

Amaresh Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-17-1999

Judge : S.K. Katriar, J.

Appeal No. : C.W.J.C. No. 492 of 1998(R)

Appellant : Amaresh Kumar Singh

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

S.K. Katriar, J.

1. The petitioner by this writ petition prays for a writ of mandamus or any other suitable writ or order or direction, quashing the impugned order contained in memo No. 754 dated 21-9-96 (Annexure-12), whereby the services of the petitioner as Milk Recorder in the Department of Animal Husbandry, Government of Bihar, has been terminated with effect from the date of the order, and for the consequential reliefs,

2. Learned Counsel for the petitioner has submitted that appointment of the petitioner at the very inception was pursuant to an advertisement pasted on the Notice Board of the local office in Ranchi. After the Selection Process was

undergone, he was appointed by order dated 16-3-93 (Annexure-1), in the Frozen Semen Bank Project, Ranchi, for the period of six months. By the letter contained in memo No. 12960 dated 8-10-93 (Annexure-3), the petitioner's services were extended in view of the requirements of the department until he faced the Subordinate Selection Board, Bihar, Patna. He was thereafter transferred like any other regular employee by order dated 14-3-94 (Annexure-4). He also placed reliance on Paragraphs-7, 8 and 9 of the writ petition to establish that like any other regular employee of the department, his Provident Fund VC. was opened, he was subjected to the test for Noting and Drafting and his Service Book was also opened. He further submitted that having worked for three and a half years, it was unreasonable on the part of the respondent-authorities to terminate his services in the manner as has been done by Annexure-12

3. Mr. R.K. Marathia, learned Government Pleader, submits that the petitioner was appointed without any advertisement through newspapers. He was surreptitiously appointed on ad hoc-basis by the local authorities and he sneaked his way into the department without undergoing the selection process, by order dated 16-3-93 (Annexure-1]. He further submits that had he been regularly appointed, he would not have been appointed for a period of six months, nor he would have later on been called upon to face the regular selection process before the Subordinate Selection Board. Insofar as the averments made in Paragraphs-7, 8 and 9 are concerned, he submitted that after having sneaked his way into the department, the petitioner had manoeuvred to achieve the trappings of a regular employee. He further submitted that the petitioner was set ?d with show-cause notice dated 30-7-96 (Annexure-10), and the petitioner had shown cause by his letter dated 6-8-96 (Annexure-11). After full consideration of the cause shown by him. the impugned order dated 21-9-96 (Annexure-12) was passed, terminating the services of the petitioner forthwith,

4. Learned Government Pleader further submits before this Court that no attempt whatsoever has been made by the petitioner to establish that he was qualified to hold the post. He also submitted that the petitioner has been initially appointed in the Frozen Semen Bank Project, Ranchi, which is almost a specialised job by itself, and for completely undisclosed and unexplained reasons he was occupying

the post of Milk Recorder at the time of the impugned order. Learned Government Pleader also relied on the judgment dated 28-11-97, passed by a learned Single Judge of this Court in CWJC No. 1005 of 1997 (R), and the judgment dated 10-3-99, passed by another Single Judge of this Court in CWJC No. 2752 of 1997(R). The petitioners of these two writ petitions were similarly circumstanced. Both were employees of the Animal Husbandry Department and had similarly sneaked their way into the department by surreptitious appointments. He has also placed reliance on a judgment of the Supreme Court reported in : (1997)11LLJ856SC Ashwini Kumar v. State of Bihar and Ors.

5. Having considered the rival submissions of the parties, this Court is clearly of the opinion that the appointment of the present petitioner is void ab initio, without, requisite advertisement, and without subjecting the petitioner and other eligible candidates to undergo due selection process. The impugned order is, therefore, valid and legal. Learned Government Pleader very rightly submitted that had the appointment at the very inception been regular, there would not have been the need to appoint the petitioner on ad hoc basis and for the limited period of six months, nor there would have been any occasion to call upon him to face the Subordinate Selection Board.

6. Learned Government Pleader very rightly contended that after show-cause notice was issued in the present case by communication dated 30-7-96 (Annexure-10), and cause was shown by the petitioner by his letter dated 6-8-96 (Annexure-11), the impugned order was passed after fully considering the cause shown by the petitioners. Therefore, this Court is clearly of the view that principles of natural justice have been fully complied with in the present case.

7. In view of the appointment being invalid and void ab initio, all the subsequent evidence on the part of the petitioner to establish that he was appointed as a regular employee becomes wholly irrelevant and are in fact, apocryphal. When the substratum is gone, where is the question of the super structure. There is also no knowing whether or not the post on which the petitioner was appointed was a sanctioned post. The reliance placed by the Government Pleader on the aforesaid judgment of the Supreme Court in Ashwini Kumar's case is quite apt. Under similar

circumstances, the Supreme Court held the appointment to be invalid from, the very inception and disapproved of the appointment. The reliance placed by the learned Government Pleader on the aforesaid two judgments of this Court are also quite apt. The petitioners of those two writ petitions and the present writ petition were similarly circumstanced, appointments having been made under similar circumstances in the same department, and against unsanctioned post.

8. I must at this stage deal with the judgments relied on by the petitioner. He has relied on the following judgments:

(i) 1995 (2) PLJR 735, Saryug Singh v. State of Bihar

(ii) AIR 1992 SC 657, Stop-Gap Lecturers' Association v. State of Karnataka

(iii) : (1991) 11 LLJ 65 SC, Jacob Mr. Puthuparambil v. Kerala Water Authority ; and

(iv) 1994 (1) PLJR 377, Fruit and Vegetable Development Corporation v. State of Bihar.

The reliance placed by the petitioner on the reported judgments is irrelevant and misplaced. All the four judgments related to cases of regularisation of service on account of continued employment for a long duration. The basic facts and circumstances of the instant case are fundamentally different. It is a case of invalid appointment from the very inception which this Court has already declared null and void.

9. Learned Counsel for the petitioner has also placed reliance on a judgment of a Single Judge of this Court reported in 1990 BBCJ 681 Om Prakash Narayan v. State of Bihar, which has laid down that principles of natural justice must be observed in such cases of termination of services. The ratio of that judgment is wholly satisfied in the facts and circumstances of the present case, inasmuch as show-cause notice was duly served on the petitioner vide Annexure-10, cause was shown by the Petitioner vide Annexure-11, and the impugned order vide Annexure-12 was passed after fully considering the cause shown by the petitioner.

10. In the result, this writ petition is dismissed as being devoid of merit.

