

Arvind Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-11-2000

Judge : S.J. Mukhopadhaya, J.

Appeal No. : C.W.J.C. No. 5322 of 1998

Appellant : Arvind Kumar

Respondent : State of Bihar and ors.

Disposition : Appeal Allowed

Prior history : S.J. Mukhopadhaya, J. 1. The petitioner initially challenged the order dated 15th April 98, whereby and whereunder, he was prohibited to work on the ground that his service had been terminated in March 1984 and he was asked to show-cause as to why an F.I.R. should not be lodged against him. 2. The petitioner submitted show-cause reply on 30th April 98 and brought to the notice of the authorities that the order of termination issued on 15th March, 1984 was recalled and he was reinstated by subs

Judgement :

S.J. Mukhopadhaya, J.

1. The petitioner initially challenged the order dated 15th April 98, whereby and whereunder, he was prohibited to work on the ground that his service had been

terminated in March 1984 and he was asked to show-cause as to why an F.I.R. should not be lodged against him.

2. The petitioner submitted show-cause reply on 30th April 98 and brought to the notice of the authorities that the order of termination issued on 15th March, 1984 was recalled and he was reinstated by subsequent order issued by Director, Secondary Education dated 6th February, 1985. After such reply, the respondents issued impugned order No. 3060-65 dated 17th June, 1998 terminating the services of petitioner on the ground that he has misappropriated Government money; his appointment was illegal and forged, as was found to be proved. The subsequent order dated 17th June, 1998 is also under challenge.

3. The brief fact of the case shows that the petitioner was appointed as clerk along with two others by Regional Deputy Director, Bhagalpur Division, Bhagalpur in November, 1982 (date shown as 5th November, 82 in the first order of termination). Subsequently, his services were terminated by Regional Deputy Director on 15th March, 1984 in pursuance of some order issued by the Director, Secondary Education. The petitioner challenged the order of termination in C.W.J.C. No. 1780/84 which was dismissed in limine, without speaking order on 5th April, 1984. Against such decision, the petitioner preferred L.P.A. No. 56 of 1984, which was admitted. During the pendency of the said L.P.A., the petitioner was reinstated by Director, Secondary Education, vide Memo No. 1753-63 dated 6th February, 1985. The same was brought to the notice of this Court by petitioner by filing an application under Section 151, C.P.O. and prayer was made to withdraw the case, it having become infructuous. This Court taking into consideration the aforesaid fact, dismissed L.P.A. No. 56 of 1984 as withdrawn.

4. After about 13 years of such reinstatement, the petitioner was suddenly asked to show-cause, vide impugned letter dated 15th April, 1998 as to why one F.I.R. be not lodged against him, his services having terminated on 15th March, 1984 and as he is still continuing to perform the duty and forcefully drawing the salary. After receipt of reply, fresh order of termination was issued on 17th June, 1998.

5. From the notice dated 15th April, 1998 (Annexure. 1), it will be evident that the respondents never alleged any illegality in the matter of appointment, nor any

allegation relating to forgery was made. The notice was given on presumption that the services of petitioner was terminated on 15th March, 1984, but in spite of the same, the petitioner forcefully continuing in the service and drawing salary. When the petitioner brought to the notice of the authority that he was reinstated by subsequent order elated 6th February, 1985 and also drawn the attention towards the order passed in L.P.A., the aforesaid question was not discussed in the impugned order dated 17th June, 1998 and the petitioner was dismissed alleging the appointment illegal mid forged, without giving any cogent reason or opportunity to the petitioner. There is nothing on the record to suggest that any inquiry was made relating to so-called allegation of forged appointment of petitioner.

6. On the other hand, it appears that others whose services were also terminated along with petitioner in 1984, including Umesh Chandra Jha, he preferred C.W.J.C. No. 1740 of 1984, wherein this Court set aside the order passed by the Director, Secondary Education dated 8th March, 1984. which was the basis of earlier order of termination of petitioner by Court's decision dated 30th March, 1999.

7. In the circumstances, I hold the impugned order dated 17th June, 1998 as illegal being violative of rules of natural justice and being based on non est ground. The said order dated 17th June, 1998 is set aside, and, in the result, the petitioner stands reinstated.

8. By way of consequential benefit, the petitioner will be entitled for full salary of the intervening period, as also the arrears of salary, if any, due, to be paid within a period of three months from the date of receipt/production of a copy of this order.

9. The writ petition is allowed with the aforesaid observations and directions.

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