

(2005) 02 PAT CK 0065
In the Patna High Court
Case No : C.W.J.C. No. 9772 of 1999

Sudhakar Ojha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 1 BLJR 663

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the learned counsel for the State. The pleadings having been completed the writ petition is being disposed off at the stage of admission itself.

2. Learned counsel for the petitioner submits that he does not press the writ petition in so far as petitioner No. 1 is concerned. The writ application is therefore dismissed with regard to the said petitioner.

3. Petitioner No. 2 was appointed as Peon on temporary basis by an order dated 18.6.1995 and posted in the office of Primary Teachers Training College, Balmikinagar. Petitioner No. 3 was similarly appointed as Peon on temporary basis in the office of Sub-Divisional Education Officer, Bagha, West Champaran. The petitioners continued to discharge their duties till the impugned order of termination dated 18.5.1999 came to be issued.

4. Learned Counsel for the petitioner submitted that in response to advertisement and calling of names from the Employment Exchange the petitioners were issued interview calls dated 4.6.1995 as contained at Annexure 8 series to the rejoinder filed to the counter affidavit of the respondents. This was followed by a process of selection where the petitioners apparently were considered along with others, whereafter their appointment letters came to be issued as contained at Annexures 2 and 3 to the writ petition. The appointment

letters would prima facie demonstrate that the petitioners were appointed in accordance with the decision of the Divisional Establishment Committee. This, learned counsel contends, would obviously mean a process of consideration and selection by the said Committee. Learned counsel next assailed the impugned order of their termination as contained at Annexure 6 dated 18.5.1999. It was submitted that the impugned order came to be issued in a pre conceived state of mind for termination of the service as evident from Annexure 7 dated 9.12.1998. The said document would demonstrate that a decision having been taken to terminate the services of persons like the petitioners a direction was issued to complete the formality of issuance of show cause notice in the aforesaid background. It was therefore submitted on behalf of the petitioners that having been appointed in accordance with law in pursuance of advertisement/employment exchange, process of selection followed by issuance of formal government orders for appointment, there was no occasion to term their appointment as illegal. The impugned order of termination was cryptic and did not disclose any reason for termination, Apart from the reciting an ex parte conclusion that the appointment appeared to be illegal and irregular. Learned counsel for the petitioners further took pains to point out that one Shailendra Singh appointed by the same signatory to the appointment letter of the petitioners and who was appointed in like manner was terminated from the service on the plea of his appointment being illegal and irregular. The matter travelled to this Court in CWJC No. 3699/2001 when this Court held that order of termination to be bad in law and the petitioner therein was directed to be reinstated without salary for the period that he had not worked. Learned counsel for the petitioners further relied upon an order of this Court in CWJC No. 5003/99 filed by one Rabindra Kumar Tiwary which also assailed the present Annexure 7 dated 9.12.1998 apart from the actual order of termination. The plea of the petitioner therein also was that the said petitioner came to be appointed as Clerk under the signature of the very same official who issued Annexures 2 and 3 to the present writ application. His services likewise having been terminated terming the appointment as illegal the matter travelled to this Court in CWJC No. 5003/99 which was allowed by an order dated 21.9.2000. LPA No. 1512/2000 having been preferred against the same was likewise dismissed followed by dismissal of SLP (Civil) No. 6977/2001 against the same.

5. Learned counsel for the State sought to submit from the counter affidavit that the appointment of the petitioners was illegal. There was no advertisement issued. It was further argued on the basis of the despatch number of the appointment letter that they were forged and fabricated. It was thus contended that the very appointment of the petitioners being clouded they deserved no relief in the present writ application.

6. Having considered the submissions made on behalf of the parties and the previous orders of this Court as recorded hereinbefore, this Court finds the Annexure 2, Annexure 3 and Annexure 8 series are Government documents which on the face of it appear to have been issued in regular course of business.

The counter affidavit filed on behalf of the respondents does not deal with or dispute the recital in the letter of appointment that the case of the petitioners was considered by a Divisional Establishment Committee and whereafter they were appointed. Undoubtedly a bald assertion has been sought to be made that no advertisement was issued. Again the plea with regard to the names having been called from the Employment Exchange is not disputed in the counter affidavit. This Court would additionally find that the order of termination was apparently issued in a preconceived state of mind by reason of Annexure 7 where a decision had already been taken to terminate the services of persons like the petitioners and in which background a show cause notice appears to have been issued leading to the order of termination dated 18.5.1999 at Annexure 6. Moreover whatever has been sought to be suggested by the respondents in their counter affidavit does not find any reference in the impugned order of termination. The order of termination is based on the premise that in the background as mentioned therein, that the petitioners allegedly did not respond to the show cause notice, it appeared that their appointment was invalid and illegal.

7. It is settled law that action of the respondents would have to be Judged by contents of the very order and they could not be permitted to urge fresh grounds or seek to explain the impugned order by setting fresh and reciting facts and events which are not mentioned in the impugned order.

8. In the facts and circumstances of the case this Court finds it difficult to uphold the order of termination dated 18.5.1999. This conclusion of the Court finds support from the aforesaid orders of this Court passed in separate writ proceedings one of which having been affirmed upto the Apex Court in similar circumstances. This Court would therefore likewise direct in terms of the order in CWJC No. 3699/2001 that the petitioners be reinstated but without salary for the periods that they have not worked.

9. This application is accordingly allowed with the observations and directions indicated.