

(2008) 08 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 511 of 2001

Uma Shankar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Citation : (2008) 08 PAT CK 0092

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : P.K. Verma and S.R. Sharan, for the Appellant; Sunil Kumar Mandal for the State, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner and the learned counsel for the State. The petitioner is aggrieved by the termination of his service by order dated 28.11.2000 in pursuance of a show cause notice dated 16.10.2000.

2. It is his case that he was appointed in temporary capacity on a Class IV leave vacancy post by the competent authority, the Regional Deputy Director, Tirhut Division, Muzaffarpur, on 18.9.1988 by the then incumbent of the post. That not only did the then incumbent of the post take work from him but all successive incumbents of the post took work from the petitioner till he came to be issued the aforesaid show cause followed by the termination. In the meantime he was absorbed in regular service by Memo No. 647 dated 25.1.1993. In this manner he continued in service uninterruptedly since 1988. It is his further case that persons named in paragraph 12 of the writ petition appointed in similar circumstances are continuing in service while he has been singled out for discriminatory treatment.

3. The stand of the respondents in their counter affidavit is that the very initial appointment of the petitioner was illegal, contrary to law inasmuch as no

advertisement was published, relevant Government circular for appointment was not followed, that his appointment letter was a fabricated document. Even while it does not deny the specific assertion in paragraph 12 of the writ petition a bald statement has been made in paragraph 11 to the effect that genuineness of the appointment of persons in Class-III and IV named in paragraph 12 are under verification.

4. It was next urged that the State was not answerable for the illegal acts of its employees in making illegal appointment and that where appointment letter was forged and fabricated the principles of natural justice had no application.

5. The show cause notice at Annexure-2 does not allege any illegality or irregularity in appointment of the petitioner. The petitioner therefore was not made aware of the allegations of illegality/irregularity he was required to answer or meet. A vague show cause notice was given to him on which followed an order of specific four illegalities/irregularities in the appointment without any opportunity to meet the same. The law stands settled that even where allegations are of forged appointment letter an enquiry is required to be held to determine the factum of forgery. Reference may be made to the judgment of the Apex Court in Director General of Police and others Vs. Mrityunjoy Sarkar and others, . The petitioner was never made aware of the grounds that he was required to meet of the alleged forged nature of his appointment. He has been taken by surprise not only on this issue but on all issues mentioned in the impugned order. For that reason alone at this stage without considering the other issues of his absorption in the service and the judgments of this Court relied upon by the petitioner for the purpose suffice it to say that the impugned order of termination is not sustainable as based on a vague show cause notice. The order of termination is accordingly set aside. The petitioner stands reinstated with his seniority only.

6. This shall however be without prejudice to the rights of the respondents to proceed afresh in accordance with law should they so desire. It is clear stand of the State that those who appointed the petitioner made illegal appointment. Yet the State does not concede its responsibility to take action against those who are all its employees who abused the power. If the respondents propose to proceed against the petitioner, this Court directs and commands the State to simultaneously proceed both depart mentally and criminally against all those who appointed the petitioner and continued to utilise the services of the petitioner, by what the State contend has illegally been taken from the coffers of the State and the same treatment must be meted out to them accordingly whether they are in service or retired as shall be meted out to the petitioner. The writ application stands allowed.