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Court : Patna

Decided On : Apr-11-2001

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 12173 of 2000

Appellant : Ashok Kumar Nirala

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard Counsel for the petitioner and JC to GP8 for the respondents.
2. By this writ application, the petitioner has prayed for quashing the order, as contained in letter No. 1355 dated 28-10-2000, by which the petitioner has been asked to show cause regarding his appointment/promotion on the post of peon in D.N. High School, Muzaffarpur and as to why his services should not be terminated.
3. Short facts giving rise to this application are as follows:

The petitioner initially was appointed as Class IV employee with effect from 20th January, 1988 after proper advertisement, interview and selection and since then he was working and getting regular salary from the school in question. Subsequently, the appointment of the petitioner was confirmed on 19-8-1992. Later on, on the basis of recommendation of the Sub-divisional Education Officer as well as the headmaster of the school, the District Education Establishment Committee in its meeting dated 6-5-1995 promoted the petitioner to the post of Clerk, and, thereafter, he was transferred from one school to another against the post of Clerk. While the petitioner was continuing on the post of clerk, his services were terminated by the Director, Secondary Education, vide order dated 18-11-1997.

4. The petitioner being aggrieved by order of termination approached this Court in Civil Writ Jurisdiction Case No. 1130 of 1998. This Court, however, after hearing the parties finally disposed of the writ application on 31-7-1998 and quashed the impugned order dated 18-11-1997.

5. Against order dated 31-7-1998 passed by this Court in Civil Writ Jurisdiction Case No. 1130 of 1998, the State preferred Letters Patent Appeal No. 1181 of 2000 and the same was, ultimately, dismissed by order dated 28-8-2000, as contained in Annexure-16. It appears from Annexure-18 series that the like matters were preferred to the Apex Court by the State of Bihar in Special Leave to Appeal (Civil) CC 657-658 and the same, ultimately, was dismissed by the apex Court. After exhausting all the remedies, the respondents issued Annexure-1 to the petitioner asking him to show cause as to why his appointment/promotion should not be cancelled giving rise to this application.

6. Learned Counsel appearing on behalf of the petitioner submitted that since the petitioner continued on the post of clerk since 1995, there was no requirement of issuance of notice to him to terminate his services on the ground of equity itself. Learned Counsel further submits that since the appointment of the petitioner and the action of the respondents were tested by this Court in Civil Writ Jurisdiction Case No. 1130 of 1998 and in Letters Patent Appeal No. 1181 of 2000, the matter is not required to be examined and scrutinised by the respondents again, as the

order of promotion of the petitioner attained finality.

7. It is not in dispute that the petitioner was promoted on the post of clerk by the District Education Establishment Committee by its resolution dated 6-5-1995 and till date the petitioner is continuing on the post as such.

8. Learned Counsel appearing on behalf of the petitioner in this regard has placed reliance in the case of Roshni Devi and Ors. v. State of Haryana and Ors. : AIR 1998 SC3268 and in the case of Abhay Kumar Pandey v. State of Bihar and Ors. (2000)2 PLJR, 115. It is settled by the judgments of this Court and apex Court that if an employee continued on a post for several years, his services should not be terminated. In the case of Roshni Devi (supra) and in the case of Union of India and Ors. v. Kishorilal Bablani : 1999(105)ELT546(SC) , this view has been approved. The law on the point is very much settled that once an employee continued on a particular post for several years, the services should not be terminated merely because the post was not advertised. I have already noticed above that the earlier order of the respondents, whereby and whereunder the services of the petitioner were terminated, was quashed by this Court and the order of this Court was affirmed in Letters Patent Appeal, as referred to above. While the matter was tested by this Court more than once, in my opinion, the respondents were not justified for the proposed action taken against the petitioner. In the facts and circumstances of the case, the law of equity stops the respondents from taking action in the matter.

9. Considering the facts and circumstances of the case and also noticing the legal proposition aforesaid, this application is allowed and the impugned notice, as contained in Annexure-1 is hereby quashed.

10. No order as to costs.