
(2007) 02 PAT CK 0102
In the Patna High Court
Case No : L.P.A. No. 350 of 2004

The State of Bihar and Others

APPELLANT

Vs

Indrasan Singh

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : (2007) 2 BLJR 949 : (2007) PLJR 202 Supp

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : S.K. Sharma. G.A.V, for the Appellant; S.N. Jha. and Mithilesh Kr. Singh, for the Respondent

Judgement

1. Heard Mr. Shyam Kishore Sharma, G.A. V in support of the appeal and Dr. S.N. Jha appearing for the respondent.

2. The respondent Indrasan Singh came to this Court in CWJC No. 7590 of 2002 challenging the office order issued by the Joint Secretary to the Government in the Department of Health under his memo No. 98, dated 11.6.2002 by which his service was terminated from the date of issuance of the order on the ground that his initial appointment was illegal.

3. On behalf of the respondent (writ petition) it was stated that in 1984 he was engaged on daily wages to discharge the duties of typist in the Engineering Cell of the State Family Welfare Bureau under the Health Department. While working on daily wages the petitioner made a representation for his regularisation in service which was forwarded to the superior authorities in the Department. Later on a Monitoring Cell was set up in the Health Department where there was requirement of someone able to type on an electronic typing machine. The respondent had acquired the necessary skill. Names were called for from the Employment Exchange that forwarded the names of the respondent and one other person. A selection committee constituted at the departmental level found the petitioner suitable and the petitioner was accordingly appointed by office

order, dated 11.3.1988. Since then he was working till he was removed from service by the impugned order, dated 11.6.2002.

4. A counter affidavit was filed on behalf of the State in which it was stated that the respondent's appointment was completely illegal. It was pointed out that under the relevant rules any appointment on a Class III post of typist in the Secretariat or its allied offices could only be made following a selection made either by the Bihar Public Service Commission or the Staff Selection Commission. The so called committee that called for the names from the Employment Exchange and made the recommendation for the petitioner's appointment had no authority or power to do so.

5. The writ petition filed by the respondent was not decided individually but it came before a single Judge of the court along with 292 similar other cases in which employees of the Health Department were removed from service on the ground that their initial appointments were illegal or irregular. The writ court disposed of all the 293 writ petitions by a common judgment and order, dated 3.9.2003. Naturally, the facts of each of the cases were not considered separately but the learned single Judge noticed that in all cases the writ petitioners were appointed with varying degrees of irregularities and enumerated six categories in which the cases would fall depending upon the nature of the irregularity in the appointment of the concerned petitioner(s). In the end all the writ petitions were allowed and the termination orders in all the cases were quashed primarily for the reason that the petitioners in each of the writ petitions had continuously worked for more than ten years and further that the State Govt. had not taken any action against those who were responsible for making those illegal appointments. The respective orders of termination of service were set aside and the writ petitioners (including the respondent) were directed to be reinstated, though without any back wages for the period they had not actually worked.

6. The State filed appeals in all the 293 cases that were allowed by the writ court by its judgment and order, dated 8.9.2003. A large number of appeals arising from the order, dated 8.9.2003 along with a number of other appeals (arising from the other orders of the writ court) and many writ petitions on similar facts came before a bench presided over by the Hon'ble the Chief Justice in a batch of 820 cases. All those cases were disposed of by a common order, dated 26.6.2006. The operative portion of the order is extracted below:

All the Letters Patent Appeals whether preferred by the State or by affected employees and all the writ petitions preferred by the affected employees are hereby disposed of by this common judgment and order with a direction to the authorities of the Health Department, Government of Bihar to reconsider the cases of all the affected employees with a view to find out on the basis of relevant facts and law as settled by the Constitution Bench in the case of Secretary, State of Karnataka v. Uma Devi (supra) as to which of such affected employees are fit for regularisation in terms of that judgment, particularly in

terms of paragraph 44 of the judgment. Such exercise should be completed within a period six months from today. If for any good reason, the time period is required to be extended then the respondent State must file an application for that purpose and seek extension from this Court. Till the process is completed, the State of Bihar and its authorities shall maintain status quo in respect of services of the affected employees as existing on date. The status quo shall get revised by the orders that may be passed by the authorities in respect of affected employees as a result of the exercise to be undertaken by them and their final decision in the light of this judgment and order.

7. Somehow the present appeal though arising from the same order, dated 8.9.2003 missed out and it was not included in the batch of cases disposed of by the order quoted above. Later on it was listed separately before this bench.

8. Mr. S.K. Sharma, learned G.A. naturally submitted that this appeal may also be disposed of in the same terms as the other appeals arising from the same judgment.

9. Dr. S.N. Jha, however, tried to argue that the case of the respondent was different from the other cases in the batch and in so far as respondent was concerned, the judgment and order passed by the learned single Judge did not warrant any interference in appeal. Dr. Jha submitted that calling for names from the Employment Exchange and then subjecting the two candidates whose names were sent by the Employment Exchange to a process of selection fully satisfied the selection norms of the State Govt. There was, therefore, no irregularity, much less, any illegality in the appointment of the respondent and the order terminating his service was wholly unreasonable unfair and unjust. The learned single Judge had rightly set it aside and in appeal there was no scope for any interference in the matter. In support of his submission Dr. Jha relied upon a decision of the Supreme court in Arun Tiwari and Ors. v. Zila Mansavi Shikshak Sangh and Ors. AIR 1998 SC 331. He also relied upon a decision of this Court in Harendra Kumar Pandey and Others Vs. State of Bihar and Others .

10. In our view it is rather late in the date to try to argue the case of the respondent separately and independently from the other cases in the batch. As noted above, both at the stage of the writ petition and in appeal a very large number of cases of dismissal of employees appointed illegally / irregularly were dealt with together by the court. Both the writ court and the appellate court did not deal with the facts of the individual cases but took into consideration the broad feature of the cases and issued appropriate directions. At the stage of the writ petition the respondent sailed in the same boat along with a number of others situated similarly. Hence, at the stage of the appeal he cannot forsake the boat and take a different course. Whatever has been said by another division bench hearing the appeals arising from the same judgment must apply to the present respondent also. Any other course would be subversive of Judicial discipline and would lead to inconsistent or even conflicting orders in similar cases. We are, therefore, unable to accept the submissions of Dr. Jha.

11. This appeal is accordingly disposed of with the direction that the case of the sole respondent Indrasan Singh shall also be governed by the decision of the court in Krishna Nand Jha v. State of Bihar and Ors. 2006 PLJR (3) 386 .

12. In the case of the respondent the period of six months shall commence from the date of receipt / production of a copy of this order in the office of the Health Secretary.

13. The appeal stands disposed of with the aforesaid observations and directions.