

(2005) 10 PAT CK 0028
In the Patna High Court
Case No : LPA No. 1237 of 1999

State of Bihar and others

APPELLANT

Vs

Rajeshwar Bhagat and others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Citation : (2006) 1 PLJR 100

Hon'ble Judges : R.N. Prasad, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Udit Nr. Singh, for the Appellant; Rajendra Pd. Singh and D.K. Tiwari (in 1237, 1197), Mr. Sudhir Kr. Singh (in 1194) and Mr. Pushkar Nr. Shahi (in 326), for the Respondent

Judgement

Barin Ghosh, J.—In L.P.A. No. 1237 of 1999, the order under challenge is dated 20th August, 1999 passed in C.W.J.C. No. 11800 of 1999. In the said Writ Petition, the petitioners contended that they were appointed after the advertisement was published and they were selected. It was thus contended that there was no just reason to terminate their services. They contended that before issuing the termination, no notice of show cause was given. They also contended that similar terminations were effected and this Court by an order passed in CWJC Nos. 11349/1997/1997, 11495, 782/1998 & 747/1998 quashed the common order of termination insofar as those, who were the petitioners in the said Writ Petitions, and accordingly they are also entitled to same relief. On that ground alone by the order impugned in the said L.P.A., the order of termination was set aside of the petitioners in the Writ Petitions. In LPA No. 1197 of 2004, the subject matter of challenge is the order dated 23rd February, 2004 passed in CWJC No. 6468/2000. The petitioner In the said Writ Petition contended that he is similarly situate to that of the writ petitioner in CWJC No. 5003/1999 which was allowed and the order of termination, insofar as the writ petitioner in CWJC No. 5003/1999 is concerned, was set aside by an order dated 29th September, 2000, and accordingly on the principle of the said order passed in CWJC No. 5003/1999, the order of termination challenged in CWJC No. 6468/2000 should

also be set aside. In that Writ Petition also it was the contention that the case of the petitioner was considered by the Divisional Selection Committee alongwith several others and thereupon appointment was given, and accordingly applying the principles on the decision rendered in CWJC No. 5003/1999, the order of termination, being the subject matter of challenge in CWJC No. 6468/2000, should also be quashed. In the impugned order, the learned Single Judge found that the case of Ravindra Kumar Tiwary as decided in CWJC No. 5003/1999 is identical to the case of the petitioner in CWJC No. 6468/ 2000, and accordingly applying the principles enunciated in the order dated 21st September, 2000 passed in CWJC No. 5003/1999, the learned Single Judge allowed CWJC No. 6468/2000 and quashed the order of termination, being the subject matter of the said Writ Petition.

2. The subject matter of challenge in L.P.A. No. 1191/2004 is the order dated 12th March, 2004 passed in CWJC No. 6609/2000, CWJC No. 6878/2000, CWJC No. 9161/2000, CWJC No. 7007/2000, CWJC No. 7042/2000 & CWJC No. 6942/2000 whereby and whereunder the learned Single Judge quashed the order of termination passed against the writ petitioners in the said Writ Petitions. LPA No. 1194/2004 is, however, directed against the said order insofar as the same concerns the petitioner in CWJC No. 9161/2000. The case of the petitioner in that case was that he was appointed by the appropriate authority and as such the appointment was legal. In this case too, it was the contention of the writ petitioner that he was also similarly situate to that of Pramod Kumar Singh, being the petitioner in CWJC No. 5003/1999, which was allowed on 21st September, 2000. It was contended that the judgment and order rendered in CWJC No. 5003/1999 has been affirmed by the Division Bench in Letters Patent Appeal No. 1245/2002. In the impugned order the learned Single Judge held that the facts in the Writ Petitions which were being dealt with by His Lordship are similar and the questions of law involved therein are also similar to that of CWJC No. 5003/1999 and accordingly by the impugned order quashed the orders terminating the service of the petitioners.

