

Surjit Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-09-2001

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. No. 9089 of 2000

Appellant : Surjit Kumar

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

S.N. Jha, J.

1. This writ petition on behalf of the sole petitioner has been filed for quashing the order of Regional Deputy Director of Education (RDDE), Tirhut Division, Muzaffarpur, contained in his Memo No. 819 dated, 26-11 -99 terminating the services of the petitioner and directing recovery of the amount paid to him.

2. The case of the petitioner is that on 16-9-92, the RDDE, Muzaffarpur requested the local Employment Exchange to recommend the names for appointment on the post of Clerk in Mofussil Offices of the Education Department in Tirhut Division. On 30-12-92, an advertisement was also published. The petitioner who possessed the requisite qualification and was registered with the Employment Exchange applied

for the post. On 25-3-93, the candidates were called for interview with requisite papers on 15-4-93. The petitioner appeared for interview. After interview, etc. on the recommendation of the Divisional Establishment Committee on 14-9-93, he was appointed on the post of Clerk and posted in the office of the Sub-Divisional Education Officer, Bagha, West Champaran. On 19-9-93, he submitted his joining in the said office which was accepted. On 4-6-96, he was transferred to Primary Teachers Training College, Dariapur, East Champaran. The said order, however, was modified on 21-11-96 and he was posted in the office of the Sub-Divisional Education Officer, Sitamarhi, where the petitioner joined and started working. All on a sudden, the payment of salary was stopped to the petitioner. However, after verification, etc. order was passed on 25-9-97 for payment of salary. The petitioner thereafter continued his services without any trouble and was also paid his salary. In the meantime on 19-4-98, he was allowed to appear at the Hindi Noting and Drafting Examination, which he passed on 3-11-98. Suddenly on 12-12-98, he was served with a show-cause notice against the proposed termination of his services alleging that his appointment was illegally irregular. Against the said notice the petitioner filed writ petition CWJC No. 2781/99 which, it is said, is pending in this Court. On 16-8-99 he was served with another show-cause notice by the RDDE stating that the show cause filed by the petitioner was not satisfactory. The petitioner informed the RDDE that he had already filed writ petition challenging the earlier notice. On 26-11-99 impugned order was passed terminating his services and directing recovery of the amount paid to him.

3. From perusal of the order dated 26-11-99, copy whereof is Annexure 9 to the writ petition, it appears that the services of the petitioner have been terminated on two-fold ground that (a) at the time of his appointment, the procedure prescribed was not observed; and (b) roster clearance was not obtained nor observance of the reservation rules was ensured. Reference has been made to Circular No. 16440 of the Personnel and Administrative Reforms Department dated 3-12-80 which is alleged to have been violated in the appointment of the petitioner. In the counter-affidavit, however, the respondents have further stated that the appointment was made without advertisement, etc. a ground not mentioned in the impugned order. In the supplementary counter-affidavit, the respondents have referred to another circular of the Personnel and Administrative Reforms Department No. 2603 dated

31-3-92 and stated that the appointment on Class III posts were required to be made as per the procedure and by the authority prescribed in that Circular and not otherwise, and as the appointment of the petitioner was not made by the prescribed authority and the procedure laid down therein was not followed his appointment was illegal.

4. The case of the petitioner is that the State Government has framed statutory rules for appointment, etc. of the ministerial staff in the offices of the Education Department in the Divisions and the attached offices under Article 309 of the Constitution of India vide Notification No. 3435 dated 13-8-74. There being statutory rules in existence appointment on Class III posts were required to be made by the authority and in accordance with the procedure prescribed therein. Neither Circular No. 16440 dated 3-12-80 nor Circular No. 2603 dated 31-3-92 can be said to be relevant. Being administrative Circulars, they could not supersede statutory rules. As regards the circular dated 31-3-92, it has further been stated that by order contained in the wireless message dated 5-9-92, its implementation was kept in abeyance till further communication. Thus, there was no question of the petitioner's appointment being made as per that circular.

5. I find substance in the case of the petitioner. The State Government having framed statutory Rules with respect to requirement of ministerial staff in the Mofussil Offices of the Education Department, it is obvious that appointment in those Offices could be made only by following the procedure and by the authority prescribed therein. The rules provide for appointment by a Divisional Establishment Committee. The impugned appointment having been made on the recommendation of the Divisional Establishment Committee after advertisement, etc. does not seem to suffer from any illegality on that score.

6. The appointment of the petitioner was verified more than once in a span of six years during which he was transferred from one office to another without any objection or hindrance from any quarter. It appears that complaints were made alleging irregularities in the appointment by the then RDDEs, Tirhut Division, which also created cloud over the petitioner's appointment. In the wake of those complaints a general direction was issued by the Director, Secondary Education

vide his letter No. 1444 addressed to the District Education Officers concerned, and Letters No. 1445 dated 9-12-98 addressed to the RDDE, Tirhut Division, Muzaffarpur, asking them to take steps to cancel the appointments of the persons concerned after giving them 15 days notice. From the chart enclosed with letter No. 1445 dated 9-12-98 marked Annexure 'A' to the supplementary counter-affidavit, it appears that direction related to as many as 134 employees working in the district of Sitamarhi, Muzaffarpur, East Champaran and West Champaran. It is not clear from the pleadings if all those 134 and odd persons were appointed in the same transaction but, apparently, they have been treated on the same footing.

7. Adverting to the second ground that roster clearance was not obtained and the compliance of the reservation rules was not ensured, it may be observed that seeking roster clearance was the look out of the authorities concerned and if that was not done the appointee should not be made to suffer after several years of appointment. There is no allegation that the petitioner played any fraud on the matter of appointment, nor it is said that the appointment was made in extraneous consideration. In such situation, if the appointing authority did not adhere to the procedure and obtain the roster clearance, it would not be proper to penalise him. Besides, foundational facts have not been stated by the respondents to suggest that the appointment of the petitioner was in excess of the quota. In this view of the matter, even if it be assumed that roster clearance was not taken, that, in my opinion, may not be a sufficient justification to terminate the services of the petitioner.

8. Both the grounds on which the petitioner's services have been terminated being thus untenable the impugned order must be set aside.

9. It may not be out of place to mention here that some of the appointments such as Ravindra Kumar Tiwary and Anil Kumar Jha whose services were terminated by similar order pursuant to the same very direction of the Director, Secondary Education dated 9-12-98, had approached this Court in CWJC No. 5003/99 and CWJC No. 4815/99 respectively which were allowed by this Court. In fact, against the order passed in the former case, the State had preferred LPA No. 1512 of 2000 which was dismissed.

10. Coming to the question of consequential relief it appears that though the petitioner's services were terminated on 26-11 -99 he moved this Court about then months after on 13-9-2000. In the absence of any explanation as to why he did not challenge the order earlier I am of the view that he should not be paid his salary for the intervening period for the months of December 1999 to August 2000, i.e., nine months.

11. In the result the petition is allowed. The impugned order dated 26-11-99 (Annexure 9) is quashed. The petitioner will be entitled to consequential benefits except salary for the months of December 1999 to August 2000. There will be no order as to costs.

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