

(2005) 09 PAT CK 0043
In the Patna High Court
Case No : CWJC No. 11296 of 1993

Sushil Kumar Srivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Citation : (2006) 1 PLJR 26

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Sunil Kumar Verma, for the Appellant; Tej Bahadur Singh and Gyan Prakash Ojha, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties. The writ petitioner prays for issuance of a direction upon the respondents to consider his case for regular appointment against vacant post of Assistant/ Clerk.

2. Precisely, it is submitted by learned counsel for the petitioner that the petitioner was engaged initially on daily wages on 8.6.1987 due to exigency of work by the Incharge Magistrate, National Rural Employment Programme (hereinafter to be referred to as "NREP"), Sitamarhi and thereafter he was deputed in the Election Cell, as the non-gazetted employees of the State were on strike, by virtue of order, as contained in annexure 1 dated 9.11.1989 and the petitioner continued to work on daily wages against the post of Clerk and all of a sudden, his deputation in the Election Cell was cancelled by order dated 30th March, 1993, as contained in annexure 13, and, ultimately, he was not allowed to join on the substantive post. It is also submitted that since the petitioner had continued in service for some time right from June 1987 to March 1993, he could not have been removed/terminated in the manner it has been done even without giving an opportunity of hearing. Learned counsel while summing up his submission tried to impress upon the Court to invoke equity in the peculiar facts and circumstances of the case.

3. Learned counsel for the State, on the contrary, submitted with reference to the counter affidavit that engagement of the petitioner was purely temporary in exigency of work and procedure for appointment of Class III posts were not followed. Thus, his engagement was by back door method and the petitioner, thus, cannot claim for his regularization/appointment as a matter of right.

4. It appears from the materials on record that the petitioner was engaged some time in the year 1987 on temporary basis to work as Clerk on daily wages and thereafter he was deputed in Election Cell on account of strike by non-gazetted employees. It is not the case of the petitioner that he was appointed or engaged to work as a clerk on the basis of advertisement, issued in the newspaper, and he had passed the requisite test for Class III posts. Sometimes, in demand of exigency persons are engaged to work for some time purely on temporary basis to meet the load of work, but that ipso facto does not confer any right upon such person to claim for fresh appointment. The procedures of law must be followed while filling up the public posts. In a case at hand, it appears that a Magistrate Incharge, NREP, Sitamarhi engaged the petitioner on daily wages and deputed him in the Election Cell, though he was not the authority to do so.

5. It is not the case of the petitioner that he was duly engaged or appointed by the Collector of the District of Sitamarhi, who had some sort of authority in law. A person, who is duly appointed and continued for some time, normally, should not be disengaged or terminated, but a person, who had come by back-door manner, cannot put forth his claim at par with the persons appointed in accordance with law.

6. The question of invoking of equity does not arise in this case nor the petitioner is entitled to raise his grievance for appointment/regularization, as he worked temporarily for some time.

7. Learned counsel for the petitioner lastly submitted that one of the co-employees, namely, Anjani Kumar, has been retained in services, whereas this petitioner has been disengaged. The petitioner has neither challenged the order of termination nor he has made Anjani Kumar as party respondent.

8. Had it been a case that the petitioner was appointed by an authority in law after following the procedures laid down in law, this Court often moulds the prayer, wherein orders of termination are not challenged, but the petitioner has approached this Court to interfere with the order of termination/disengagement, as he was engaged by back door method, which is quite unknown to law. Mere rendering services by the petitioner for some time on casual basis will not confer any right upon him to ask for the reliefs, as prayed for in this application.

9. It is noticed that the petitioner has been disengaged since 30th March, 1993 and it is not known to the Court as to whether any Class III post is lying vacant in the Collectorate of Sitamarhi. In case certain posts are vacant, that shall be advertised where the petitioner may also apply and he may be considered for the same in accordance with law.

10. For the reasons, aforementioned, therefore, I do not find any merit in this application. This application is, accordingly, dismissed.

No order as to costs.