

Binod Kumar Sinha Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jun-24-1998

Judge : P.K. Deb, J.

Appeal No. : Civil Review No. 21 of 1996 (R) and C.W.J.C. No. 1039 of 1996 (R)

Appellant : Binod Kumar Sinha

Respondent : State of Bihar and ors.

Judgement :

P.K. Deb, J.

1. Both these cases have been heard together as the matter in issue is the same and the parties are also the same.

2. In the Review application, the petitioner, Binod Kumar Sinha has claimed for review of the judgment dated 19.10.1995 passed by Hon'ble Mr. Justice R.N. Sahay in C.W.J.C. No. 3836 of 1993 (R), whereby according to the petitioner, the Hon'ble Single Judge has committed error of record holding that the appointment of respondent Nos. 6 and 7 i.e. Mukesh Kumar and Atafur Rahman respectively is protected by the direction of this Hon'ble Court, which according to the petitioner, is basically incorrect and contrary to the records of the case.

3. The facts of the case which are almost admitted can be reiterated as follows.

The petitioner Binod Kumar Sinha was appointed on 6.12.1982 as Compiler in the Forest Research Division under the Forest Department in the pay scale of Rs. 535-765 (since revised to 975-1540). As per norms the appointment to the higher post of Computer were used to be made by promoting the seniormost Compiler if eligibility remains so. Accordingly, when the post of Computer fell vacant in the Forest Research Survey Division another Wing under the same Department, the petitioner submitted his application on 22.8.1986 and the Conservator of Forest requested for sending full details of the petitioner by his letter dated 3.12.1988. Accordingly, the necessary details were sent by the Forest Research Officer by his letter dated 13.3.1989. However, the matter relating to the promotion of the petitioner to the post of Computer remained pending. The petitioner also submitted an application on 7.6.1988 praying for considering his case for appointment to the higher post of Computer.

4. It may be mentioned here that under the Conservator of Forest working Plan & Research Division (respondent No. 4), there exists two Division called Forest Research Division and Forest Resources Survey Division. According to the petitioner, there existed two posts of Compiler and one post of Computer in the Forest Research Division and one Rajnath Ram was working as Compiler under the Research Division for several years. There remains, according to the petitioner, no post of Computer in the Survey Division. The post of Computer in the Survey Division fell vacant whereupon Rajnath Ram aforesaid who was working as Compiler in the Research Division was promoted to the post of Computer in the Research Division itself and later transferred to the Survey Division and thus, the post of Computer in the Research Division held by Rajnath Ram fell vacant upon his transfer to the Survey Division. One Devendra Prasad was working as Compiler in the Research Division and was the seniormost Compiler in the Research Division was accordingly promoted to the post of Computer in the Research Division in place of Rajnath Ram who was transferred to Survey division. Rajnath Ram was subsequently promoted to the post of Statistical Assistant and as such on his promotion the post of Computer in the Resources Division fell vacant and as the petitioner was seniormost Compiler he was entitled to be promoted to the post of Computer and hence he submitted application as aforesaid.

However, by ignoring his case from consideration, the respondent No. 6 was appointed as Compiler on 23.7.1992 and in the scale of 1320-2040. According to the petitioner, such appointment of respondent No. 6 was by back door method in the post of Compiler and also after one year promoted to the post of Computer when the petitioner remained 11 years senior to the said respondent No. 6. It was further stated that the appointment of respondent No. 6 ignoring the case of the petitioner was totally illegal, inoperative and discriminatory as the same was done violating the provisions of Articles 14 and 16 of the Constitution of India.

5. The petitioner's further case is that the respondent No. 7 was appointed without any advertisement to the post of Compiler on 17.5.1993 and peculiarly he was granted a higher pay scale of Rs. 1302-2040 which was practically the pay scale of Computer. This respondent No. 7 is also 10/11 years junior to the petitioner. According to the petitioner, both the appointments of respondent Nos. 6 and 7 were done illegally under back door method without proper advertisement, etc. etc.

