

(2018) 01 PAT CK 0153

In the Patna High Court

Case No : Letters Patent Appeal No. 1679 Of 2014 In Civil Writ Jurisdiction Case No. 6990 Of 2011

State Of Bihar, Through The Collector And Ors

APPELLANT

Vs

Sujit Kumar Mishra And Ors

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 2 PLJR 546

Hon'ble Judges : Rajendra Menon, CJ;Anil Kumar Upadhyay, J

Bench : Division Bench

Advocate : Rohit Mishra

Final Decision : Dismissed

Judgement

Seeking exception to an order 23.9.2013 passed by the learned Writ Court in C.W.J.C. No.6990 of 2011, this Appeal has been filed by the State

Government under Clause 10 of the Letters Patent.

Respondents Sujit Kumar Mishra and others were appointed on contract basis as Amins and by cancelling their contract appointment when fresh

contract appointments were being made and when an effort was made to replace a contract appointee by another contract appointee, the matter came

to this Court in various writ petitions. The learned Writ Court initially examined the matter and found in C.W.J.C. No.11396 of 2009 vide order dated

7.9.2009 that the Collector-cum-District Magistrate, Gopalganj has taken a specific stand in the said writ petition that Amins have already been

appointed on regular basis and, therefore, in terms of Clause 11 of the letters of appointment, the contract of appointment stood terminated. This was

contested and the Court examined the matter and found that the Collector has

not taken the correct stand and, therefore, the matter was remanded back to the Collector as it was found that the Collector had informed the Court earlier that the appointment of the petitioners therein could not be completed because approval was not obtained from the competent authority. The learned WRit Court found that approval was not needed and the Collector was competent to make the appointment on the post in question and he was, therefore, directed to re-examine the matter. However, on re-examination the Collector has again rejected the same, but now came out with a new case that the initial appointment of the petitioners was irregular. In C.W.J.C. No.6990 of 2011, the matter was examined in detail by the learned Writ Court and the findings recorded by the learned Writ Court in this matter reads as under:

.....Merely because these are contractual temporary appointments do not mean that State or its functionary is absolved of its responsibility under

Article 14 of the Constitution. Feudalistic State has come to an end. We are governed by Constitution and constitutional norms. We are not dependent

upon whims and fancies of individual officers. The ground given is that Collector was not authorized to make these appointments. Why and how this is

said is not indicated. It is by virtue of the last part that is Clause 9 of Annexure 1 where power to appoint by the State has been given to the Divisional

Commissioner. The Collector of the district has deliberately tried to mislead everybody. This Clause 9 is in respect of Circle Inspector (Anchal

Nirichak) alone and not to Amin. This is a new ground now manufactured by the district Collector, a ground which has not been taken before the High

Court, a ground which is not mentioned in Annexure 21. Then again he mentions that there is no approval from the State. Where was approval

required is not stated? Then when it comes to payment, the directive of the State, as noticed above, is clear. It has to be paid at the district level itself

unless excess payments are required which never happened. Regular Amins surely were paid much more than Rs.3,000/- honorarium that is to be

paid to the petitioners. Petitioners were appointed on sanctioned vacant posts. There were already budgetary allocations for these posts.

Thus, in my view, this deliberately shifting stand of the Collector-cum-District Magistrate, Gopalganj speaks volumes of his bona fide.

.....Here again, it is stated that so far as Amins are concerned, appointments

had to be only for two years, which I had already shown, was not applicable to the petitioners. They were not being reemployed. Again, a stand is taken that if no regular appointment is made within two years they should automatically be terminated. There is no such policy guideline available on record. This counter affidavit further shows how desperate the district authorities to get rid of these people and to justify their illegal action by any method.

In my view, for the reasons aforesaid, it is clear that the order of termination of contractual service of the petitioner without there being a regular appointment in the cadre cannot be sustained in fact or in law. It is wholly arbitrary, mala fide in law. It is the manner in which the Collector-cum-District Magistrate, Gopalganj has changed his stand from time to time justifying termination is a serious matter.

Taking note of the aforesaid, the learned Writ Court has allowed the writ petition, quashed the order of termination and has directed the State Cabinet

Vigilance Department to conduct an enquiry into the scandalous cancellation of appointment and thereafter resorting to take steps for making contract appointment again. The learned Writ Court was constrained to take this step because of the Collector's taking shifting stand in the matter.

Considering the reasons that weighed with the learned Writ Court for interfering into the matter, as is detailed hereinabove, we see no reason to make any indulgence into the matter. The appeal is dismissed.

The State Government should implement the order of the learned Writ Court, cause an enquiry into the matter, as directed by the learned Writ Court, and depending upon the outcome of the enquiry, proceed in accordance with law.