
(2015) 09 JH CK 0005

In the Jharkhand High Court

Case No : L.P.A. No. 483 of 2008, I.A. No. 3720 of 2008, L.P.A. No. 387 of 2008
and I.A. No. 647 of 2009

The State of Bihar and Others

APPELLANT

Vs

Amir Lal Paswan and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 09 JH CK 0005

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Ramit Satender, J.C. to G.A. and Rajneesh Vardhan, J.C. to G.A., for the Appellant

Final Decision : Disposed Off

Judgement

Dhirubhai Naranbhai Patel, J.—These Letters Patent Appeals have been preferred against the judgment and order delivered by the learned Single Judge in W. P. (S) No. 6354 of 2002 dated 25th June, 2008, whereby, the petition preferred by respondent No. 1 was allowed and the order of termination of the services of respondent No. 1 was quashed and set aside. Against this judgment and order, the State of Bihar and the State of Jharkhand have preferred these Letters Patent Appeals.

2. Learned counsels appearing for the appellants submitted that respondent No. 1 (original petitioner) was appointed by the Rehabilitation Officer, who had no authority to appoint, on the post of "Chainman". This was an illegal appointment and, hence, after giving an adequate opportunity to represent the case by the original petitioner, his services were terminated vide order dated 5th June, 1998 (Annexure-1 to the memo of L.P.A. No. 387 of 2008). It is further submitted by the learned counsels appearing for the appellants that this type of appointment is back door appointment and, therefore, services cannot be regularized by the State. The learned Single Judge has allowed the writ petition mainly for the

reason that in a similarly situated case, Hon"ble the Patna High Court had allowed a writ petition being C.W.J.C. No. 6586 of 1998 vide order dated 11th January, 2000 and, therefore, the termination order passed by the appellants dated 5th June, 1998 was quashed and set aside, but, the order passed in C.W.J.C. No. 6586 of 1998 dated 11th January, 2000 was quashed and set aside in L.P.A. No. 675 of 2000 and in other allied Letters Patent Appeals by the Division Bench of Hon"ble the Patna High Court vide order dated 29th January, 2003. The said decision is at Annexure-2 to the memo of L.P.A. No. 387 of 2008 and, hence also, the judgment and order passed by the learned Single Judge in W.P.(S) No. 6354 of 2002 deserves to be quashed and set aside. Learned counsels appearing for the appellants have relied upon the decision rendered by Hon"ble the Supreme Court, reported in State of Bihar Vs. Chandreshwar Pathak, and submitted that those who are illegally appointed, they are back door employees and, therefore, their services ought to be terminated.

3. When the matters are called out, nobody appears on behalf of respondent No. 1.

4. Having heard learned counsels for the appellants and looking to the facts and circumstances of the case, we hereby quash and set aside the judgment and order delivered by the learned Single Judge in W.P.(S) No. 6354 of 2002 dated 25th June, 2008 mainly for the following facts and reasons :

(i) Respondent No. 1 was appointed on the post of "Chainman" by the Rehabilitation Officer vide order dated 26th July, 1986. This officer had no power, jurisdiction and authority to give employment on public post.

(ii) There is no public advertisement for the post, in question. The public at large were not given any opportunity to compete for the post. Thus in absence of public advertisement, respondent No. 1 was appointed in the Government services. This is clear violation of Articles 14 and 16 of the Constitution of India.

(iii) It has been held by Hon"ble the Supreme Court in the case of State of Bihar Vs. Chandreshwar Pathak, , at paragraphs 10, 11, 12 and 13 read as under:

"10. The order of appointment, in the present case, is as follows:

"In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No. 6/86 F3 Shri Chandeshwar Pathak, S/o. Shri Devnarayam Pathak of Village Haraji, PO Haraji, PS Dimbara, District Chhapra was appointed as Constable temporarily from 14-1-1988 afternoon on the condition that his previous character found satisfactory and as and when necessary, his service shall be terminated without assigning any reason or show cause. His pay scale shall be Rs. 425-10,565 EB-10-605 with the basic pay of Rs. 425. He has been allotted CT No. 390."

It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete

or any selection process was undertaken before appointment of the respondent.

11. In *State of Orissa v. Mamata Mohanty*, it was observed as under:

"Appointment/employment without advertisement

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution.

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit. "

12. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which SLP has been dismissed by this Court as mentioned earlier.

13. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The learned Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same."

