The State of Bihar and ors. Vs. Santosh Kumar Singh

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Court : Patna

Decided On : Sep-09-2008

Judge : Barin Ghosh and C.M. Prasad, JJ.

Appellant : The State of Bihar and ors.

Respondent : Santosh Kumar Singh

Disposition : Appeal allowed

Judgement :

Barin Ghosh and C.M. Prasad, JJ.

1. Sometimes in 1990, the respondent-petitioner was appointed in a Government School as a Class-IV employee on the strength of an appointment letter issued by the District Education Officer. According to the Rules, the appointing authority in respect of a Class-IV employee is the Headmaster of the School.

2. Although, the Headmaster of the School is the appointing authority, but he can appoint a person in a Class-IV post only when the person has been recommended by the Committee constituted by the Rules. The Committee so constituted, in terms of the Rules, can only recommend a person, who has been selected amongst others, after permitting all and sundry to offer themselves for being selected for recommendation.

3. The respondent-petitioner worked as such Class-IV employee undisturbed until 8th June, 2001 when by a notice it was held out to the respondent-petitioner that his initial appointment was an illegal appointment. By the said notice, the respondent-petitioner was called upon to show cause why his illegal appointment should not be put to an end. The respondent-petitioner on 21st June, 2001 gave an explanation and thereby stated that he submitted an application with the District Education Officer for being appointed in a Class-IV post and in consideration of the said application, the respondent-petitioner was chosen for appointment amongst other similar such applicants and thereupon he was issued the appointment letter by the District Education Officer and since then, he is serving the School to the satisfaction of all concerned un-interruptedly.

4. This explanation having not been found satisfactory, by a letter dated 31st October, 2001 the respondent-petitioner was told so, and with that a further opportunity was given to him to establish that his appointment was a legal and valid appointment. Petitioner-respondent gave a reply to the letter dated 31st October, 2001 and thereby held out that his explanations given on 21st June, 2000 are the explanations available from his side and on the basis thereof, the matter be considered. The principle thrust that was given was that since 1990 until 2001 the respondent-petitioner has worked at the School with un-blemish record and accordingly, equity was in favour of retaining the respondent-petitioner and not to terminate his services.

5. A thing done in violation of law is illegal. Anything illegal is void. A thing void is void from the beginning and accordingly, is void ab initio. If a thing is void ab initio, the same cannot serve as a platform to construct an edifice thereon. Inasmuch as a thing illegal is void ab initio, it is not at all necessary to take steps to have the same declared as such. At any point of time, illegality can be set up as a perfect defence to a claim founded thereon or as a shield to protect an onslaught arising therefrom. However, at times it becomes necessary to have illegality declared as such, like in cases when an authority lacking inherent jurisdiction passes an order and thereby creates a right in favour of one and an obligation on the other, when the authority concerned has no power to create any such right or obligation.

6. In the instant case, it was a necessity to pronounce or declare that the very appointment of the respondent-petitioner was illegal, inasmuch as unless such a pronouncement is made, the respondent-petitioner would continue to serve and draw remuneration for service rendered. We have not been called upon in this case whether prior to making such pronouncement, it was at all necessary to give notice to the respondent-petitioner inasmuch as such notice had been given. By the notice dated 8th June, 2001, the respondent-petitioner was told that his appointment is an illegal appointment and accordingly, the same may be put to an end unless he establishes that the appointment was a legal appointment. In the explanation given by the appellant on 21st June, 2001 in response to the said notice dated 8th June, 2001, the respondent-petitioner in no uncertain terms held out that he had been appointed by the District Education Officer and that before his appointment, he was selected by the District Education Officer. He did not indicate that District Education Officer before making such selection gave an opportunity to all and sundry to be a part of selection. The State relied upon the law governing the field and pointed out that neither the District Education Officer was the appointing authority, nor he was the selection authority and accordingly, selection and appointment by the District Education Officer, being contrary to law, were illegal.

7. The learned Counsel for the respondent-petitioner, however, submitted that equity lies in favour of the respondent-petitioner inasmuch as without any complain from any quarter he has duly discharged his duties for 11 years. Equity can be claimed by one, who has done equity. The same cannot be claimed by a person, who has not done so. A person, who has obtained an appointment contrary to law and thereby deprived others even to offer themselves for being considered for appointment, did not do equity to those persons, and accordingly, cannot seek equity in his favour to retain such an appointment.

8. The ultimate order of termination, which was the subject matter of challenge in the writ petition has been quashed by the Judgment and Order under appeal only on the ground of equity. We see no reason for showing misplaced sympathy in the name of equity. Accordingly, we allow the appeal and set aside the Judgment and Order under appeal and dismiss the writ petition.