

Dr. Vikash Kumar Prasad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-05-1997

Judge : Narayan Roy, J.

Appeal No. : Civil Writ Jurisdiction Case No. 3747 of 1996 (R)

Appellant : Dr. Vikash Kumar Prasad

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. Anil Kumar Sinha, Smt. Shyamla P

Disposition : Applications Allowed

Judgement :

Narayan Roy, J.

1. Heard Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the petitioner, Mr. K.N. Prasad, learned Counsel appearing for respondent No. 6, and the learned Government Pleader No. II for respondents Nos. 1 to 5.

2. This writ application has been filed by the petitioner for quashing the order dated 2.11.1996, as contained in Annexure-6, by which promotion of the petitioner to the post of Assistant Professor, Paediatric Surgery, Rajendra Medical College & Hospital, Ranchi (hereinafter referred to as RMCH, Ranchi), has been cancelled and respondent No. 6 Dr. Jawahar Prasad Gupta has been posted in place of the

petitioner, and also for quashing the order dated 4.11.96, as contained in Annexure 6/A, by which Notification No. 476 (17)/H, dated 25.6.1986, as contained in Annexure-2, has been cancelled, by which the petitioner was appointed on the post of Assistant Professor in Paediatric Surgery, RMCH, Ranchi.

3. Learned Counsel appearing on behalf of the petitioner submitted that an advertisement was issued by the State Government pursuant to the Notification No. 640/3 dated 24.5.1983, as contained in Annexure-1, inviting applications for filling up the teaching posts in various Medical Colleges, Pursuant to the advertisement, the petitioner, who was having requisite qualifications, applied for the post of Assistant Professor, Paediatric Surgery and after due interview the petitioner, alongwith other eligible candidates, was selected and a panel was prepared in 1983, where the name of the petitioner was placed at Sl. No. 1 and, accordingly the petitioner thereafter was appointed on the post of Assistant Professor in Paediatric Surgery, vide notification dated 25.6.1986, as contained in Annexure-2, out of '1983 Panel' and he was posted in R.M.C.H., Ranchi, where he worked continuously on the post as such, whereas respondent No. 6, who was also an applicant for appointment on the post of Assistant Professor, Paediatric Surgery from '1983 Panel' could not be appointed. However, respondent No. 6 was appointed as Assistant Professor against unsanctioned post on 1.9.1992, out of '1990 Panel' and was posted as the Associate Professor, since there was no vacancy for the post of Assistant Professor. However, the posting of respondent No. 6 was subsequently cancelled as he was holding a higher post irrespective of his qualification.

4. Mr. Anil Kumar Sinha, learned Counsel for the petitioner, further submitted that just to accommodate respondent No. 6 the impugned notifications as contained in Annexure 6 and 6/A were issued by the State Government cancelling the appointment of the petitioner on the post of Assistant Professor in Paediatric Surgery, out of 1983 Panell. Learned Counsel further submitted that the orders as contained in Annexure-6 and 6/A are highly arbitrary and unreasonable, as the same could not have been issued after a lapse of almost eleven years when the petitioner was continuously functioning on the post as such. Learned Counsel also submitted that once the petitioner was appointed on the post as such after due

advertisement and after facing the interview, the orders impugned could not have been issued even without affording an opportunity of being heard to the petitioner, and, accordingly, the orders impugned are violative of the principles of natural justice.

5. Counter-affidavits have been filed on behalf of the respondent State and also on behalf of respondent No. 6.

6. Respondent Nos. 1 to 5 in the counter-affidavit have stated that the petitioner was wrongly placed at Sl. No. 1 in '1983 Panel' as he was not eligible for the same. It is also stated in the counter-affidavit that the petitioner had obtained only ten points without any teaching experience in Paediatric Surgery up to the cut off date of 31.7.1983, whereas total point of respondent No. 6 was seventeen and he had teaching and working experience as Resident Surgeon, Paediatric Surgery, and, therefore, the petitioner could not have been shown at Sl. No. 1 and his appointment, accordingly, was not justified and to correct the wrong the respondent State issued notifications as contained in Annexures-6 and 6/A, cancelling the appointment of petitioner and appointing respondent No. 6 on the post of Assistant Professor, Paediatric Surgery.

7. Respondent No. 6 has filed the counter affidavit on the same line as has been done by respondents 1 to 5. However, Mr. K.N. Prasad, learned Counsel appearing on behalf of respondent No. 6, submitted that there is nothing wrong in issuing the impugned notifications as contained in Annexures-6 and 6/A, whereby and where under the appointment of the petitioner has been cancelled and respondent No. 6 has been appointed on the post of Assistant Professor. Learned Counsel further submitted that since the appointment of the

petitioner was ab-initio void at the time of his initial appointment out of '1983 Panel', as the petitioner was not having the requisite qualifications, the same was liable to be rectified and petitioner was not having the requisite qualifications, the same was liable to be rectified and the respondent State after realizing its mistake rectified the same by issuing the notifications as contained in Annexures-6 and 6/A.

