the applicability of the principle of natural justice. He further submitted that at the relevant time the syndicate was the competent authority to take decision with regard to the appointment etc of the employees. Now the power has been vested in the Vice-Chancellor u/s 10(6) of the Bihar State Universities Act, 1976 and in that view of the matter the Vice-Chancellor is competent to rescind or recall the order/ decision of the Syndicate which perse is unconstitutional and void. He also contended that if the appointment of the petitioner is unconstitutional then his continuance in service even for a period of nine years will not justify his continuance in service specially when the University has taken decision to terminate the services of all the persons who have been appointed on the around of being wards of the employees. He also submitted that Ashok Kumar Singh and Ors. whose services, were also terminated along with the petition by Annexure-9 have come to this Court in C. W. J. C. No. 357 of 1993(R) and this Court has dismissed the said writ application on 30-4-1993.

7. The first question to be determined in this case is as to whether the order of

termination of the petitioner is vitiated because of non-compliance of principle of natural justice. Before dealing with the said question it is to be stated at the outset that the appointment of a person solely on the ground of descent is unconstitutional. Article 16, Clause (1) of the Constitution guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Clause (2) prohibit discrimination on certain grounds in respect of any such employment or appointment. The appointment of a person only on the ground that he happens to be the ward or child of the employees of the University is really based on descent only and this is violative of Article 16 of the Constitution of India. Any such appointment will be discriminatory as those who do not happen to be the sons of the employees will be discriminated. The Supreme Court in the case of *Yogender Pal Singh and others Vs. Union of India* others, has held that the rule granting preference in favour of sons and near relatives of the persons in service is unconstitutional. So far as the case of the petitioner is concerned, as stated above, admittedly accordingly to his own case he was appointed solely on the ground of being ward of retired employee and thus his employment from very beginning was unconstitutional.

8. The question as to whether in the above circumstances the petitioner is entitled to opportunity of hearing before termination of his service. Learned Counsel for the petitioner relied upon some decisions in support of his contention referred the decision of Single Bench of this Court in the case of *Om Prakash Narayan and Others and Gyan Kumar Pandey and Others Vs. The State of Bihar and Others*, . The said case is distinguishable on facts. In the said case the persons were in employment for a long period of time and the assertion was that they were appointed by following the rules but their services were terminated without affording opportunity of hearing to them. In that context, it was held that due to non-observance of principle of natural justice the order of termination was vitiated. In this case, as stated above, the appointment of the petitioner is unconstitutional and as such the said case is of no help to the petitioner. He also referred to the decision of the Supreme Court in the case of *Shrawan Kumar Jha and others Vs. State of Bihar and others*, . From the bare perusal of the judgment it appears that the observations were made in the facts and circumstances of that case. It further appears that in that case the assertion of the petitioners was that they were appointed by the competent authority which was denied by the respondents of that case and in that context it was held by the Supreme Court that the opportunity of hearing should be given to the petitioners. The said case, in our opinion, has no application to the present case.

9. The Full Bench of this Court in the case of *Bijoy Kumar Bharti v. State of Bihar* reported in 1983 BUR 536 has held that if the appointment is void and illegal, it is not necessary to observe principle of natural justice before termination of the service. We are of the view that if the appointment of a person is unconstitutional then the aggrieved person cannot insist for observance of principle of natural justice before termination of service. It is well settled that if

observance of principle of natural justice causes injustice than justice, then its applicability can be excluded.

10. Even assuming that the petitioner is entitled to an opportunity of hearing such opportunity in the present case will be an empty formality for the reason that even according to the own case of the petitioner he was appointed only on the ground of being the ward of the employee of the University. Such appointment has been held by the Supreme Court as unconstitutional-In that view of the matter, giving an opportunity of hearing to the petitioner will not advance his case. It is well settled that the court never issues futile writs. In the present case, only one conclusion is possible that the appointment of the petitioner is unconstitutional and in that view of the matter the direction to give an opportunity of hearing will only amount to issue futile writ. For the aforesaid reasons we find no force in the submission of the learned Counsel for the petitioner that the termination order is illegal for non-compliance of principle of natural justice.

11. So far as the second point is concerned, that point is also without substance for the reason that at the relevant time syndicate was the competent body to lay down policy decision with regard to the appointment of the employees of the University. At present syndicate is not in existence. Now the power is vested under the Act to the Vice-Chancellor to take all decisions with regard to appointment etc. He is thus, competent, in our view, to recall or rescind the decision of the Syndicate which as stated above was unconstitutional. Accordingly, his order to rescind the decision of the Syndicate as contained in Annexure-2 is not illegal and without jurisdiction,

12. In support of the last point, learned Counsel for the petitioner relied upon some decisions of the Supreme Court that the persons have worked for considerable period of time, their services should not be terminated. The Supreme Court has power under Article 142 to pass such orders as may be necessary for doing complete justice in any case or the matter pending before it. this Court cannot direct the petitioner for reinstatement in service after having found that his appointment is unconstitutional. Accordingly, we do not find any force in the submission advanced on behalf of the petitioner. It i; to be mentioned that the Division Bench of this Court has dismissed the writ application of Ashok Kumar Singh and others whose services were also terminated along with the petitioner.

13. In the result we do not find any merit in this writ application and the sane is dismissed.