
(2007) 03 PAT CK 0143
In the Patna High Court
Case No : CWJC No. 3152 of 2003

Vijay Shankar Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 455

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : M.N. Parbat, Ved Prakash Srivastava and Sanjay Kumar Jha, for the Appellant; Nilu Agrawal and Mr. Zaki Haidar for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner seeks to challenge the order passed by the Superintending Engineer, Public Health Engineering Organisation, Chapra Circle under memo No. 96 dated 21.3.2002 (Annexure-18) by which he was removed from service on the ground that his appointment was irregular. He also challenges the order, dated 8.7.2002 passed by the Chief Engineer by which he was allowed to rejoin for a period of three months till a proper appointment was made against the post and the order, dated 26.7.2002 passed by the Executive Engineer by which his joining was accepted subject to the condition that the arrangement would terminate on expiry of three months. The irony of the matter is that the process for the petitioner's removal from service was started on the basis of the order passed by this Court in a letters patent appeal in the case of termination of service of another employee. But the order of the court passed in L.P.A, failed to sustain in appeal before the Supreme Court and the apex court directed for taking the concerned employee back in service. Abhay Kumar Pandey, another employee was earlier removed from service on the same ground that his appointment was irregular. He challenged the order of his termination before the court in CWJC No. 699 of 1998. The writ petition was allowed by order, dated 26.8.1999 Reported in Awadhesh Kumar Singh Vs. Union of India (UOI) and

Others, passed by a single Judge; the impugned order of-termination of service was quashed and the petitioner (Abhay Kumar Pandey) was directed to be re-instated on his substantive post with all consequential benefits. The State preferred an appeal being L.P.A No. 1252 of 1999. The appeal was allowed by a Division Bench by judgment and order dated 12.12.2000 and the order of the learned single Judge was set aside.

2. From the order coming under challenge in the case in hand it is evident that the process for the petitioner's removal from service was started on the basis of the order of this Court in L.P.A. 1252 of 1999 (State of Bihar vs. Abhay Kumar Pandey). In this regard it becomes significant that against the order of the Division Bench Abhay Kumar Pandey preferred a SLP before the Supreme Court being S.L.P (Civil) No. 10405 of 2005. The appeal was allowed by order, dated 8.8.2003, the order of the Division Bench of the court was set aside and the order of the learned single Judge was restored subject to the direction that on reinstatement the concerned employee Abhay Kumar Pandey would not be entitled to back wages.

3. That is one aspect of the matter.

4. The relevant facts of the case are as follows. In the year, 1986-87 the petitioner was engaged to work as a Correspondence Clerk on daily wage basis. On 20.4.1990 he was appointed on the post of Correspondence Clerk on ad hoc basis. His "appointment" was terminated by order, dated 31.1.1991. The petitioner challenged the order of termination before the court in CWJC No. 1318 of 1991. The writ petition was disposed of by order, dated 29.6.1992 by a Division Bench with the following observations and directions:

"In the circumstances, we dispose of this application with a direction to the respondents to take steps for regular appointment against the post held by the petitioner prior to the issuance of the impugned order and allow him an opportunity to compete for such appointment alongwith other eligible candidates."

5. In pursuance of the court's direction the Superintending Engineer by his letter, dated 12.1.1993 called for names of eligible candidates from the Employment Exchange. The Employment Exchange asked the Supdt. Engineer to make a requisition in the prescribed proforma. The Supdt. Engineer then called for names from the Exchange in the prescribed proforma. On 2.2.1993 the Employment Exchange sent the names of five candidates including the petitioner. The candidates were called for an interview on 26.2.1993. On the basis of the interview the petitioner was selected and was appointed by office order No. 26, issued by the Supdt. Engineer, Public Health Engineering Organisation, Chapra, under his memo No. 186, dated 31.3.1993 (Annexure 8).

6. From the records it appears that after the petitioner's appointment questions arose from time to time with regard to the validity of the petitioner's appointment but on each occasion the matter ended up on finding that the

appointment was made after calling for names from the Employment Exchange and in pursuance of the court's order. On 1.6.2001 a show cause notice was once again issued to the petitioner giving reference of the order passed by the court in the case of Abhay Kumar Pandey (L.P.A. No. 1252 of 1999). The petitioner then filed a representation, dated 10.6.2001 before the Commissioner-cum-Secretary of the department stating the details with regard to his appointment. Another show cause notice was given by the Supdt. Engineer on 20.6.2001 to which he gave his reply on 11.7.2001. The Chief Engineer then examined the records as well as the documents produced by the petitioner and forwarded the matter to the departmental head with his note that the appointment appeared to be valid. However, the department seems to have taken a different view and the Supdt. Engineer finally issued the order of removal from service, dated 21.3.2002. A year and a half later the order of the court in L.P.A. No. 1252 of 1999 that had formed the basis for the petitioner's removal from service was set aside by the Supreme Court and the concerned employee, namely, Abhay Kumar Pandey was directed to be reinstated though without back wages.

7. In the aforesaid facts and circumstances I find it difficult to sustain the impugned order of the petitioner's removal from service. The orders contained in Annexures 18, 22 and 24 are accordingly set aside. The petitioner is directed to be re instated on the post of Correspondence Clerk but he will not be entitled to any back wages. In the result, this writ petition is allowed but with no order as to costs.