

(2009) 01 PAT CK 0109
In the Patna High Court
Case No : LPA No. 9 of 2009

The State of Bihar and Others

APPELLANT

Vs

S.M. Ekramuddin

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Citation : (2009) 2 PLJR 218

Hon'ble Judges : Chandramauli Kr. Pd., Acting C.J.; Shyam Kishore Sharma, J

Bench : Division Bench

Advocate : Piyush Lall, for the Appellant; Satyavrat Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. State of Bihar and its officers aggrieved by the order dated 8th September, 2008 passed by the learned Single Judge in CWJC No. 7378 of 2008 allowing the writ application, have preferred this appeal under Clause 10 of the Letters Patent. Writ petitioner-respondent was initially appointed as Steno-Typist in the office of the District Magistrate, Darbhanga in the year, 1977. Later on two posts of Personal Assistant (non-gazetted) were sanctioned for the newly created Saran Division and for filling up the aforesaid two posts of Personal Assistant an advertisement was issued and the respondent offered his candidature and ultimately appointed to the second post of Personal Assistant on 11th June, 1985. He was confirmed on the said post on 30th November, 1991. The first post of the Personal Assistant was held by one Suraj Prasad Singh and the post held by him was upgraded. Suraj Prasad Singh later on died. When the petitioner-respondent applied for being upgraded to the post held by Suraj Prasad Singh, he was upgraded to the post held by Suraj Prasad Singh and ultimately by order dated 8th March, 1997, the Commissioner, Saran Division, confirmed him to the post of Senior Personal Assistant.

2. Later on the respondent's service was terminated. He challenged the same before this court which has given rise to the impugned order.

3. Mr. Piyush Lall, Junior Counsel to Additional Advocate General-III appearing on behalf of the appellants submits that the learned Judge has erred in holding the termination of service of the respondent to be illegal on the ground that no regular departmental inquiry was held. He submits that in case of illegal appointment, there is no necessity of holding a regular departmental inquiry. In support of his submission, he has placed reliance on a judgment of this court in the case of *Ishwar Dayal Sah vs. State of Bihar & Ors.*, 1987 PLJR 819.

4. We do not have the slightest hesitation in accepting the broad submission of Mr. Lall that in case of illegal appointment based on forged and fabricated document, no regular inquiry is necessary. However, in the present case, the learned Judge has observed that "it is not a case simpliciter of forged, fake and fabricated appointment making it void ab initio". According to the learned Single Judge the issues are of a nature "which had to be more seriously delved upon by framing of charges, laying out documents to be served on the petitioner with an opportunity to the petitioner to rebut the same alongwith documentary, oral and other evidence when the disciplinary authority was required to arrive at his independent determination of nature of appointment whether it be an illegal or irregular".

5. In view of the finding aforesaid, we are of the opinion that the learned Single Judge did not err in allowing the writ application

6. We do not find any merit in the appeal. It is dismissed in limine.