

Shailendra Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-20-2004

Judge : Narayan Roy, J.

Acts : Service Law

Appeal No. : CWJC No. 3699 of 2001

Appellant : Shailendra Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : JC to 8

Advocate for Pet/Ap. : Rajendra Pd. Singh, Sr. Adv. and Tej Bahadur Singh, Adv.

Disposition : Application allowed

Judgement :

Narayan Roy, J.

1. Heard counsel for the parties.

2. This writ application is directed against order, as contained in annexure 1, issued vide Memo No. 1783 dated 8.12.2000, whereby and whereunder appointment of the petitioner on the post of Clerk has been cancelled by respondent No. 3, the Regional Deputy Director of Education, Tirhut Division,

Muzaffarpur.

3. According to the case of the petitioner, certain Class III posts had fallen vacant in the offices under the control of the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur. The posts as such were advertised and at the same time, names were also called for from the local Employment Exchange and on the basis of the names forwarded by the Employment Exchange including that of the petitioner and others they were considered for appointment on Class III posts by the Divisional Establishment Committee and by virtue of the order, as contained in annexure 4 dated 12.6.1995, the petitioner was appointed on the post of Clerk in the pay scale of Rs. 1200-1800.

4. While the petitioner was continuing on the post as such, all of a sudden, his appointment was cancelled on 18.5.1999, which was challenged by the petitioner in this Court by way of an interlocutory application in CWJC No. 11098 of 1998 and at the same time, he also challenged the same before the Director, Secondary Education, Government of Bihar, Patna. The Director, Secondary Education, Government of Bihar, however, stayed the order of cancellation of his appointment and, in that view of the matter, the petitioner withdrew his writ application and he started functioning on the post of Clerk, but immediately thereafter a show-cause notice was served upon him as to why his appointment should not be cancelled and thereafter by virtue of an order, as contained in annexure 1, his appointment on the post of clerk has been cancelled.

5. It is submitted by learned counsel for the petitioner that the petitioner was appointed on Class III post by the competent authority and that also by the Divisional Establishment Committee by following all the norms and procedures laid down for such appointment. It is further submitted that the posts were advertised and at the same time, names were also asked for from the local Employment Exchange, and the petitioner's name was forwarded along with others by the Employment Exchange, pursuant to which he was considered along with other eligible persons by the Divisional Establishment Committee and he was appointed on the post of clerk.

6. In this background, learned counsel for the petitioner submitted that the order impugned is arbitrary, unreasonable and wholly without jurisdiction and not sustainable in law.

7. Though a counter affidavit has been filed on behalf of the respondents, the statement made in the writ application with regard to advertisement of the post and calling for the names from the Employment Exchange is not disputed. A bald plea has been taken saying that all the procedures for appointment were not followed including that of reservation policy and roster clearance.

8. Learned counsel for the petitioner now submits that the question, which has fallen for consideration in this case has already been considered by this Court in the case of *Sri Ravindra Kumar Tiwari v. The State of Bihar and Ors.*, in CWJC No. 5003 of 1999 and the writ application was allowed and the order of termination was set aside and the order of this Court has ultimately been affirmed by the Apex Court.

9. The order passed by this Court in case of *Sri Ravindra Kumar Tiwari* (supra) has been placed on record as annexure 15 and the order passed by the Apex Court has been produced before me for my perusal.

10. The facts of this case and that of *Sri Ravindra Kumar Tiwari*, (supra) appear to be identical. In the case of *Sri Ravindra Kumar Tiwari*, (supra), the appointment was made by the Divisional Establishment Committee on the basis of the names forwarded by the Employment Exchange. The same fact is involved in this case as well. The judgment passed by this Court, as contained in annexure 15, in that view of the matter, squarely covers this case.

11. In the result, this application is allowed and disposed of in terms of the order passed by this Court, as contained in annexure 15 and the order impugned, as contained in annexure 1, is set aside and the petitioner is directed to be

reinstated. However, the petitioner would not be entitled for salary for the period actually he has not worked. It is needless to say that now onwards pursuant to this order, the petitioner will be entitled for his salary.

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