

Arun Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-13-2007

Judge : Navin Sinha, J.

Acts : Bihar Service Code - Rule 103

Appeal No. : CWJC No. 9620 of 2007

Appellant : Arun Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : A. Amanullah, S.C. 17

Advocate for Pet/Ap. : Tej Bahadur Singh, Adv.

Disposition : Application dismissed

Prior history : 1. Heard learned Counsel for the petitioner and learned Counsel for the State. 2. The petitioner is aggrieved by order dated 27.6.2007 terminating his services on a class IV post. 3. Learned Counsel for the petitioner submits that under the Rules, the Director (Respondent No. 2) was competent to make appointment on Class IV posts. The petitioner was appointed by an officiating Director. He relies upon Rule 103 of the Bihar Service Code, Note 2 Sub-clause (c), which reads as follows: (c) An ord

Judgement :

1. Heard learned Counsel for the petitioner and learned Counsel for the State.
2. The petitioner is aggrieved by order dated 27.6.2007 terminating his services on a class IV post.
3. Learned Counsel for the petitioner submits that under the Rules, the Director (Respondent No. 2) was competent to make appointment on Class IV posts. The petitioner was appointed by an officiating Director. He relies upon Rule 103 of the Bihar Service Code, Note 2 Sub-clause (c), which reads as follows:

(c) An order appointing an officer to hold the current charge of the duties of a post, should in the absence of any specific direction to the contrary, be deemed to clothe the officer with all the powers vested in the fullfledged incumbent of that post, even though he may not get full pay of the post. Such officer should not, however, modify or over-rule the orders of the regular incumbent of that post, except in emergency, without obtaining the orders of the next higher authority.

Where the appointment to hold current duties of a Post involves the exercise of statutory or such other powers conferred on the holder of the post, the appointment shall also be notified in the Gazette.

4. The emphasis is laid on the words 'with all the powers vested in the full-fledged incumbent of that post' to submit that the appointment by Incharge Director cannot be said to be illegal. The next submission is that the impugned order itself states that it was being passed in pursuance of 'the directions of the administration'. The order having been passed at the behest of another, without application of mind by the issuing authority, the same was vitiated. He relies upon a Division Bench judgment of this Court in 1994(1) BLJ 605 (Asharf Jha v. State of Bihar and Ors.).

5. Learned Counsel for the State submits that the petitioner was the son of the Head Clerk in the Department. There was no regular advertisement. A notice was purported to be put up on the notice board in pursuance of which seven persons applied and five were selected. No selection committee was constituted and there was absence of roster clearance and rules regarding reservation. The appointments were conspiratorial in nature of in-house family appointments of the

Director and Head Clerk. The petitioner submitted his reply to the show cause notice. The impugned order has been passed after consideration of the same and he has not been prejudiced. The order of termination discloses due application of mind. The words 'on direction of the administration' are superfluous and do not control the reasoning in the order so as to vitiate the same.

6. Employment in Government service is considered a national wealth. The Courts have, therefore, consistently held that any appointment on a Government post has to be in consonance with Articles 14 & 16 of the Constitution of India. It entails a proper advertisement by wide publicity making one and all aware of the availability of vacancy, the criteria for selection and mode for selection. The fact that an eligible candidate may choose not to apply is wholly irrelevant. The emphasis is whether an opportunity has been given to all, who may be eligible to be considered, if they so wish. In the present case, it is apparent from the show cause notice dated 13.4.2007 that the appointment was alleged to be illegal on the ground (a) that no advertisement was published; (b) that no Selection Committee was constituted; (c) that no roster clearance was done; (d) that the requirement for reservation were violated; and (e) that the then Director and the Head Clerk had made conspiratorial appointments of their own family members. The reply submitted by the petitioner on 19.4.2007 states that the advertisement was published on the notice board; that he had appeared before a Committee of 5-6 persons in the office of the Director. There is no mention of the names of the members of the Selection Committee or the date of the same. A bald unsupported statement is made that all procedures were followed.

7. The reply of the petitioner to the show cause notice was found to be unsatisfactory. He was then issued a fresh show cause notice on 17.5.2007. His subsequent reply dated 22.5.2007 was only a reiteration of his earlier reply. The order of termination discusses the illegality in the appointment. The petitioner was twice afforded a show cause notice. He replied to the same which was unconvincing. Personal hearing was also afforded. The order then states that on administrative directions his services were being terminated.

8. This Court is satisfied that Annexure-1 cannot be stated to have been issued with no application of mind by the author, merely at the behest of the 'administration'. It is not the case of the petitioner that the order lacks jurisdiction having been issued by an authority incompetent to do so. The order is speaking in nature. The petitioner has not been prejudiced in any manner. The words 'the directions of the administration' mentioned in the order has to be noticed in the context of the entire recitals in the order that decision had been taken at the Government level to issue show cause notice, to hear the appointees, before taking a final appropriate decision.

9. The reliance placed by the petitioner on the Division Bench judgment in the case of Ashraf Jha v. State of Bihar and Ors. (supra) is misconceived. From the facts it appears that it related to a case of transfer and not appointment. It is further not noticeable from the judgment if the impugned order contained reasons as presently is the case. The impugned order therein appears to have been issued on directions without further more. It is crucial to note the following lines from paragraph 4 of the judgment relied upon 'We are not sure as to what the word 'administration' in the present context means.' In the present case, the word 'administration' is quite clearly correlatable to the earlier recitals and discussion of the illegality in the appointment, issuance of two show cause notices and consideration of the reply to the same. It cannot be said that the authority abdicated its powers to act at the behest of another. In the facts and circumstances of the present case, this Court is satisfied that no prejudice whatsoever has been caused to the petitioner.

10. The defence of advertisement published on the notice board in pursuance of which seven persons applied and five selected does not impress this Court. A Division Bench of this Court in 1991(2) PLJR 568 (Dr. Rajnikant and Anr. v. State of Bihar and Ors.) has already held that 'notifying the vacancies on the notice board of the Colleges was not enough and cannot be a notice to candidates, who are entitled to admission and were waiting therefore.' The allegations are of appointment of the family members of the Director and the Head Clerk. No selection committee is stated to have been constituted. Though the petitioner sought to dispute the correctness of the same, no rejoinder to the counter affidavit

has been filed giving the details of the mode, method of the Selection Committee much less in the show cause filed by the petitioner.

11. The fact that the petitioner may have come to this Court earlier for a claim for wages in CWJC No. 4642 of 2006, in which the legality of his appointment was not in question is of no avail to him in the present controversy.

In the result, this writ application is dismissed.

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