

Mannu Kumar Vs. State of Bihar and ors.

Mannu Kumar Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/122210

Court : Patna

Decided On : Jan-20-1993

Judge : S.B. Sinha and G.B. Bharuka, JJ.

Appeal No. : Civil Writ Jurisdiction Case No. 8352 of 1932

Appellant : Mannu Kumar

Respondent : State of Bihar and ors.

Prior history : S.B. Sinha and G.C. Bharuka, JJ. 1. In this application the petitioner has prayed for quashing of an order as contained in Memo No. 3836 dated 30-6-1992 whereby and whereunder the appointment of the petitioner in the post of Graduate Physical Training Teacher in Anusuchit Janjati Awasiya Uchcha Vidyalaya, Nima, Katihar has been cancelled and also for quashing of the order whereby he has been directed to refund a sum of Rs. 12.127-60 paise. 2. The fact of the matter lies in a very narrow compass

Judgement :

S.B. Sinha and G.C. Bharuka, JJ.

1. In this application the petitioner has prayed for quashing of an order as contained in Memo No. 3836 dated 30-6-1992 whereby and whereunder the appointment of the petitioner in the post of Graduate Physical Training Teacher in Anusuchit Janjati Awasiya Uchcha Vidyalaya, Nima, Katihar has been cancelled

and also for quashing of the order whereby he has been directed to refund a sum of Rs. 12.127-60 paise.

2. The fact of the matter lies in a very narrow compass.

3. The petitioner filed an application before the Director Welfare, Government of Bihar for his appointment as a Graduate Physical training teacher in the school in question.

4. The Minister Incharge, Tribal Welfare made an endorsement to the respondent No. 3 on 21-8-1991 for his appointment in the said school. The said application of the petitioner was thereafter forward by the Assistant Director, Welfare, vide his memo No. 7204, dated 1-10-1991 with a direction to take necessary steps for his appointment.

5. The petitioner on 27-12-1991 again filed an application before the Minister Incharge, Tribal Welfare Department, stating: therein that only the Director Welfare was competent to appoint Graduate trained physical training Teachers, On that application the Minister Incharge Tribal Welfare by an order dated 16-1-1992 directed the District Welfare Officer, Katihar to appoint the petitioner on the vacant post.

6. The District Welfare Officer pursuant to the aforementioned direction appointed the petitioner in the school by a letter dated 17-1-1992. The said offer of appointment is contained in Annexure 6 to the writ application.

7. The petitioner joined the said school on 22-1-1992. The petitioner, however, has not been paid his salary from June, 1992. The petitioner submitted an application on 25-2-1992 for regularisation of his appointment and upon that again an endorsement in favour of the petitioner had been made by the Minister.

8. The Director, Welfare Department, however by his letter dated 18-4-1992 directed the petitioner to show cause as to why he should not be removed from the said post as his appointment was illegal. A copy of the letter is contained in Annexure-10 to the writ application.

The petitioner submitted his show cause to the respondent No. 3 on 8-6-1992, a copy whereof is contained in Annexure-11 to the writ application.

9. The petitioner's appointment has been cancelled and pursuant thereto the Headmaster of the said school has directed the petitioner to refund a sum of Rs. 12,127-60 paise on the ground that his appointment has been cancelled with effect from the date of appointment.

10. The learned Counsel appearing on behalf of the petitioner has submitted that prior to issuance of the impugned order, he was entitled to an oral hearing, He has further submitted that the grounds mentioned in the show cause notice and the grounds mentioned in the impugned order vary and in that view of the matter too, the impugned order must be held to be ill-gal.

The learned Counsel further submitted that in any event, the petitioner's application for regularisation should have been considered by the respondent.

The learned Counsel in support of his contention relied upon a decision of the Supreme Court of India in Shrawan Kumar Jha v. State of Bihar, reported in AIR 1991 SC 309.

