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Court : Patna

Decided On : Sep-06-2001

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 8325 of 2000

Appellant : Binay Kumar Singh and anr.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard learned Counsel for the parties.

By this writ application, the petitioners have prayed for quashing of order, as contained in Memo No. 781 dated 12-6-2000, whereby and whereunder petitioner No. 1 has been terminated as also direction has been given for recovery of the amount paid to him, and the order, as contained in Memo No. 789 dated 12-6-2000, whereby and whereunder petitioner No. 2 has been terminated and direction have been given for recovery of the amount paid to him.

2. It is submitted by learned Counsel appearing on behalf of the petitioners that petitioner No. 1 appointed as Clerk and petitioner No. 2 was appointed as Peon on

the basis of the recommendations of the Divisional Establishment Committee and names were called for from the Employment Exchange and on the basis thereof, the petitioners applied and they were interviewed and were finally selected by the Divisional Establishment Committee and, accordingly, they were appointed to the aforesaid posts. It is further submitted that at one point of time, the matter was scrutinised by the Director, Secondary Education at the stage when the salary of the petitioners were stopped and the Director, on scrutiny of the matter, ultimately, found that the petitioners were entitled for salary and, accordingly, directions were given as such.

3. Prima facie, it appears that the petitioners were appointed by the Divisional Establishment Committee, Tirhut Division, and from time to time, they were transferred from one place to another. It is further submitted that the posts as such were advertised and names were asked for from the Employment Exchange and on the basis of the applications filed by the petitioners, they were interviewed and appointed by the Divisional Establishment Committee. In this view of the matter, it is submitted on behalf of the petitioners that appointment of the petitioners could not have been cancelled as they were appointed after following the procedures laid down in law.

4. A counter-affidavit has been filed in this case on behalf of the respondents. In the counter-affidavit, it is, inter alia, stated that the petitioners were not appointed after observing the procedure prescribed in law and roster reservation Rules were not ensured and further appointments were made without advertisement etc. However, the counter-affidavit does not speak in categorical terms as to whether the posts upon which the petitioners were appointed were advertised or whether their names were asked for the Employment Exchange. It is not also stated in the counter-affidavit as to whether the petitioners had requisite qualification for the post as such.

5. From the facts enumerated in the writ application it is borne out that the petitioners had requisite qualifications for the posts as such and posts were advertised and names were called from the Employment Exchange and on the basis thereof, the petitioners applied and they were interviewed and they were

finally selected by the Divisional Establishment Committee and, accordingly, they were appointed to the post of Clerk and the Peon, respectively.

6. Prima facie, it appears that the petitioners were appointed by the Divisional Establishment Committee after following the normal procedures and their selection was made after due advertisement. From the facts enumerated in the writ applications and also in the counter-affidavit, it appears that the petitioners are not alleged to have played any fraud in the matter of appointment nor it is alleged that appointments were made on extraneous consideration. However, it appears that the roster clearances etc. are not said to have been observed and compliance of reservation Rules was also not observed. However, for these, the petitioners should not be made to suffer after several years of appointment for the fault of the authorities in not observing these formalities and in any view of the matter, it cannot be a sufficient justification to terminate their services.

7. Learned Counsel appearing on behalf of the petitioners lastly submitted that questions involved in this writ application have already been set at rest and appointment of similarly situated persons have been held to be legal and valid and in this connection reference has been made to Civil Writ Jurisdiction Case No. 9089 of 2000 (Sujit Kumar v. The State of Bihar and Ors.), disposed of on 9-7-2001.

8. The order dated 9-7-2001 passed in Civil Writ Jurisdiction Case No. 9080 of 2000 has been brought on record. On perusal of the order aforesaid, it appears that this Court having faced with the similar situation held that order of termination of the writ petitioner was not justified as he was appointed by the Divisional Establishment Committee after following the normal procedures. The objection, which has been raised here in the counter-affidavit was also raised before this Court and this Court held that the action of the authorities was without jurisdiction and the writ petitioner should not be made to suffer on account of fault of the authorities in not observing roster clearance etc. Similar is the situation in these writ applications and, in my opinion, this case is squarely covered by the decision rendered by this Court in Civil Writ Jurisdiction Case No. 9089 of 2000 (Sujit Kumar v. The State of Bihar and Ors.)

9. In the result, this writ application is allowed and the orders impugned, as contained in Annexures 11 and 12, respectively, are hereby quashed. The petitioners are directed to be reinstated in service with all consequential benefits except the salary for the period they have not worked under the respondents. However, there will be no order as to costs.

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