

Ashok Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-24-1999

Judge : S.K. Katriar, J.

Appeal No. : C.W.J.C. No. 570 of 1998 (R)

Appellant : Ashok Kumar

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

S.K. Katriar, J.

1. The sole petitioner in this writ petition prays for an appropriate writ or direction for a declaration that interference by the then Executive Engineer, Mechanical Division, Hazaribagh, with the cadre of Junior Accounts Clerk held by the petitioner is arbitrary, bad for lack of jurisdiction, and wholly unauthorised, and accordingly, it be declared that the petitioner continues to hold the post in the cadre of Junior Accounts clerk and as such he is entitled for salary ever since 1-1-93. The petitioner had approached this Court earlier also in writ jurisdiction as well as in contempt proceeding, but obviously without success.

2. According to the petitioner, he was appointed as a Pump Attendant in the Mechanical Division of the Public health Engineering Department (PHED, for short), as a Class IV employee on 20-8-74. He was thereafter promoted to the next higher post of Righan being a Class III post, on 12-2-84. The seniority list of class III employees was published on 22-8-95. no objection having been, raised, the same attained finality. By order dated 13-12-88, the petitioner was given an equivalent post of Junior Accounts Clerk, being another post of just the same level and carrying just the same pay-scale in the same department under orders of the Superintending Engineer, Mechanical Circle, Ranchi. The Accounts Section was also under the Superintending Engineer. It was a precisely equivalent post, but surely involved change of discipline and cadre. The petitioner further states that the said order dated 13-12-88, was approved by the Regional Chief Engineer, PHED, Bihar, Ranchi, by his order dated 21-1-91 (Annexure-A), The Executive Engineer, Mechanical Division, by his order dated 11-11-92 interfered with the said order dated 13-12-88, read with the order dated 21-1-91 (Annexure-A), and ordered that the petitioner cannot continue on the Accounts side and stopped his functioning. The Superintending Engineer inquired into the matter and by his order dated 20-12-92 directed the Executive Engineer not to give effect to the said order dated 11-11-92 which, in effect, should mean that the petitioner shall continue to function on the Accounts side. The Executive Engineer refused to relent and stopped payment of salary to the petitioner with effect from 1-1-93. It must be stated that the petitioner has not annexed any one of the aforesaid documents to the writ petition.

3. Aggrieved by the order of the Executive Engineer stopping his salary with effect from 1-1-93, the petitioner moved this Court by preferring CWJC No, 1683 (R). The writ petition was disposed of by this Court by order dated 5-8-93, whereby the petitioner was given the liberty to file a representation before the Regional Chief Engineer with regard to the payment of his salary, which if submitted had to be disposed of within the fixed period. According to the petitioner, no order was passed on his representation and he had, therefore, to prefer a contempt application before this Court for non-implementation of the order dated 5-8-93 (Annexure-1), which was registered as MJC No. 24 of 1994(R). The same was finally dropped by this Court by order dated 27-9-95 (Annexure-8), aggrieved by

the said order dated 27-9-95 (Annexure-8), the petitioner had preferred SLP (Civil) No. 10230 of 1996, before the Supreme Court . which was dismissed as withdrawn on 24-11 -97 (Annexure-9). All attempts .. of the petitioner having failed on the executive side, and obviously in this Court as well as the Supreme Court on earlier occasion, the petitioner has again moved this Court for just the same cause of action and just the same reliefs.

4. Learned Counsel for the petitioner submitted that the Executive Engineer had passed an arbitrary order on 11-11-92, discontinuing the petitioner on the Accounts side and stopping his salary. He also acted in clear disobedience of the order dated 24-12-92, passed by the Superintending Engineer who had clearly directed him not to give effect to the said order dated 11-11-92. Relying on a document marked Annexure-10 to the writ petition, he further submitted that this document is a chart showing change of cadre/section happening in the department for a long time. The document marked Annexure-11 is the purported policy decision of the State Government to the effect that such change of cadres is permissible. He further relied on the documents dated 10-5-95 (Annexure-6), and dated 5-10-95 (Annexure-7). In his submission, Annexure-6 was submitted by the then Regional Chief Engineer to the Registrar of this Court in the aforesaid CWJC No. 1683 of 1993 (R), and Annexure-7 was another report dated 5-8-95 of the Regional Chief Engineer, PHED, Ranchi. Relying on those two documents, learned Counsel for the petitioner submitted that the Regional Chief Engineer had in his two reports to this Court in CWJC No. 1683 or 1993(R), submitted that the petitioner should be paid his full salary w.e.f. 1-1-93, because he has been deprived of the same on account of the arbitrary action of the Executive Engineer and amount should be realised from the salary of the Executive Engineer.

