
(2011) 11 PAT CK 0091
In the Patna High Court
Case No : CWJC No. 13686 of 2007

Upendra Narayan Chaudhary	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Citation : (2012) 2 PLJR 537

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, for the Appellant; J.P. Shukla, Lalit Kishore, Mrs. Binita Singh in CWJC No. 13686, M/s SC-22, J.P. Shukla in CWJC No. 15171, M/s AAG-1, J.P. Shukla and Shitanshu Shekhar Mishra in CWJC No. 13707, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kumar Jha

1. Heard counsel for the parties in all these three cases. The petitioners are working on the post of peon in the different High Schools. By the common impugned order dated 31.8.2007 have been sought to be removed from service only on the ground that at the time of their initial appointment in the year 1981-82 the procedure meant for appointment on Class-IV post including publication of advertisement in the newspaper and undergoing the prescribed procedure for appointment was not followed.

2. Mr. Rajendra Prasad Singh, learned counsel appearing on behalf of the petitioners in all these cases has submitted that it is not in doubt that the Collector of the district was authorized to nominate a person from his panel for appointment on any Class-IV post, in view of the procedure laid down in Government circular no. 16441 dated 3.12.1980. He has also submitted that the appointment letter of the petitioner itself goes to show that their such appointment was made in the light of the recommendation made by the Collector

and therefore, it cannot be said that the prescribed procedure for appointment at the time of entry of the petitioners in service was not followed. He has also assailed the impugned order on the ground of violation of the principles of natural justice and in this regard a specific averment made by the petitioners of their being no notice and/or opportunity of hearing has in fact not been controverted by the respondents in their counter affidavit. He has also relied on the order dated 18.11.2011 in C.W.J.C. No. 13422 of 2007, wherein, a similarly situated person namely Rishikesh Pandey, terminated by the same impugned order was directed to be reinstated in service after quashing the order so far it related to him.

3. Counsel for the State in all these cases did not dispute the basic facts but they have dwelt upon the aspect that as a matter of fact when the case of the petitioners was being considered for grant Of ACP after completion of their 24 years of service, it was detected that their initial appointment was bad and therefore, the District Screening Committee headed by the Collector of the district had taken decision not only to reject their cases for grant of ACP but also terminate their services. He would submit that as a matter of fact before doing so, a comment was called for from the Headmaster of the School in which the petitioners were working and on receipt of the same and its consideration by the District Screening Committee such an order was passed.

4. Amidst these facts one thing becomes admitted that the petitioners have been subjected to termination of their services after being allowed to continue for a period of 25 to 26 years, inasmuch as, the petitioner Umesh Thakur was appointed in the year 1981 whereas the petitioner Upendra Narayan Choudhary and Nageshwar Thakur were appointed in the year 1982. The fact that that in this period of 24 to 25 years, there was no flaw ever detected in the appointment of the petitioners. Their continuation of work and getting salary would by itself be a good ground to accept the submission of learned counsel for the petitioner that everything was done only in half to deny the benefit of ACP to the petitioners.

5. That apart it is the cardinal principle of equality and parity that whenever a person is subjected to adverse order which in turn would take away the benefit of continuation in service and thus source of livelihood, the same must be preceded by strict adherence to the principle of natural justice. All theses petitioners in fact have been removed from service without being given even any show cause notice and/or opportunity of hearing. In view of this admitted fact, the impugned order even otherwise cannot be sustained.

6. Considering these aspects, this Court in the case of Rishikesh Pandey (supra) had held as follows:-

From the counter affidavit, it becomes clear that no opportunity of show cause was ever given to the petitioner and in this regard the Headmaster of the School was asked as to whether that the appointment of the petitioner was made in prescribed manner. Such indirect inquiry made by the District Education Officer

with regard to the appointment of the petitioner after more than 26 years by order dated 4.7.2007, would also make out a case of malice the part of the Authorities who had sought to dig out an old matter from the grave. From the reading of the impugned order, it would appear that as a matter of fact when the petitioner after completing 24 years of service was to be considered for grant of A.C.P., the Authority had denied the same by questioning the initial appointment of the petitioner.

That apart, there also to be clear violation of principles of natural justice and Annexure-B of the counter affidavit is in fact a direct proof of the fact that the petitioner was never given any show cause notice and/or opportunity of personal hearing. The reliance placed by the counsel for the State on a reply filed by the petitioner dated 14.7.2007 also seems to be wholly misconceived. The petitioner in the light of the query made from him by the Headmaster in response of Annexure-B, a letter sent to the Headmaster by the District Education Officer had only explained that his appointment was made against a leave vacancy by the competent Authority namely, the District Education Officer till the expiry of leave and joining of Sri Ganpati Swaroop, the peon working in the High School. As a matter of fact, this part of the defence of the petitioner has not at all been considered in the impugned order and therefore, even if, this Court accepts the submission of learned counsel for the State that a show cause notice was issued to the petitioner, (though factually it was not so) and the petitioner had filed his show cause reply (which again would be factually would be incorrect), this court will have no hesitation in holding that the impugned order is even otherwise in clear violation of the principles of natural justice.

An equally important facet of the principle of natural justice would be that when a show cause notice is issued and a reply is filed, the Authority before passing the order also must apply his mind to the facts stated in the reply and take them into consideration while passing the order. In the present case, even if, Annexure-B is held to be a show cause notice issued by the Authority, the facts mentioned by the petitioner in his letter dated 14.7.2007 as contained in Annexure-C does not appear to have ever been taken into consideration in the impugned order as contained in Annexure-2, which to say the least is a cryptic perfunctory and mechanical order by way of a mere camouflage for denying the benefit of A.C.P. to the petitioner and few other peons. In such a situation this Court cannot uphold the impugned order which must be held to be wholly arbitrary and illegal.

7. Normally, having quashed the order of appointment on the ground of principles of natural justice, this Court could have given opportunity to the Authorities to issue fresh show cause notice to the petitioners but taking into account that now the petitioners are at the verge of retirement of their service, after having been allowed to continue in service from 1981-82, this court would not give any such liberty to the Authorities to go into the question of their illegality in the initial appointment made in the year 1981-82 specially when this Court would find that the process of appointment as laid down in the

Government Circular dated 3.12.1980, seems to have been followed by the process of sending the name by the Collector of the district to the Appointing Authority.

8. The same impugned order has already been quashed in the case of Rishikesh Pandey (supra) and there is no distinction in the case of the petitioners and as such when this Court had not given liberty even in the case of Rishikesh Pandey for reopening the matter by issuance of fresh show cause notice, both prudence and equity would demand that such liberty should not be granted in the case of the petitioners. That being so, all these writ applications are allowed and the common impugned order in all these cases dated 31.8.2007 are hereby quashed with a direction to reinstate the petitioners back in service forthwith with all consequential benefits. There would be however, no order as to costs.