6. When the petitioner's case was totally ignored, he came up before this Court in C.W.J.C. No. 3596 of 1993 (R) as mentioned above. The official respondents i.e. respondent Nos. 1 to 5 filed a counter-affidavit wherein it was stated that the posts of Computer and Compiler were advertised before making the appointment in favour of respondent Nos. 6 and 7 and after receipt of applications they were recruited directly and as the petitioner never applied for appointment to the post of Computer, his case was not considered. It was further stated in that counter-affidavit that respondent Nos. 6 and 7 had made applications against the advertisement made and then after following normal procedures they were appointed, but the respondent Nos. 6 and 7 in their counter-affidavit, admitted that those posts against which they had been appointed were never advertised but they claimed that they had moved before this Court earlier in C.W.J.C. No. 2180 of 1991 (R) and pursuant to the direction of this Hon'ble Court vide order dated 11.10.1991 they had been appointed. When contradictory statements were there in two counter-affidavits as mentioned above, this Court asked the respondent Nos. 1 to 5 to file further counter-affidavit to clarify the matter giving full details. There, after, the respondent Nos. 1 to 5 filed supplementary counter-affidavit giving full details and it appeared from that Supplementary counter-affidavit that

respondent No. 6 i.e. Mukesh Kumar was appointed on daily wage basis w.e.f. 1.1.1985 on the post of Compiler and he along with others filed C.W.J.C. No. 2180 of 1991 praying regularization of their services and as per direction of this Court, his case was considered for appointment from the panel prepared earlier and on the basis of representation being filed, the respondent No. 6 was appointed. Regarding the respondent No. 7, it was further stated that he was appointed on daily wage basis as a Compiler w.e.f. 23.2.1986 and he filed C.W.J.C. No. 1682 of 1992 (R) for regularization of his services as a Compiler and as per direction made in that writ petition by the High Court, the respondent No. 7 filed a representation and then he was appointed regularly as Compiler.

7. It appears from the copy of the orders of those two writ petitions namely C.W.J.C. No. 2180 of 1991 (R) and C.W.J.C. No. 1682 of 1992 (R) that those writ petitions were dismissed on withdrawal as per permission being sought from the side of the petitioners and as per their prayers, liberty was given to make representation before the respondent-authority. For proper appreciation of the matter in dispute, particularly, regarding the judgment in C.W.J.C. No. 3536 of 1993 (R), the observations and directions made by this Court in the abovementioned two writ petitions, it is required to be reiterated which I do accordingly.

C.W.J.C. No. 2180 of 1991 (R) Mukesh Kumar and Anr. v. State of Bihar:

According to the petitioners, their names appeared in the panel, which is Annexure-4 to this application. Their grievance is that although by letter contained in Annexure-9, respondent No. 4 re-question respondent No. 6 for necessary action with regard to the petitioner's representation for their appointment, the respondent No. 6 is not passing any order. If respondent No. 6 admittedly subordinate to respondent No. 2 is not taking any action on the request made by the respondent No. 4, the latter should have brought this fact to the notice of the respondent No. 2 for proper action against respondent No. 6. This Court is not for the enforcement of discipline in the Forest Department. The petitioners may bring this fact to the notice of respondent No. 2 that although their names appeared in the panel (Annexure-4) and vacancies exists they are not being appointed and

after 31.10.1991, the panel will lapse as a result of which they will not be entitled to appointment on the basis of Annexure-4.

This application with the aforesaid observation is directed to be withdrawn and to enable the petitioners to file their representations before respondent No. 2 alongwith a copy of this Order. If such representation is filed, the respondent No. 2 shall pass an appropriate order on the same so that if he is of the opinion that the petitioners should be appointed, appropriate be passed before 31.10.91.

(Signed : S. Roy N. Roy)

In C.W.J.C. No, 1682 of 1992 (R) Atafur Rahman v. State

In this case, the petitioner has prayed for direction to the respondents to regularise the services of the petitioner. It appears that for the said grievance which has been made in this application, the petitioner has already filed representation before the Principal Chief Conservator of Forest, Bihar at Ranchi on 17.3.1992. The grievance of the petitioner is that as yet no final order has been passed by the concerned authority. In that view of the matter, we are disposing of this application with a direction to the respondent No. 3 to dispose of the representation of the petitioner by a reasoned order within a period of two months from the date of production/receipt of a copy of this Order as aforesaid.