11. In this case a counter affidavit has been filed on behalf of the respondent Nos. 2 to 4 wherein it has inter alia been contended that the petitioner's appointment was wholly illegal and void ab initio.

12. According to the respondents as soon as the illegal appointment was made known to the District Welfare Officer, he immediately took action in the matter. According the respondents the petitioner had been appointed without observing the rules and procedures laid down by the State and further the said appointment had been made by an authority who was not competent therefor.

13. It is one of those cases which depicts a sordid state of affairs prevailing in the State of Bihar and demonstrates as to how the back-door appointments are made.

14. From the facts as stated hereinbefore, it is evident that the petitioner himself has admitted that the District Welfare Officer had no jurisdiction to appoint him in

the scale of pay of Graduate Physical Trained Teacher.

15. The Director, Welfare in his show cause notice asked for the petitioners explanation on the following points: (1) the District Welfare Officer has not been delegated with any power to appoint a Physical Trained Teacher (ii) for such appointment a Divisional Level Committee has been constituted whose Chairman is Deputy Director Welfare, but he was not selected by the said Committee (iii) in his appointment the procedure laid down by the State had not been followed (iv) in his appointment, the rule of roster has not been followed (v) No advertisement had been issued prior to his appointment.

16. The petitioner in his explanation with regard to Issue No. 1 admitted that he was appointed pursuant to the direction of the Minister of Welfare. He however, submitted that the matter as to whether the District Welfare Officer had power to appoint him or not his departmental responsibility and therefore no explanation should have been asked for from him.

17. With regard to point No. 2 he stated that pursuant to the Directors order the matter should have been placed before the Selection Committee but the same had not been done.

18. He accepted the fact that he filed an application before the Minister, Welfare straightway but he stated that he did so pursuant to the oral order of the Director.

19. With regard to point No. 3, he stated that it was for the Deputy Director, Welfare to follow the procedure for appointment as laid down by the State.

20. With regard to point No. 4, he stated that for non observance of the roster also, the Deputy Director, Welfare is responsible.

21. With regard to issue No. 6 he admitted that no advertisement had been issued but according to him even in the said matter the Deputy Director, Welfare, was responsible.

22. The petitioner, therefore, admitted that he was appointed pursuant to the direction of the Minister, Welfare and not upon following the recruitment rule and

the provisions of Article 16 of the Constitution of India. He, as indicated hereinbefore, further admitted that he was not appointed by the Competent authority.

23. The Director. Welfare, did not find the explanation of the petitioner satisfactory. He further held that the High Court had also passed an order of injunction restraining the State to fill up the vacant post in residential school run by the Welfare Department and as such the appointment was illegal as the same had been done in violation of the High Court's order.

24. It is, therefore, clear that prior to the appointment of the petitioner neither any provision of the recruitment rules had been followed nor the provisions of Article 16 had been complied with.

25. It has been held by this Court on a number of occasions that in such a matter even principles of natural justice are not required to be complied with. In this case, the petitioner himself has accepted that his appointment was illegal.

26. In *Bijoy Kumar Bharti v. State of Bihar*, reported in 1983 BLJR 536, it has been held where the appointment is illegal that principles of natural justice are not required to be complied.

27. In *M. L. Gupta v. Instrumentation Ltd. and Ors.* reported in 1992 (1) PLJR 137, upon taking into consideration various decisions of the Supreme Court and this Court, it has been held:

Article 16 of the Constitution of India provides that all citizens of India are entitled to get equal opportunity for the purpose of obtaining employment in State service

In order to fulfill such a condition, it is necessary to consider the cases of all citizens who are eligible to be appointed. For that purpose it is not only necessary to call for the names from Employment Exchange, but the same in some cases also requires due advertisement of posts in newspapers by notifying the vacancies and the requisite qualifications therefor so that all eligible candidates may apply for their appointment in the said posts '

It was further observed:

From the decisions of the Supreme Court as also of this Court, as referred to hereinbefore, it will thus be evident, that any appointment which was made by a person having no authority to do so or the appointments have not been made following the mandatory provision of the recruitment rules and Articles 14 and 16 of the Constitution. Such appointments should be held to a nullity. In this view of the matter, in my opinion, this Court's exercise of its writ jurisdiction cannot direct regularisation of the services of the employee when the same would be violative of Articles 14 and 16 of the Constitution.