5. Mr. Ramesh Kumar Marathia, learned Government Pleader, submitted that the aforesaid letter dated 21-1-91 (Annexure-A), where by according to the petitioner aforesaid order dated 13-12-88 of the Superintending Engineer was approved by the Chief Engineer, was a fake letter and was never issued by the Department. Learned Government Pleader took me through Paragraphs 22 and 23 of the counter-affidavit read with letters dated 7-10-91 (Annexure-B), and dated 8-6-92 (Annexure-C), to establish that after the inquiry the department came to a definite

conclusion that the aforesaid letter dated 21-1-91 (Annexure-A) was a forged and fabricated document. This position is further manifest from the comprehensive letter contained in memo No. 404 dated 22-6-95 (Annexure-H), from the Joint Secretary, PHED, Patna, to the Regional Chief Engineer, PHED, Ranchi.

6 Learned Government Pleader further submitted that the petitioner was reverted from the post of Junior Accounts Clerk to his original post Rig Man from 1-1-93, vide office order No. 312 dated 11-12-92, office order No. 7, dated 9-1-93 and approved by letter No, 377, dated 15-6-93, which are marked Annexures : D to F to the counter-affidavit, respectively. Relying on the statement made in paragraph-25 of the counter-affidavit, he submitted that the petitioner had worked as Junior Accounts Clerk from 9-6-89 to 31-12-92, and he has been fully paid for this [period, he further submitted that the petitioner never carried out the said order of reversion and has not worked at all ever since 1-1-93. Therefore, there is no question of payment of salary to him w.e.f. 1-1-93. Learned Government Pleader further submitted that in view of the petitioner's refusal to carry out the order or reversion and his continued, unauthorised absence ever since 1-1-93, the petitioner was subjected to departmental proceeding and his services have been terminated by office order No. 58, dated 20-10-94 (Annexure-G). Learned Counsel further submitted that the said order has not so far been challenged either in appeal or in this Court and has, therefore, attained finality. In any case, the framework of the present writ petition is entirely different. Learned Government Pleader further submitted that it is manifest from the internal communication dated 22-6-95 (Annexure-H), that no post of Junior Accounts Clerk was available or vacant in the PHED Division at Hazaribagh.

7. The learned Government Pleader lastly submitted that the writ petition should be thrown out on the ground of suppression of material facts. In Paragraphs 17 and 21 of the counter-affidavit, it has been stated that the petitioner has purposely and with a mala fide motive suppressed the material fact of his termination from service. It is stated in Paragraph-17 of the counter-affidavit that it was ' clearly stated in the show cause submitted by the Executive Engineer, PHED, Mechanical Division, Hazaribagh, in the aforesaid MJC No. 87 of 1995(R), that the services of the petitioner had been terminated on account of continued, unauthorised absence

since 1-1-93, and for his refusal to carry out the order of reversion, vide Annexure-G. He further submitted that the petitioner is guilty of forging the aforesaid letter dated 21-1-91 (Annexure-A), which is the bed-rock of the petitioner's case. My attention has been invited to the contents of paragraph-8 of the report which states that 'it was clear that the petitioner with effect from 9-6-89, the date when the petitioner joined on the post the Junior Accounts Clerk continued and still continues to serve on the post of Junior Accounts Cleric' which, in the submission of the learned Government pleader, amounts to misleading this Court. In view of the facts and circumstances stated above, he submitted that the petitioner knew full well that his services had been terminated for continued absence from duty ever since 1-1-93. Wrapping up his argument on this part, he submitted that the writ jurisdiction can never be exercised in favour of a person who is guilty of suppression of fact, or misleading the Court, or forging documents.