This application is disposed of.

(Signed : N. Pandey)N. Roy

8. Thus, from the above, it emerges that no direction was given by this Court for making appointment of respondent Nos. 6 and 7 to the respondent Nos. 1 to 5. It further clarifies that both the respondent Nos. 6 and 7 were in the services on daily wage basis as Compiler much later than the petitioner Binod Kumar Sinha and he was admittedly senior, even if he had also been on the daily wage basis as Compiler. But, according to the petitioner, he was confirmed as Compiler long back, it further appears that respondent No. 6 had admitted that he was working on daily wage basis since 1.1.1985 and his case for regularization was taken up by the authorities and a penal was prepared in which his case was considered for

regularization to the post of Compiler in the pay scale of 975-1540/- and thereafter, he made an application requesting the authorities to appoint him to the senior post of Computer in the scale of Rs. 1,320-2,040/- and the Principal Chief Conservator of Forest directed the Conservator of Forest under letter No. 422 dated 5.4.1993 to appoint the respondent No. 6 to the post of Computer. Thereupon, the respondent No. 6 was appointed on the post of Computer by the terms of order dated 15.4.1993. The respondent No. 7 also contended that he was also working on a daily wage basis on the post of Compiler with effect from 23.2.1986 and pursuant to the order of this Hon'ble Court, his case for regularization was taken up and a panel was prepared in which his case was considered for regularization for the post of Compiler in the scale of pay of Rs. 975-1,540/-. However, he was granted the scale of Rs. 1,320-2,040 as the post of Compiler in the Evaluation-cum-Planning Centre carried the same scale.

9. In the supplementary counter-affidavit filed by respondent Nos. 1 to 5, they categorically admitted that the posts were never been advertised and according to them the post, of Computers are generally filled up by promotion but for making appointments in question, names were called for from the Employment Exchange only in respect of Reserved category candidates. By letter dated 10.4.1990, an information was sent to all the Divisions of the Development Circle for sending the names of Daily-wage workers. Thereupon, the names were sent and a panel was prepared and thereafter, the respondent Nos. 6 and 7 were appointed on the post of Compiler.

The fact remains thus that as per the appointment the petitioner-was definitely much senior to the respondent Nos. 6 and 7. It is further stated that at the time of regularization of the services of the respondent Nos. 6 and 7 and then giving promotion to the respondent No. 6 the petitioner's case was totally ignored as according to the respondent Nos. 1 to 5 the stands taken in the earlier writ petition was that the post of Computer was generally being filled up by promotion. Nowhere, it has been stated by the respondent Nos. 1 to 5 that the petitioner's case was not considered for any defect with regard to his appointment as Compiler.

10. In C.W.J.C. No. 1039 of 1996 (R), the petitioner Binod Kumar Sinha has prayed for quashing the order dated 10.2.1996 passed by the respondent No. 2 i.e. the Principal Chief Conservator of Forest, Government of Bihar as contained in Annexure-14 by which the representation filed by the petitioner in compliance of the Order of this Court in C.W.J.C. No. 3836 of 1993 (R) has been rejected regarding promotion of the petitioner to the post of Computer mainly on the ground that the Roster Policy of the Government does not give any scope for appointment/promotion of the petitioner to the post of Computer. The grievance of the petitioner is the same as that of the Civil Review Petition as stated in details. The petitioner's main grievance is with regard to the legality of the appointment of respondent Nos. 6 and 7 and if their illegal/irregular appointment had been regularized by the official respondent Nos. 1 to 5 then the petitioner's case cannot be ignored now on the ground of roster policy as the petitioner's case should have come earlier than consideration of the cases of the respondent Nos. 6 and 7.

