

Md. Nizamuddin and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Sep-04-2003

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

Acts : Service Law

Appeal No. : L.P.A. No. 809 of 2003

Appellant : Md. Nizamuddin and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : V.N. Sinha, G.P. 9

Advocate for Pet/Ap. : Rajendra Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.

1. This Letters Patent Appeal has been filed against an order of 31st July, 2003. The order was passed on two writ petitions C.W.J.C. No. 1342 of 1999 : Shashi Bhushan Singh v. The State of Bihar and Ors. and C.W.J.C. No. 1374 of 1999: Md. Nizamuddin and Anr. v. The State of Bihar and Ors.

2. All the petitioners to whom the order of 31st July, 2003 is applicable have not filed a Letters Patent Appeal. This appeal has been filed only by Md. Nizamuddin and Babujee Kamat. They were initially appointed as Canal Mates, a work charge grade IV employees, in 1979.

3. In the counter-affidavit to the writ petition it is explained that the appointment on a work charge post is accepted. Thus, there is no issue that the petitioners had not been appointed. There is also no issue that the petitioners were given work on the post of a Grade III regular establishment as typists subsequently in 1981. It was discovered later on that as the petitioners were given appointments on a work charge establishment and as Canal Mates, work charge grade IV, the appointments could not be regularised individual to the petitioners. There was a clear stipulation facing the Executive Engineer that under no such circumstances class IV employees will be adjusted to and on Class III posts. This was a departmental letter dated 2nd April, 1983 No. 517. But the fact that they had been given Class III appointment was an irregularity or an illegality. The petitioners, thus, were sent back to their original posts whatever be their status. So far on facts there is no issue between the petitioners and the State respondents.

4. The petitioners have not been able to explain as to how their appointments were made and whether an appointment letter had been issued to them. The Court will leave this aspect.

5. The situation has to be taken in generality. These are State appointments. The petitioners had been appointed as Canal Mates in the Irrigation Department. Such a state of affairs should not be rendered that the petitioners become regular and those senior to them remain in Class IV on the work charge establishment and perhaps in a temporary status. If the petitioners or persons like the petitioners are to receive an improved status that will have to be considered for all in order of seniority as is the Muster Roll and not exclusively for the petitioners. If the High Court were to give a direction for the petitioners, it will make a mistake in giving them status and those senior to them perhaps will remain as Class IV employees be they regular or as work charge employees.

6. The job of the petitioners has not been terminated. Any improvement in their status will have to be seen as a whole amongst their class as a whole. No error has been committed in the orders on the writ petition. This appeal is misconceived.

7. Dismissed.

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