3. In LPA No. 326 of 2005, the subject matter of challenge is the order dated 12th March, 2004 passed in CWJC No. 6609/ 2000, CWJC No. 6878/2000, CWJC No. 9161/2000, CWJC No. 7007/2000, CWJC No. 7042/2000 & CWJC No. 6942/2000 whereby and whereunder the orders terminating the services of the petitioners in the said Writ Petitions were quashed. The learned Single Judge relying upon the judgment and order passed in CWJC No. 5003/ 1999 and finding that the facts at hand are similar or identical to those of CWJC No. 5003/1999 allowed the Writ Petitions and quashed the orders of termination passed against the petitioners in the said Writ Petitions.

4. In LPA No. 469 of 2005, the subject matter of challenge is the order dated 12th March, 2004 passed in CWJC No. 6609/ 2000, CWJC No. 6878/2000, CWJC No. 9161/2000, CWJC No. 7007/2000, CWJC No. 7042/2000 & CWJC No. 6942/2000 whereby and whereunder the orders of termination passed against

the petitioners in the said Writ Petitions were set aside on identical grounds.

5. In none of the orders impugned in these Appeals the learned Single Judge dealt with the facts except to state that the case of the petitioners in the Writ Petitions was that they had been appointed after following the requisite Rules i.e. advertisement followed by selection. When the advertisement was published, how the petitioners responded to the advertisement, whether the petitioners were called at interview, when the selection took place, etc. were not dealt with. While passing the order dated 23rd February, 2004 in CWJC No. 6468/2000, the learned Single Judge recorded that the case of the petitioner was considered by the Divisional Selection Committee and he alongwith several others were appointed on the post of Clerk. All the impugned orders, however, were based either on the case of Ravindra Kumar Tiwary decided in CWJC No. 5003/1999 or on the case of Phulendra Prasad decided in CWJC No. 11349/97.

6. In the case of Phulendra Prasad the Court found as a fact that Phulendra Prasad was sponsored by the Employment Exchange and while terminating his service and the services of the petitioners in CWJC No. 11495/97, CWJC No. 782/98 and CWJC No. 487/99, no show cause was issued before terminating the services of the petitioners therein. Although in CWJC No. 11800/97 it is the contention of the petitioners that the termination of their services was effected without any notice to them, but in none of the other Writ Petitions the respondents writ petitioners have contended that their services were terminated without giving them show cause notices.

7. In CWJC No. 5003/1999, it was the contention of Ravindra Kumar Tiwary that the appointment given to him was made on the basis of interview pursuant to a local advertisement published in February, 1995. It was his contention that though this advertisement was issued on the Notice Board but names were also called for from the local Employment Exchange and pursuant thereto on 2nd June, 1995, the Employment Exchange forwarded his name whereupon interview was held and eventually he was appointed. It was his case that he joined the post on 30th June, 1995 whereupon his educational qualifications were verified by the concerned authorities on 14th October, 1996 and thereupon he was paid his salary. It was his case that he was permitted to appear at the Hindi Noting & Drafting Examination, which he successfully passed. It was stated that on 12th December, 1998 a notice was issued to him in terms of a direction of the Director dated 19th October, 1998 to produce relevant papers of his appointment in order to ascertain whether he was appointed in a legal manner or not. It was his case that he responded to the notice by filing the required documents, but without considering those documents, by a non-speaking order, his services were terminated on 10th February, 1999. All these facts have been recorded in the judgment and order rendered in CWJC No. 5003/1999 dated 29th September, 2000. After recording those facts, the learned Single Judge observed that no ground has been assigned for coming to the conclusion that the appointment was illegal except a bald statement that the appointment was not in accordance with

the circulars of the Personnel & Administrative Reforms Department or Human Resources Development Department issued from time to time. The learned Single Judge noted the contention of the State as made out in its counter affidavit to the effect that no advertisement was published, no interview was held, no roster clearance was obtained and no panel was prepared. The learned Judge then observed as follows:--

"The object of the advertisement undoubtedly is to ensure fair selection. Unless the vacancies are notified to the candidates at large and opportunity is given to them, the selection cannot be said to be legal."