11. The respondent Nos. 6 and 7 in both the Review petition and the writ petition as mentioned above by filing counter affidavits have taken the same plea that their appointments were made regular and the same when challenged before this Court had been found to be on the direction of the High Court and as such legal and now there is no scope of going back on factual aspect to consider the legality/irregularity of the appointments of respondent Nos. 6 and 7. It has categorically been stated by the respondent Nos. 6 and 7 that they have no grievances if the petitioner is posted as Computer or promoted to that post when such posts are lying vacant but in consideration of the case of the petitioner the private respondent Nos. 6 and 7's appointments cannot be questioned as the same had already got the seal of the Court.

12. In the counter-affidavit filed in the review petition and in the writ petition, the respondent Nos. 1 to 5, have taken the plea that the post of Computer were being filled up 50% by direct recruitment and 50% by promotion (although, in the earlier counter-affidavit filed in earlier writ petitions, the respondent Nos. 1 to 5 had taken the plea that Computer posts were being filled up by promotion from the posts of Compiler). According to the respondent Nos. 1 to 5, the case of the petitioner was never been ignored rather his case would be considered at opportune moment,

but at present because of the Roster Policy, the petitioner cannot be found to be fit for promotion in the post of Computer.

13. A new thing has now been emerged in the counter-affidavit filed by the respondent Nos. 1 to 5. There was another writ petition filed by one Rajesh Kumar being C.W.J.C. No. 1091 of 1994 (R) which was disposed of by a Bench of this Court on 18.8.1994 giving direction to the official respondents for consideration of the case of that Rajesh Kumar for the appointment of Computer, if a representation is filed by that Rajesh Kumar. In that writ petition also the appointment of these respondent Nos. 6 and 7 had been challenged to the irregular and improper. When representation was filed by that Rajesh Kumar, the matter was considered and a Review Committee was appointed by the PCCF to look into the appointment of Computer and that Review Committee vide Annexure-A could discover that the appointments made to the posts of Computers earlier were not made as per norms and rules and rules have been totally violated -and - the Review Committee report was referred to the Government and the decision of the Government in that matter is awaited. That report of the Review Committee had been submitted to the PCCF, Bihar, Ranchi on 24.10.1994 but it appears that the said report of the reviewing Committee as contained in Annexure-A is now pending and nothing has been done by the appropriate Government on that report.

14. From perusal of the report, it appears that the Review Committee had rightly found that the appointments of respondent Nos. 6 and 7 were not regular and bunglings were made in not only making their appointments but also on preparation of the panels and then giving promotion to the respondent No. 6 to the post of Computer bypassing the genuine claims of other persons in the post of Compiler including that of the petitioner and that respondent No. 7 had been given higher pay scale which is not permitted for the post of Compiler.

15. Thus, from the counter-affidavits filed by the official respondents, it appears that they are taking different pleas at different stage. Sometimes, they were supporting the case of the respondent Nos. 6 and 7 and now when it could be found that all laches were there on their side, they are trying to take shelter on the report of the Review Committee.

16. On consideration of the cases of the parties, the following point emerges:

(1) There is definitely irregularity in the appointment of respondent Nos. 6 and 7 and although, a Single Judge of this Court held in C.W.J.C. No. 3836 of 1993 (R) that the appointments of the respondent Nos. 6 and 7 were made as per direction of this Court, but the same observation on the face of the records are not found to be factually correct.

This Court in the writ petition filed by the respondent Nos. 6 and 7 had never given any direction to give appointments to them, rather their writ petitions were permitted to be withdrawn by giving a direction for filing representation. In the representation being filed, the official respondents then took more opportunity to give the coverage of their bunglings done earlier and giving them appointment. The respondent Nos. 6 and 7 were appointed as Compiler on the basis of a panel which panel were never prepared legally and the case of the petitioner was definitely ignored while making such empanelment. For that reason, the respondent Nos. 1 to 5 at earlier stage took the plea that panel was made after advertisement but when the Court asked to file further affidavit then they came up that such panel was prepared without advertisement and the Rules for appointment were not being followed and, therefore, there is definitely violation of Article 14 and also of Article 16 of the Constitution of India. But, the fact remains that the respondent Nos. 6 and 7 had been appointed or regularized as Compilers, although the petitioner was regularized long back and his appointment as Compiler was never been questioned by any of the parties neither by the State officials. So, the petitioner's appointment as Compiler is not a matter to be considered in this writ petition. The fact remains that the petitioner was appointed on work charge basis long before the respondent Nos. 6 and 7 and then his case was regularized and the respondent Nos. 6 and 7 were appointed as Compilers or regularized whatever might be and then respondent No. 6 was appointed/promoted within a short span from his appointment as Compiler to Computer and the petitioner's case was always remained ignored.

