

Arun Kumar Sinha Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Oct-31-2017

Appellant : Arun Kumar Sinha

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Ms. Satakshi

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 4477 of 2008 Arun Kumar Sinha, son of Ram Sharan Prasad, resident of village Murgiya Chak, Post Islampur, Police Station Islampur, District Nalanda, Bihar. Petitioner -V e r s u s- 1. The State of Jharkhand; 2. The Secretary, Health, Medical Education and Family Welfare Department, Government of Jharkhand, Ranchi; 3. The Director-in-Chief, Health Services, Government of Jharkhand, Ranchi; 4. The Civil Surgeon-cum-Chief Medical Officer, Dumka; 5. The In-charge Medical Officer, Jarmundi Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - M/s. Ritu Kumar, Samavesh Bhanj Deo, Vikash Kumar and Shatakshi, Advocates. For the Respondent-State : - Mrs. Chandra Prabha, S.C. IV. and Mr. Rohit, J.C. to S.C. IV. 12/31.10.2017 In the accompanied writ application, the petitioner has prayed for issuance of writ of certiorari for quashing the order dated 16.06.2008 vide Annexure-19, issued by the respondent No. 2, whereby the claim of the petitioner has been rejected and the petitioner has further prayed for direction to the respondents for payment of arrears of salary from 06.08.1998 till date alongwith interest @ 18 per cent per annum.

2. The brief facts, as has been averred in the writ application, are that the petitioner was appointed against a vacant sanctioned post of Attendant-cum-Sweeper in the year 1988 and the services of the petitioner was approved with effect from 01.08.1988 and he was placed in the regular pay-scale. Vide Annexure-3 to the writ application, the In-charge Medical Officer, Primary Health Centre, Jaarmundi directed to lodge F.I.R. against the illegally appointed persons including the petitioner. However, no F.I.R. was lodged against the petitioner but the salary of the petitioner was withheld. Subsequently, due to intervention of the Civil Surgeon-cum-Chief Medical Officer, the payment of salary of the petitioner was approved. In the year 1992, the petitioner was promoted to the post of the Clerk. The petitioner was issued show cause notice in the year 1994 and the Civil Surgeon-cum-Chief Medical Officer, Dumka 2 directed to make an enquiry with regard to several persons and issued show cause notices to them. Again in the year 1998, the salary of the petitioner was stopped. Being aggrieved by the order of stoppage of salary, the petitioner filed C.W.J.C. No. 4951 of 1999 (P), which was disposed of vide order dated 09.01.2007 with liberty to the petitioner to file representation and direction has been issued that on receipt of the representation and production of original order of appointment, the Secretary, Department of Health, Government of Jharkhand, Ranchi will make an enquiry himself and/or through any Officer as to whether such order of appointment was issued from the office or not and whether the said order of so called appointment is forged document or not and a decision in this respect be taken and communicated to the petitioner within a period of three months. In pursuance to the order passed in the aforesaid writ application, the order dated 16.06.2008 vide Annexure-19 has been passed, which is impugned in this writ application. Being aggrieved and dissatisfied with the impugned order dated 16.06.2008 vide Annexure-19 of the writ petition, the petitioner left with no other alternative and efficacious remedy has knocked the door of this Court under Article 226 of the Constitution of India for redressal of his grievances.

3. Ms. Satakshi, learned counsel for the petitioner during course of hearing submits that no opportunity of hearing was given before stoppage of salary of the petitioner. Learned counsel further submits that no termination order has been issued to the petitioner, therefore, the petitioner is deemed to be continuing in

services.

4. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents, wherein, it has been submitted that in pursuance to the order dated 09.01.2007, passed in C.W.J.C. No. 4951 of 1999 (P), the petitioner filed representation alongwith relevant documents for his appointment. The petitioner alongwith Civil Surgeon-cum-C.M.O., Dumka was directed to appear before the Secretary, Health Department, Jharkhand on 21.01.2008 and after hearing the petitioner and the Civil Surgeon -cum-C.M.O., Dumka, and examining the papers produced by the petitioner and the Civil Surgeon-cum-C.M.O., Dumka, the appointment letter of the petitioner was found to be forged and the 3 representation of the petitioner has been rejected by the Secretary, Health Department, Govt. of Jharkhand vide order dated 16.06.2008 vide Annexure-19 of the writ application. It has further been submitted that since after verification, the appointment of the petitioner has been found to be forged, therefore, the question of allowing him to discharge his duties does not arise, as he is no more in services.

5. Mr. Rohit, learned J.C. to S.C. IV appearing for the Respondent-State during the course of hearing has vehemently submitted that the matter has been examined threadbare and the appointment of the petitioner has been found to be forged, therefore, the petitioner is not entitled to any relief.

6. After hearing the learned counsel for the respective parties and on perusal of the records, it appears that the petitioner has not been able to make out a case for interference due to the following facts and reasons : - (i) On perusal of the records, it appears that from the very inception of entering into service, the appointment of the petitioner was shrouded in suspicion and therefore, the Civil Surgeon directed for lodging of F.I.R. In pursuance to the order dated 09.01.2007, passed in C.W.J.C. No. 4951 of 1999 (P), the matter has been enquired into and the appointment of the petitioner has been meticulously examined, which has been found to be forged, therefore, the petitioner is a beneficiary of malpractice/forgery and fraud, so the petitioner is not entitled to any relief, as claimed in the writ petition. Justice Denning in *Lazams Estates Ltd.- versus-Bearley* (1956) 1 All

ER34134 wherein, he observed No Court will allow a person to keep on advantage which he has obtained by Fraud - Fraud Unravels everything. (ii) Law is well-settled that fraud vitiates everything. The view of this Court gets fortified by the decision of the Hon'ble Apex Court rendered in the case of Devendra Kumar Versus State of Uttaranchal and Others reported in (2013) 9 SCC363 wherein, at paragraph-25 it has been held as under:

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25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* - a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide *Union of India v. Major General Madan Lal Yadav and Lily Thomas v. Union of India.*) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).

7. In view of the reasons stated in the foregoing paragraphs and as a logical sequitor, the writ petition does not warrant any interference by this Court. Accordingly, the writ petition sans merit, is dismissed. (Pramath Patnaik, J.) APK

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