8. The learned Judge then proceeded to hold that even if it is accepted that the vacancy was not advertised in any newspaper at the State level, the State has not denied the case of the petitioner regarding calling for name from the Employment Exchange and forwarding of the petitioner's name by the Employment Exchange on 2nd June, 1995 vide Annexure-2. The learned Judge then held in no uncertain terms that the appointment was made by the Divisional Establishment Committee and from the order itself it would be evidenced that the said selection was made from the list of candidates forwarded by the Employment Exchange. The learned Judge found that there were no allegations against the Members of the Committee, who had made the selection. It was not the contention that no vacancy was in existence or that the appointment of the petitioner could upset the quota of reservation. In sum and substance, the learned Judge held that inasmuch the name of Ravindra Kumar Tiwary was forwarded by the Employment Exchange and the Divisional Establishment Committee considered the cases of those, who had been sponsored by the Employment Exchange, and there being no other infirmity on record, an appointment pursuant to such sponsorship and selection cannot be terminated without assigning any reasons.

9. In the cases at hand, in these appeals, none of the writ petitioners contended that his name had been forwarded by the Employment Exchange. In such view of the matter, the case of none of the writ petitioners-respondents in these appeals can, by a stretch of imagination, be either similar or identical to that of Ravindra Kumar Tiwary decided in CWJC No. 5003/ 1999.

10. In such view of the matter, if the orders impugned in these appeals, except the one passed in LPA No. 1237/99, are permitted to remain, the same would set a glaring wrong principle for the fate of the writ petitioners-respondents in these appeals has been decided on the facts not at all applicable to them.

11. In each of these appeals, the State has filed applications for condonation of delay in preferring the appeals. In regard to condonation of delay in preferring the appeals, we have heard learned counsel appearing for the parties and have also considered the averments made in the applications. We have found reasonable causes for delay in preferring the appeals and at the same time we are overwhelmed by the fact that the decisions impugned in appeals, except in

LPA No. 1237/99, have been rendered applying the facts which are not at all applicable to the facts applicable to the respondents-writ petitioners and accordingly we allow the applications for condonation of delay in preferring these appeals.

12. On merits, we have heard learned counsel appearing for the parties and for the reasons already indicated above, we are of the view that each of these appeals, except LPA No. 1237/99, and LPA No. 1194/2004 should be allowed and the orders impugned therein should be set aside and the Writ Petitions giving rise to the orders impugned in those appeals should be remitted back for reconsideration on their merits, and accordingly, we pass such an order.

13. We would, however, dismiss LPA No. 1237/99 inasmuch as it has been admitted in the counter affidavit filed in CWJC No. 11800/97 that before issuing the impugned orders of termination no show cause was issued and as the fact is, at least two of the writ petitioners-respondents were working since 1974 and the last of the writ petitioner-respondent was working since 23rd December, 1996 and the impugned order of termination is dated 18th November, 1997. This order will, however, not prevent the State to reconsider the validity of the appointments of the said writ petitioners-respondents upon giving them appropriate show cause notices.

14. We would also allow LPA No. 1194 of 2004 and dismiss the Writ Petition registered as CWJC No. 9161 of 2000 for in that Writ Petition the petitioner has relied upon the appointment letter issued in favour of the writ petitioner, which shows that the same was issued on the basis of the recommendation made by the Minister and there is no pleading that the recommendation was preceded or succeeded by application followed by selection and accordingly the conclusion would be that the appointment was an out and out illegal appointment.

15. Learned counsel appearing on behalf of some of the writ petitioners submitted that after the orders impugned in these appeals were passed, some of the writ petitioners were reinstated. It was submitted that while we would remit back the Writ Petitions, we should pass an order of status quo so as to save the services of those writ petitioners, who have been reinstated until the Writ Petitions are decided on merits. We do not think that it would be appropriate to do so, for as yet there is no finding of facts justifying that the termination of the services of the petitioners were improper. The learned counsel for none of the writ petitioners-respondents in these appeals has referred to one single interview letter issued in favour of one single writ petitioner-respondent or even a general notice calling upon all applicants to appear at the interview. The petitioners-respondents have not produced alongwith the Writ Petitions any acknowledged letter or application made by them in response to any advertisement. The appeals are thus disposed of without any order as to costs.

Ram Nandan Prasad, J.

16. I agree.