

Pawan Kumar Ojha Vs. the State of Bihar and Others

Pawan Kumar Ojha Vs. the State of Bihar and Others

SooperKanoon Citation : sooperkanoon.com/1151859

Court : Patna

Decided On : Mar-13-2014

Judge : Shivaji Pandey

Appeal No. : Civil Writ Jurisdiction Case No. 8135 of 2003

Appellant : Pawan Kumar Ojha

Respondent : The State of Bihar and Others

Judgement :

In this case, the petitioner is making prayer for quashing of Memo no. 851 dated 30th May 2001(Annexure-1) whereby and whereunder the services of the petitioner has been declared to have been appointed illegally without following the procedure of appointment and removed the petitioner from the service.

It has been submitted that on 31st December 1992, local advertisement was published for appointment to the post of Clerk. The petitioner and others were called through Employment Exchange. Interview letter was issued vide letter dated 5th February 1993 (Annexure-3). Interview was conducted and the petitioner was declared as a successful candidate.

The Divisional Establishment Committee on the basis of recommendation appointed the petitioner and others vide letter dated 27th January 1994 (Annexure 4 to this writ petition) on the post of Clerk in the pay scale of Rs. 1200-1800.

The petitioner after being appointed, joined the post of Clerk on 29th August 1994 in the office of Assistant Director, Buniyadi Shiksha Sadan and was getting salary regularly.

Doubt was raised about genuinenity of the appointment of the petitioner and a direction was issued vide order dated 29th August 1996 for verification of his testimony.

On 31st August 1996, verification report was submitted pointing out, the petitioner was appointed legally.

In 1998 the salary of the petitioner along with others was stayed. Against that, they filed CWJC No. 11098 of 1998 and later on the District Education Officer removed the petitioner from services vide letter dated 8th May 1999 which was challenged in the said writ petition through Interlocutory Application, on account of stay order passed by the Director, Secondary Education vide order dated 27th April 2000, the said writ petition i.e. CWJC No. 11908 of 1998 was withdrawn. When they have withdrawn the writ petition, Regional Deputy Director, Tirhut Division, Muzaffarpur vide letter no. 577 dated 17th May 2000 issued show cause to the petitioner, Sachida Nand Sharma and Shailendra Kumar Singh for production of the copy of the advertisement, Interview letter, Appointment letter and Joining letter and later on vide order dated 20th May 2001 petitioner was removed from service.

The counsel for the petitioner submits that the present petitioner along with Sachida Nand Sharma and Shailendra Kumar Singh were removed from their services in one transaction. Against order of removal, Shailendra Kumar Singh filed a writ petition vide CWJC No. 3699 of 2001 and this Court by order dated 20th July 2004 set aside the order of removal. The same was challenged before the Division Bench in LPA No. 199 of 2005 that met with same fate. Similarly Sachida Nand Sharma has also moved before this Court in LPA No. 247 of 2010 and ultimately the order was passed in his favour, relying on the order passed in CWJC No. 5003 of 1999 (Ravindra Kumar Tiwari Vs. State of Bihar).

The counsel for the petitioner submits that the case of petitioner, by and large, is identical to the case of aforesaid two persons and his case squarely covered by

the order passed in those cases and as such, he is entitled to the same benefit as have been given to the aforesaid persons.

In contra, the counsel for the State has submitted that the appointment of the petitioner was per se illegal, without following the procedure of appointment and as such, the appointment of the petitioner is completely de hors to the provision of Article 14 and 16 of the Constitution of India. Last panel was prepared in the year 1987 and thereafter no panel was prepared in Tirhut Division so much so that petitioner and others were registered in Bettiah Employment Exchange and they were appointed by Regional Deputy Director, Tirhut Division of Education, Muzaffarpur.

This Court finds the facts of the present case is identical to the cases of Sachida Nand Sharma and Shailendra Kumar Singh who were terminated from services along with petitioner in the same transaction and ultimately their cases were allowed by this Court. This Court in view of identical situation and following the order passed by Division Bench and Single Bench of this Court, Memo no. 851 dated 30th May 2001 (Annexure-1) will meet same fate and accordingly, the same is set aside and this petition is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com