

Tarkeshwar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-29-2000

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 6475 of 2000

Appellant : Tarkeshwar Singh

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Prior history : Radha Mohan Prasad, J. 1. Heard learned Counsel for the petitioner, Mr. Banwari Sharrna, learned Counsel appearing for the respondent Zila Parishad and learned Junior Counsel to Government Pleader No. IV for the State. 2. In the present writ petition, the petitioner has assailed the validity of the order dated 15th July, 2000, contained in Annexure 21, whereby and whereunder his initial appointment as Steno-Typist in Zila Parishad has been cancelled and his services have been terminated with f

Judgement :

Radha Mohan Prasad, J.

1. Heard learned Counsel for the petitioner, Mr. Banwari Sharrna, learned Counsel appearing for the respondent Zila Parishad and learned Junior Counsel to

Government Pleader No. IV for the State.

2. In the present writ petition, the petitioner has assailed the validity of the order dated 15th July, 2000, contained in Annexure 21, whereby and whereunder his initial appointment as Steno-Typist in Zila Parishad has been cancelled and his services have been terminated with further direction that his pension etc. shall not be payable by the Zila Parishad.

3. From the impugned order, it appears that the petitioner was initially appointed against the post of Steno-Typist on daily wages. Later, the appointment of the petitioner was made regular, vide resolution dated 2.1.1986, contained in Annexure 10, and consequential order was issued, vide Memo No. 40 dated 10.1.1986, contained in Annexure 11. It appears that the petitioner's service was also confirmed, vide order contained in Memo No. 633 dated 1.9.1990, contained in Annexure 13. The petitioner continued in the employment of Zila Parishad for almost 13 long years before the impugned order (Annexure 21) was issued on the ground that his initial appointment was made without advertisement and that the State Government had not accorded approval till date as was required as per the resolution for his appointment. It was also alleged that the roster clearance was also not obtained.

4. With respect to the first and third ground, learned Counsel for the petitioner has submitted that such question cannot be allowed to be raised after lapse of 13 long years. Moreover, it is not the case of direct recruitment for which the authorities might be under obligation to comply the aforementioned requirements but, in the present case, the petitioner was given appointment by way of absorption in service against the sanctioned post and by the competent authority.

5. With respect to approval of the State Government, it is submitted that in view of the admitted fact that the petitioner was appointed against the sanctioned vacant post, there is no requirement in law to take the approval of the State Government in the matter of appointment as, in fact, Zila Parishad itself is competent authority to make appointment.

6. Learned Counsel appearing for the Zila Parishad has fairly submitted that there cannot be any dispute that in case of such appointment, the authority should act with all promptness in detecting the irregularity, but in the absence of approval of the State Government, the authorities in the Zila Parishad also found themselves helpless. However, he has not been able to show/refer to any statutory provisions under which the approval of the State Government in the matter of such appointments against vacant posts by Zila Parishad is required.

7. In the case of Roshni Devi v. State of Haryana : AIR 1998 SC3268 , before the apex Court, the appointments though found invalid but keeping in view that the persons concerned had rendered more than nine years' service, equity was invoked and their appointments were saved.

8. Under such circumstances, this Court finds it difficult to sustain the impugned order.

9. In the result, the writ petition is allowed and the impugned order contained in Annexure 21, is quashed. The respondents are directed to reinstate the petitioner forthwith. However, it is made clear that this order shall not come in the way of the authorities from proceeding with the departmental inquiry, if any, against the petitioner, in accordance with law.