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**Court :** Patna

**Decided On :** Feb-09-2005

**Judge :** Navin Sinha, J.

**Appeal No. :** C.W.J.C No. 11885 of 1999

**Appellant :** Sanjay Kumar

**Respondent :** State of Bihar and ors.

**Disposition :** Application allowed

**Judgement :**

**Navin Sinha, J.**

1. Heard learned counsel for the petitioner and the learned counsel for the State. The pleadings of the parties having been complete this Court finds that the present writ application can be disposed of at the stage of admission.

2. The petitioner questions the order impugned at Annexure 12 dated 10.2.1999 by which his Services as a Clerk in the Institution in question have been terminated for reasons of violation of instructions issued from time to time while making his appointment as also that his appointment was not made by the competent authority. It is significant to note here that the impugned order contains the names of seven persons including the petitioner and one Rabindra Kumar

Tiwary who stand at serial 2 thereof.

3. It is the contention of the petitioner that in pursuance of certain vacancies advertised on the Notice Board of the office of respondent No. 2 applications were invited through the District Employment Exchange. The petitioner in the specified manner duly applied for appointment on the post of Clerk. The Divisional Establishment Committee after considering the applications and candidature of the petitioner appointed him as a Clerk in the Institution on 26.6.1995. The order of appointment specifically recited that in pursuance of the names having been called from the Employment Exchange and the decision of the Divisional Establishment Committee the petitioner was being appointed, it is significant to note that the aforesaid Rabindra Kumar Tiwari is also mentioned at serial 2 of the order of appointment along with the petitioner. It is further case of the petitioner that the appointment was made against the sanctioned post. The Service Book of the petitioner was also opened, he was paid his regular salary and was also admitted to the General Provident Fund Scheme of the employer. Show cause notice was issued to the petitioner with regard to the nature of his appointment nearly three years later on 12.12.1998. Pursuant to his saving submitted reply thereto he was again asked to show cause on 21.1.1999 on the ground that the previous reply submitted by him was not satisfactory. In the meantime the petitioner appeared in the Hindi Notings and Drafting Examination held by the Department and duly qualified therein. It was in this background that the order of termination came to be issued questioning the nature of his appointment as being contrary to law.

4. The counter affidavit on behalf of the respondents would aver that the records of the appointment of the petitioner were not available in the office of the respondents. Even the proceedings of the Divisional Establishment Committee could not be available in the office of the respondents and thus the appointment of the petitioner did not appear to be valid. For these reasons the appointment and claim of the petitioner appears to be false and fabricated.

5. Having considered the submissions made on behalf of the parties this Court finds that the counter affidavit on behalf of the respondents does not deny or assert the legality of the appointment of the petitioner but simply suggests it to be

contrary to law for alleged reasons that the records be not available in their office. It is not the case of the respondents that no such requisitions were made and deliberations by the Divisional Establishment Committee were made. In fact in the facts and circumstances of the present case it is not necessary for this Court to go into the question of the validity and legality of publication of a notice on the Notice Board inviting applications, requisitioning of names through the Employment Exchange etc. for the reasons that the aforesaid Ravindra Kumar Tiwari whose name finds mention in the present order hereinabove and was alike terminated along with the present petitioner, assailed his order of termination in CWJC No. 5003/99. A Bench of this Court on 21.9.2000 allowed the writ application and quashed the impugned order of termination as being contrary to law. The fact would be that the order impugned presently does not survive. This was questioned by the respondents in LPA No. 1512/2000 which was likewise rejected on 22.11.2000. The matter then travelled to the Supreme Court in SLP (Civil) No. 6077/2001 at the behest of the respondents. The Special Leave Petition was also dismissed. The aforesaid orders would be available on record in there joinder filed on behalf of the petitioner to the counter affidavit filed on behalf of the respondents. This Court finds that the case of the petitioner is similarly situated. Once a finding has been arrived at affirmed by the Supreme Court on the nature of the appointment in question, rejecting the plea that the same was contrary to law, the present writ application has to be allowed.

6. In the circumstances the impugned order of termination dated 22.2.1999 as contained in Annexure 12 is quashed in so far as the present petitioner is concerned. No order as to costs.

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