8. Now the questions for determination are two folds:-(i) As to whether the petitioner was eligible for the post of Assistant Professor, Paediatric Surgery, out of '1983 Panel?', and (ii) As to whether the petitioner, who was appointed on the post of Assistant Professor, Paediatric Surgery and continued to work on the post for more than ten years, his appointment was liable to be cancelled after lapse of almost ten years?

9. So far as the question No. (i) is concerned, it appears that the petitioner had applied for the post of Assistant Professor, Paediatric Surgery pursuant to the advertisement, as contained in Annexure-1, and he was selected for the post as such after facing the interview and his name was included at Sl. No. 1 of '1983 Panel'. The proceeding of the Interview Board, which has selected the candidates of '1983 Panel' for appointment on the post of Assistant Professor(Paediatric) has been brought on record, marked as Annexure-24, which is said to have been discussed in the State Legislative Assembly by one Ambika Prasad, M.L.A., 6.9.1993. From the minutes as contained in Annexure 24, it appears that the petitioner's name was placed at Sl. No. 1 showing that he had obtained ten points and he had experience of juniors and senior Resident Surgeon, whereas the name of respondent No. 6 was placed at Sl. No. '15' and he had obtained seventeen points, but had no experience as Resident Surgeon.

10. The respondent authorities, however, in paragraph No. 10 of the counter-affidavit have stated that the petitioner had no teaching experience in Paediatric Surgery, whereas respondent No. 6 had experience of Resident Surgeon for more than eleven months. The statement made, in the counter-affidavit at the fact of the minutes of the Interview Board, as contained in Annexure-24, is ex-facie incorrect the same appears to be misleading.

11. Seeing the minutes, as contained in Annexure-24, it must be held that the petitioner had the requisite qualification and rightly, therefore, he was placed at Sl. No. 1 of '1983 Panel' and he was appointed on the post of Assistant Professor, Paediatric Surgery, vide notification dated 25.6.1986, as contained in Annexure-2, and in no way respondent No. 6 had any case for his appointment of the post of Assistant Professor, Paediatric Surgery, and rightly, therefore, the same was not

given to him.

12. The question No. (i), therefore, is answered in affirmative.

13. Now coming to the next question as to whether the petitioner's appointment was liable to be cancelled after more than ten years is concerned, it appears from the materials on record that the petitioner continued on the post of Assistant Professor, Paediatric Surgery, right from 1986 and while he was functioning on the post as such, the orders impugned as contained in Annexures-6 and 6/A were served upon him cancelling his appointment.

14. Prima facie it appears even from the minutes of the selection committee, as contained in Annexure-24, that the petitioner's selection was in accordance with the requirements and eligibility. The petitioner since had obtained the required points and had working experience, he was rightly selected for the post of Assistant Professor, Paediatric Surgery, and ex-facie it is manifest from the minutes of the Selection Committee, as contained in Annexure-24, that respondent No. 6 had no working experience.

15. Even assuming that there had been some discrepancy or irregularity in '1983 Panel1, out of which the petitioner was appointed, his appointment as such could not have been cancelled after a lapse of more then ten years. In the case of Roshan Lal and Ors. v. International Airport Authority of India and Ors. reported in : (1981)ILLJ272SC , the apex Court has held as under:

One of the principal submissions made by Smt. Shyamla Pappu, learned Counsel for the petitioners was that the appointment of the respondents as Airport Officers (Ops.) was made at a time when there was no sanction for such posts and therefore their appointment was illegal. Other reasons were also advanced in support of the claim that the respondents were irregularly appointed as Airport Officers. We are afraid that it is rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Ops.). The respondents were appointed as Airport Officers in 1975 and the present writ petitions were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers Several years after

their appointment. We also notice that the prayer in the writ petitions also is confined primarily to the seniority list and the consequences flowing from the seniority list.

Similarly in the case of Narender Chadha and Ors. v. Union of India and Ors. reported in : [1986]1SCR211 , the apex Court has held that in a case where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation, it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all.

16. It is not in dispute that the petitioner continued on the post as such for more than ten years and at no point of time his appointment was challenged by the respondent No. 6 and merely because the appointment of the petitioner was questioned on the floor of the State Legislative Assembly at the behest of respondent No. 6 the orders impugned were issued even without giving an opportunity of being heard to the petitioner and thus the action of the respondent State must be held to be arbitrary and most unreasonable and violative of the principles of natural justice.

17. Having considered the submissions made at the bar and also noticing the case of the respective parties and seeing the legal propositions as motivated above. It must be held that the orders impugned, as contained in Annexures-6 and 6/A cancelling the appointment of the petitioner on the post of Assistant Professor, Paediatric Surgery is wholly without jurisdiction and also violative of the principles of natural justice.

18. In the result, this writ applications allowed and the orders impugned, as contained in Annexures-6 and 6/A, are hereby quashed. Consequently thereof, the petitioner shall continue on the post as such where he was working from before. However, in the facts and circumstances of the case there shall be no order as to cost.