8. Learned Counsel for the petitioner submitted in reply that the contents of the departmental letter dated 7-10-91 (Annexure-B), does not connect the petitioner and, therefore, reliance placed by the respondents is wholly misplaced. As to the internal communication dated 8-6-92 (Annexure-C), he submitted that this was a letter from the Regional Chief Engineer, Ranchi, to the Superintending Engineer, Ranchi, to enquire whether or not the aforesaid letter dated 21-1-91 (Annexure-A), had been issued by the office. He lastly submitted that the reports dated 10-5-95 (Annexure-6), and dated 5-8-95 (Annexure-7) both submitted by the Regional Chief Engineer, Ranchi, to this Court in MJC No. 97 of 1995 (R), at the behest of the Court, were submitted pursuant to the order dated 3-5-95 (Annexure-5) passed by this Court in MJC No. 97 of 1995(R).

9. Having considered the rival submissions, this Court is clearly of the view that the petitioner has preferred this writ petition mindlessly and without any cause of action at all. All his grievances relating to payment of salary ever since 1-1-93 has been comprehensively agitated by the petitioner before this Court in CWJC No. 1683 of 1993 (R), as well as MJC No. 24 of 1994(R), and S.L.P. (C) No. 10230 of 1996. The petitioner having failed to get any relief whatsoever on the earlier occasions, nothing survived thereafter. Secondly, it is manifest from the averments made in Paragraphs -22 and 23 of the counter-affidavit read with Annexures : B,

C. and H, that the authorities had reached a definite conclusion after checking up their records and enquiring that the aforesaid letter dated 21-1-91 (Annexure-A), is a forged and fabricated document, obviously at the instance of the petitioner. Who else other than the beneficiary himself. Thirdly, the aforesaid letter contained in memo No. 404, dated 22-6-95 (Annexure-H), is a comprehensive letter on the entire gamut of the issue in hand after due enquiry from the Joint Secretary, Department of PHED, Patna, to the Regional Chief Engineer, PHED, Ranchi, stated that no post of Junior Accounts Clerk was available or vacant in the office of the PHED, Hazaribagh. Fourthly, the petitioner was reverted to the post of Rig Man with effect from 1-1-93 as is manifest from Paragraph-24 read with Annexures D, E and F, of the counter-affidavit, and was never carried out. This Court is in no doubt that the petitioner was bound to carry out the said order of reversion which, if carried out, would have rendered all subsequent action at the instance of the petitioner on the administrative side or in this Court impossible. This Court, therefore, blames the petitioner no end for his indisciplined and recalcitrant behaviour. Fifthly as is manifest from the averments made in Paragraph-21 of the counter-affidavit, read with the order dated 28-10-94 (Annexure-G), that the services of the petitioner has been terminated after a proper departmental inquiry on account of continued unauthorised absence from duty ever since 1-1-93, and also for disobedience of the orders of the Government. It has been clearly found in course of the inquiry that the petitioner has not worked at all since 1-1-93. Where is, therefore, the question of payment of salary ?

10. Lastly, this Court is clearly of the view that the petitioner is guilty of gross suppression of facts for misleading this Court, and of forging the documents to create a case to agitate at various levels. It is manifest from the materials on record that the petitioner is guilty of fabricating the aforesaid letter dated 21-1-91 (Annexure-A). He is also guilty of misleading this Court by making a false statement in paragraph-8 of the counter-affidavit to the effect that he has been continuously functioning as Junior Accounts Clerk ever since 9-6-89 and still continues to serve as such. Faced with the aforesaid order of reversion to the post of Rig Man, and the order of termination dated 28-10-94 (Annexure-G), there is absolutely no question of his working at all on any post ever since 1-1-93 let alone as Junior Accounts Clerk. The petitioner is also guilty of suppressing the material

facts. He has been fully aware of the order of reversion as well as the order terminating his services surely ever since copy of the show cause of the Executive Engineer was served on him in MJC No. 97 of 1995(R). The writ petition is, therefore, fit to be dismissed on the ground of suppression of facts, for misleading this Court, as well as forging a vital document in support of this case.

11. In the result, this writ petition is dismissed.

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