28. The principles of natural justice as is well known is based upon two basic principles viz *audi alteram partem* and *nemo debet esse iudex in propria causa*. The principles of natural justice have been developed by the apex court time to time adding new concepts therein. In some decisions the apex court has gone to the extent of holding that the principles of natural justice are embodied in Article 14 of the Constitution of India.

29. The Supreme Court in *Tulsi Ram Paul v. Union of India* : (1985) 11 LLJ 206 SC traced the history of the principles of natural justice in paragraph 72 to 80 of the judgment and thereafter, discussed various principles involved therein in paragraphs 81 to 83 thereof.

The Supreme Court thereafter proceeded to consider the question as to how the said provisions have been interpolated by the Courts:

The Supreme Court held:

The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which the subject-matter that of article.' Shortly, put the syllogism runs violation of a rule of natural justice results in arbitrariness which is the same as discrimination where discrimination is the result of State action. It is a violation of Article 14, Article 14 however natural justice. What it does is to guarantee that any law or of State

action violating them will be struck down. The principles of natural justice however apply not only to legislation and State action but also where any tribunal authority or body of men, not coming within the definition of 'State' in Articles 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice required that it must decide such matter fairly and impartially.

However, it was also held that observance of principles of natural justice can be excluded by a statute either expressly or by necessary implication.

30. In *Union of India v. J. N. Sinha*, reported in : (1970)11LLJ284SC , it has been held:

But if on the other hand, a statutory provision either specific or by necessary implication excludes the application of any of all the rules of principles of natural justice then the court cannot ignore the mandate of the Legislature of the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of exercise of that power.

31. Reference in this connection may also be made to *R. S. Dass v. Union of India*, reported in : [1987]1SCR527 .

32. However, it is well known that there are certain exceptions to the principles of natural justice:

In case of *Maharashtra board of Secondary and High Secondary Education v, K. S. Gandhi and Ors.* reported in 1991 (2) SCC 116 it has been held:

From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (STC) of the principles of natural justice Acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait jacket formula as an abstract proposition of law. It depends on the facts of the

case, nature of the inquiry and the effect of the order--decision on the rights of the person and attendant circumstances.

33. In *Ex-Capt. K. Balasubremanian and Anr. v. State of Tamil Nadu and Anr.* reported in 199 (2) SCC 708 it has been held that principles of natural justice need not be complied with when the order does not involve civil consequences.

In *Baikuntha Nath Das v. Chief District Medical Officer* reported in : (1992)ILLJ784SC , it has been held that the principle of natural justice are not required to be complied with in a case of compulsory retirement.

34. In *Ram Krishan Verma v. State of U. P.*, reported in : [1992]2SCR378 , it has been held:

The 50 operators including the appellants private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jewan Nath Wahai* case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after September 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objection this Court in *Grindlays Bank Ltd. v. ITO*, held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route of area or promotion thereof. Surfeited their right to hearing of the objection filed by them to the draft scheme dated February, 26, 1959, Moreover, since the court in *Jewan Nath Wahai* case upheld the approved scheme and held to be a procedural formality with no tangible result. Therefore the 'objections' outlived their purpose. They are, therefore! not entitled to any hearing

before the hearing authority.

35. In *S. L. Kapoor v. Jagmohan*, reported in AIR 1981 SC 136, the Supreme Court held:

As we have said earlier whereon the admitted and undisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.

36. The decision in *Sharwan Kumar Jha v. State of Bihar and Ors.* reported in : AIR 1991 SC 309 has no application in the facts and circumstances of the case.