(emphasis supplied)

(iv) It further appears from the facts of the case that adequate opportunity of being heard was given to respondent No. 1. Thus, even after giving adequate notice of being heard to respondent No. 1, the services of respondent No. 1 were brought to an end vide order dated 5th June, 1998. The said order is at

Annexure-1 to the memo of L.P.A. No. 387 of 2008.

(v) It further appears from the facts of the case that the learned Single Judge had allowed the writ petition being W.P.(S) No. 6354 of 2002 vide order dated 25th June, 2008 mainly relying upon the order passed by Hon'ble the Patna High Court in C.W.J.C. No. 6586 of 1998 dated 11th January, 2000. The decision passed by the learned Single Judge in C.W.J.C. No. 6586 of 1998 has been overruled by the Division Bench of Hon'ble the Patna High Court in L.P.A. No. 675 of 2000 and in other allied Letters Patent Appeals vide order dated 29th January, 2003. This decision is annexed at Annexure-2 to the memo of L.P.A. No. 387 of 2008. Paragraphs 34, 35, 36 and 37 of the said decision read as under:

"34. It is indeed gratifying to note that the state is taking some interest in matters like present and is trying to remove these who were allowed to enter in services illegally or from the backdoor.

35. The question of continuance in service would in fact be based upon the application of policy of mercy or policy of estoppels or on the fact of long stay. We have already found that long stay of an incumbent in an establishment/ Government office would not make his stay justifiable. The question of estoppels would not arise in a matter like present. The question of mercy does not arise because they have already obtained from the state for long many years what they were otherwise not entitled to. In our opinion, such a protection now would be adding premium to illegality and would be in violation of the principles of justice, equity, fair play and good conscience. The illegal stay howsoever long would not make the same legal. If the question of mercy arises then the petitioners must show to this court that why a mercy should not be shown in cases of those who are awaiting their turn of appointment/employment for long but are still out of employment and are unable to earn anything or get anything from state either in form of salary or subsistence.

36. The matter may also be appreciation from another angle. The writ petitioners were appointed in the year 1985 or so. Some of the petitioners were immediately terminated but were later on re-employed showing that they were illegally retrenched. The matter did not end there and an enquiry into the subject was made. The enquiry showed that all such persons were illegally appointed and the appointments were motivated. The state Government after finding that the appointments were illegal proposed to terminate the services of such persons and directed registration of first information report against the officer who had issued such orders. It is not in dispute before us that the said officer is facing prosecuting because he had issued, as alleged by the State Government, illegal orders which were contrary to law and were for reasons best known to the said officer. On one side the said officer/officers is/are being prosecute because they issued appointment orders in favour of the petitioners and on the other hand the petitioners, who were benefited by those illegal orders are requesting the High Court that they be allowed to continue and their services be regularized. Would it not be fallacy of law that the person who issued the orders is being prosecuted

and the persons who are benefited by the said order are to be rewarded reinstatement in service or their regularization? Would it not mean that the High Court is agreeing to the appointments and is finding the same to be valid or is exercising its extra ordinary jurisdiction in favour of those persons who are benefited by illegal orders? The High Court certainly would not be a party to all these illegal exercises.

37. In our considered opinion to judgments under appeal can not be allowed stand, these deserve to and are according set aside. The appeals filed by the State Government are allowed. The appeals filed by the writ petitioners are dismissed. All the writ applications are dismissed. However there shall be no order as to costs."

(emphasis supplied)

(vi) The aforesaid order passed in group of Letters Patent Appeals by the Division Bench of Hon''ble the Patna High Court was also challenged before Hon''ble the Supreme Court and the SLPs were converted into Civil Appeals. All the civil appeals being Civil Appeal Nos. 5682-5684 and several other Civil Appeals were dismissed by Hon''ble the Supreme Court vide order dated 11th July, 2006. The order passed by Hon''ble the Supreme Court reads as under:

"O R D E R

In view of the recent decision of the Constitution Bench in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , we are of the opinion that there is no merit in these appeals. The appeals are dismissed accordingly.

..... Sd/-..... J. (S.B. Sinha)

..... Sd/-..... J. (Dalveer Bhandari)"

The aforesaid facts, reasons and judicial pronouncements were not appreciated by the learned Single Judge while allowing the writ petition being W.P.(S) No. 6354 of 2002 vide order dated 25th June, 2008.

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the judgment and order delivered by the learned Single Judge in W.P.(S) No. 6354 of 2002 dated 25th June, 2008. Accordingly, both the appeals are allowed and disposed of.

6. Accordingly, I.A. No. 3720 of 2008 and I.A. No. 647 of 2009 are also disposed of.