

Umesh Sharma and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-15-2003

Judge : Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.

Acts : Service Law

Appeal No. : LPA Nos. 928 of 1996, 317 and 344 of 1997

Appellant : Umesh Sharma and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : A.B. Sinha, SCX and Sanjeev Kumar, Adv.

Advocate for Pet/Ap. : S.N. Jha, Sr. Adv., Indu Bhushan Singh, Arun Kumar, Vivek Kumar, P.C. Thakur and Vijay Kr. Mukul, Advs. and Dinu Kumar, Adv. for LPA Nos. 317 and 344/97

Disposition : Appeal allowed

Judgement :

Ravi S. Dhavan, C. J.

1. These three letters patent appeals which arise out of three writ petitions against two decisions but similar issues. One is dated 3rd September, 1996, passed in CWJC No. 8210 of 1995 (Umesh Sharma and Ors. v. The State of Bihar and Ors.). The others are in CWJC No. 10350 of 1995 and CWJC No. 10363 of 1995

both dated 5-2-1997. Petitioners are in three sets of petitions and their date of appointments are given as below:

CWJC No. 8210 of 1995

Name of petitioners Date of appointment

1. Umesh Sharma 1-5-1987
2. Ravi Shanker Sharma 19-3-1985
3. Krishna Kumar 24-6-1985
4. Pradeep Kumar Sharma 24-6-1985
5. Rajiv Kumar 24-6-1985
6. Upendra Kumar 1-11-1985
7. Ajit Kumar Mishra 6-2-1986
8. Madheshwar Kumar 30-9-1986
9. Jaishankar Prasad 1-10-1986
10. Vijay Kumar 30-5-1988
11. Anil Kumar 1-9-1989

CWJC NO. 10350 of 1995

1. Jawahar Prasad 28-8-1989
2. Dinesh Ravidas 28-8-1989

CWJC No. 10363 of 1995

1. Sheo Keshwar Pathak 31-5-1987

2. The issue is about vaccinators who were required by the State administration for employment on an advertisement. In pursuance of the advertisement the petitioners: applied. It is on record that some had made applications after they had been recommended by the State Employment Exchange. The first batch of recruitment was done in the year 1978. Each of the Vaccinator, so recruited, had worked for two years. Their service books had been opened. Deduction had been made from their salary and credited to their provident fund account. They received increments. When the petitioners desired regularization and time bound promotion, an issue was raised much after the recruitment that their employment itself was irregular. It needs to be recorded that some of the petitioners had even received time bound promotion.

3. A fact not to be overlooked is that during the year 1985-86 the district of Gaya witnessed a Cholera epidemic. All the petitioners were recruited in the district of Gaya to deal with this Cholera epidemic to take prophylactic measures. To meet this emergency. The petitioners were recruited on different dates. Vaccination is continuing process and a permanent plan of the State Health Services. The circumstances that an epidemic took place, itself shows that there may have been a let and slackness in the preventive measures.

4. The petitioners contended that they had been issued appointment letters. Their service books had been opened. There was no issue that they had not been recruited. The immediate need to recruit them was the Cholera epidemic within the district of Gaya. The original appointment letters had been sought and it is on record that they were in the custody of a clerk. This clerk suppressed the records and misplaced them. The state respondents suspended this clerk. The best evidence lay with the respondents themselves, the issue that the clerk had destroyed the records is a matter for the respondents to enquire into. The petitioners submit that another set of appointment in lieu of the petitioner was being attempted surreptitiously.

5. If the contention is that appointments were illegal then there was no occasion to process the appointment, open the service books, make deductions from the salary of incumbents for crediting to the provident fund account At the expense of

repetition it is on record that the services of the petitioners have also been utilised as vaccinators when the district of Gaya faced a Cholera epidemic.

6. It is a shabby defence that appointments were illegal. The fact that a clerk has been suspended is not an answer which inspires confidence. Indeed if these appointments had been made illegally, as is now being contended, then the burden must lie very heavily on top of the administration between the Secretary and the Director General, Health Services and the District Administration which made the recruitment. Indeed all are responsible and all must be visited with either suspension or dismissal along with the clerk. If an inquiry is to be made then everyone connected with these appointments must be inquired threadbare. An inquiry on a clerk will not do.

7. Nothing has been presented before the Court that the recruitment as was made, for the purpose it was made and under the exigencies when made was bad. Another aspect on the record which cannot be ignored is that the Deputy Development Commissioner by his report dated 4th February, 1989 (Annexure 27 to CWJC No. 8210 of 1995) had recorded that the appointments and consequential promotion had been made correctly. Subsequently, the Civil Surgeon by his report dated 20th September, 1990 (Annexure 14 to CWJ No. 8210 of 1995) reiterated that upon the matter being examined he found that there was no irregularity in the appointment of vaccinators.

8. In the circumstances, the Court does not any valid reason to permit the termination orders which visited the vaccinators, to remain. Services of the petitioners were terminated illegally. In totality of the circumstances of the record and on the light of this observation made in this order, the judgment dated 3rd September, 1996 is set aside.

9. The Letters Patent Appeals are allowed.

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