In that case a disputed question of fact arose on several counts including comma as to whether the District Welfare Officer was competent to appoint the petitioner thereof (ii) whether the petitioner joined the post or not and (iii) whether the procedures for recruitment had been followed or not.

37. In the peculiar facts and circumstances of the case the Supreme Court held that the principles of natural justice should have been complied with.

38 *Sharwan Kumar Jha's* case (*supra*) is not an authority for the proposition that the principles of natural justice are required to be complied with even in cases the appointment has been made in complete violation of the recruitments rules and or Article 16 of the Constitution of India. In any even as noticed hereinbefore the petitioner had been given a reasonable opportunity of hearing and thus he was not entitled to any further hearing or oral hearing as a matter of right. In this case, the question of giving an oral hearing to to the petitioner did not also arise inasmuch as the petitioner admitted the allegation made by the Director Welfare that in the matter of his appointment the procedures or recruitments had not been followed or not at all and he was appointed by a person who was not competent therefor.

39. It is really a matter of great concern that the illegal appointments are being made at the behest of the ministers who are custodians of law. It is high time that the ministers of the State of Bihar as well as the other officers should realise that

they are governed by the rule of law. Rule of man which the concerned ministers are following, has no place in a democratic set up.

40. Normally in such a case this Court directs payment of salary for the period the concerned employee although his appointment is illegal but the present case is such a blatant one in which we refuse to exercise our discretion to give any relief whatsoever to the petitioner in exercise of our jurisdiction under Article 226 of the Constitution of India. It will however, be open to the petitioner to file a suit against the Deputy Welfare Officer and the Minister concerned for realisation of his dues and/or damages.

41. We may further observe that our judicial experience that Article 16 is observed more in its breach in this State is highlighted in this case.

In this case appointments have not been made even for a temporary period. It is one of such cases where the recruitment rules and Article 16 have been breached with such impunity that one cannot possibly ignore the phenomenon.

This aspect of the matter has also been considered by the Supreme Court in two recent decisions:

The Phenomenon has recently been noticed by the apex court in two cases. In *Delhi Development Horticulture Employees Union v. Delhi Administration* Delhi and Ors. 1992 (1) Judgment Today 394, it has been observed:

We may take note of the pernicious consequences to which the direction or regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including

money. The employment is given first for temporary period with technical breaks to circumvent the relevant rules and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs-for better and secured prospects. That is way most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertakings casual or temporary works though they are urgent and essential for fear that those who are employed on such works are required to be continue for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interest are thus jeopardised on both counts.

In *Karnataka State Private Colleges Stop Gap Lecturers Association v. State of Karnataka and Ors.* (1992) 2 SCC 20, similar feeling of anguish has been expressed in these words:

Ad hoc appointments a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovation to the service jurisprudence. They are individual problems to begin with., become a family problem with passage of time and end with human problem in Court of law. It is unjust and unfair to those who are lessor fortunate in society with little or no approach even though better qualified, more meritorious and well deserving. The infection is widespread in Government or semi Government departments or State financed institution. It arises either because the appointing authority resorts to it deliberately as a favour or to accommodate some one or for any extraneous reason ignoring the regular procedure provided for recruitment as a pretext under emergency measure or to avoid loss of work etc, Or the rules circulars issued by

the department itself empower the authority to do so as a stoppage arrangement. The former is an abuse of power. It is unpardonable: Even if it is found to have been resorted to as a genuine emergency measures the courts should be reluctant to grant indulgence, Later gives rise to equities which have bothered courts every now and then.

42. This aspect of the matter has also been dealt with this Court in *SitaramThakur and Ors. v. State of Bihar*, CWJC No. 9941 of 1992.

43. For the reasons aforementioned, this application is dismissed with the aforementioned observations.

44. However, in the facts and circumstances of the case, there will be no order as to costs.

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