17. Although, the official respondents have now taken the plea that the case of the petitioner was never been ignored but the factual position reveals that for vested

interest the petitioner's case was definitely being ignored for the reasons best known to the appointing authority. If the roster policy was not followed in case of appointment of respondent Nos. 6 and 7 when the petitioner's legitimate claim was there of being considered for the post of promotion as Computer then on the same plea of roster policy now the petitioner's claim cannot be defeated. If any dwelling has been done from the side of the respondent No. 2 or other respondents then they have to suffer for it but not the petitioner. It appears that the Review Committee report remained unconsidered for last four years giving go-bye to norms and regularise the services of the poor employees and it appears that until and unless Court gives an order the high a ups in the State Government are not to open up their red tapism of the files.

18. It has been pleaded from the side of the respondent Nos. 6 and 7 that the Review Petition is not maintainable as the order passed by a Single Judge in C.W.J.C. No. 3836 of 1993 (R) was never been challenged either in LPA or before the Supreme Court and the direction given by the Court was complied with by the petitioner by filing representation before the respondent No. 2 and only when his representation had been cancelled/rejected vide Annexure-14 the petitioner is filing this Review Petition further challenging the appointments of respondent Nos. 6 and 7.

19. It is true that the petitioner has come up with this Review Petition at a belated stage and when he had filed representation for consideration of his promotion as Computer as per direction of this Court, now he cannot go back to challenge the observations and findings of that writ petition. There is some force in the submission of respondent Nos. 6 and 7 in this Court, but while considering the writ petition i.e. C.W.J.C. No. 1039 of 1996 (R) wherein also the same questions are being involved, when this Court cannot shut its eyes regarding the observation made by a Single Bench of this Court in C.W.J.C. No. 3836 of 1993 (R). Such observations were definitely not correct but when appointment of respondent Nos. 6 and 7 had been made long back and these matters are under consideration of the State Government on the basis of the Review Committee's report as contained in Annexure-A, I am not going to pass any Stricture or any direct decision regarding the irregularity/illegality of the appointment of the respondent Nos. 6 and

7, but definitely irregularities were there but by the go of the day when several years have passed and these respondents had also suffered by knocking the door of this High Court time and again then it would be for the consideration of the authorities as to how their services are to be regularised but definitely high pay scale given to the respondent No. 7 in no case be justified and such justification has also not been cleared from the side of the respondent Nos. 1 to 5.

20. Regarding the promotion of respondent No. 6 to the post of Computer, the case of the petitioner was knowingly being concealed for the reasons best known to the respondent Nos. 1 to 5 and they are responsible for making the dwinglings and bunglings and the petitioner's claim can in no case be given go-be on the plea of roster policy now at this stage.

21. At the time of argument, it has been brought to the notice of the Court that still there are posts of Computer lying vacant. The respondent Nos. 1 to 5 cannot now say that the service of Computer are not necessary and as such no promotion or appointment can be made in those vacant post. This would mean that after doing irregularities and illegalities, they are now shutting the door of the legitimate claim. If any post of Computer is lying vacant, the petitioner's case should be considered and such consideration must be made within two months next from the date of presentation of a copy of this Order from the side of the petitioner. The respondent No. 2 shall consider the same even if no Review Committee report has been taken into action in the meantime or not. Annexure-14 is hereby quashed and the matter is sent back for re-consideration of the case of the petitioner in the light of the observations made above.

22. The writ petition and the Review Petitions are thus disposed of.

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