
(2003) 09 PAT CK 0123
In the Patna High Court
Case No : L.P.A. No. 778 of 2003

The State of Bihar and Others

APPELLANT

Vs

Sudhanshu Shekhar Mullick

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Citation : (2004) 1 PLJR 207

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : R.P. Bhagat, for the Appellant; Dharendra Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. The delay in filing the appeal is condoned.
2. When the appeal was filed the Court recorded its order of 28 August, 2003. The defence of the State government before the learned Judge considering the writ petition was produced. The case was adjourned at the request of State Counsel to be put up after two weeks. The issues were noticed in the order.
3. In case the Petitioner Respondent had received an irregular appointment then clearly somebody had made it. If the Petitioner is to go out of service then so is the Officer who made an irregular appointment. The State administration now protects those erring officers in a belated appeal that appointment of certain lower grade incumbent was illegal. But where exactly is the Officer who made it. The illegality has to be inquired into. If the appointment was by fraud then two people had joined in it. The situation could not be explained and, thus, the learned Judge has recorded the inability of the State to offer a clear cut defence in the writ petition. The defence in the counter affidavit was worthless. The learned Judge records:

He, however, could not give details of such appointment as to whether they were made between 18.3.80 and 21.2.92 or before/after when the Regional Directors

had no such power or the power was withdrawn respectively. Counsel for the State also attempted to submit that the initial appointment of the Petitioner was not in accordance with law.

4. Such cases cannot be judged in a vacuum. The Officer who made the illegal appointment is answerable to the system. If the appointment is forged then consequence of dismissal must visit the Officer who made it upon whatever inquiry the State may institute.

5. State Counsel present today still has received no instructions. It is unlikely that another instruction will come in a case where it is accepted that a Superior Officer made an appointment without following the procedure. What the Petitioner received perhaps was only consequential. There can be no let from responsibilities that Superior Officers will make illegal appointments merrily and the lower rank staff will face flak. If the lower rank staff has to go then both will go. In the present case the State government could not satisfy the learned Judge who was deciding the writ petition that the appointment came within the spectrum of irregular appointment. Clearly the Petitioner was harassed. This appeal is misconceived.

6. It is dismissed with cost at Rs. 5,000/- to be deposited by the State of Bihar to the account of the Bihar State Legal Aid Services under the Legal Aid Services Authorities Act within one month from today.