

Pramod Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jun-21-2006

Judge : Ramesh Kumar Datta, J.

Acts : Police Act - Sections 12; Police Rules - Rule 63

Appeal No. : C.W.J.C. No. 6741 of 2003

Appellant : Pramod Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : S.C. 1

Advocate for Pet/Ap. : Rajendra Prasad Singh, Sr. Adv.

Disposition : Petition dismissed

Judgement :

Ramesh Kumar Datta, J.

1. This writ petition has been filed for quashing of the order vide Memo No. 135 dated 26.2.2003 issued by the Superintendent of Police Railway, Katihar and for further quashing of the follow up order vide Memo No. 471 dated 18.3.03 by which the petitioner has been removed from service on the ground that his appointment was not made after following the process of selection. Petitioner further claims for

a direction to the respondents to reinstate him with all consequential benefits.

2. The case of the petitioner is that his father Tirath Narayan Singh was working as constable in Bihar Police and on 30.1.1989 he made an application before the Inspector General of Police, Railway, stating that his health was very poor and on that account he was facing trouble in discharging hard duty on the post of constable and, thus, he may be permitted to voluntarily retire and in his place his son, the petitioner, may be appointed on the post of constable. After some further reminders the request made by the petitioner's father was accepted and by Memo No. 1200 dated 13.4.1989 an order was issued by the Railway I.G. Bihar, Patna approving the case of the petitioner for appointment. Subsequently the petitioner was appointed and his father voluntarily retired from service. The petitioner thereafter joined his post and continued on the same until all of a sudden on 26.2.2003 the impugned order was issued removing him from service on the ground that the appointment has not been made as on compassionate appointment either or on the recommendation of the appointment committee and, therefore, the Government treated his appointment as illegal.

3. Mr. Rajendra Prasad Singh, learned Senior Advocate appearing for the petitioner, has mainly based his claim on the basis of the equity and on the ground that there was no fraud or misrepresentation by the petitioner and every thing is above board. It is contended by the learned Counsel that it was wholly unfair to terminate the petitioner after long lapse of 14 years of service in course of which he has received several commendations and rewards.

4. A counter affidavit has been filed on behalf of the respondent No. 3 wherein the fact has not been denied. But it is clear stand of the respondent that the appointment of the petitioner was made in gross violation of the rules and procedures for appointment as contained in Bihar Police Manual and there was no authority conferred upon the Inspector General of Police, Railway to make such appointment. It was stated by the learned S.C.1 appearing for the State that even Railway Superintendent of Police has no power to appoint. In terms of the conditions of the Bihar Police Manual there is process on the basis of which appointment has to be made on the basis of a panel prepared by the Selection

Board and only on the basis of such recommendation the S.P. can make appointment. It is contended by the learned Counsel for the State that neither the I.G. nor the D.G.P. has such authority to appoint any such person either on compassionate ground or for any other reason. In support of his said contention learned Counsel for the petitioner relied upon a Judgment of this Court reported in 2000(3) PLJR 717; Sudhir Kumar v. The State of Bihar. In the said decision the issue was whether the DGP and I.G. has inherent power to make appointment or any such power either under Rule 63(c) or Section 12 of the Police Act to direct to make appointment of any person on the post of constable.

5. After considering various decisions of the Supreme Court in this regard this Court clearly laid down that the D.G.P. had no power to make appointment or direct for appointment of a constable on the said or any ground as per the Government Circular as well as order issued from time to time.

6. On the aforesaid stand learned Counsel for the petitioner relied upon the case of the Division Bench of this Court reported in 1994(2) Bihar Law Judgment 496 Ashok Kumar and Ors. v. the State of Bihar and Ors. On the basis of the said Judgment learned Counsel contended that if the initial appointment was wrong but the petitioner has not obtained the same by fraud or misrepresentation then the validity of such appointment cannot be reopened after the lapse of 14 years. On a consideration of the facts of the case of Ashok Kumar I find that the issues of that case were entirely different. There the ad hoc employment of the petitioner was regularised by order passed by the authorities and subsequently their services were terminated. There was also in intervening period an order of this Court passed in writ petition whereby their appointments had been upheld and certain direction had been issued. This Court had held for the said reasons that the issue could not be reopened and, thus, after 12 years the authorities could not be permitted to question the initial appointment of the petitioner.

7. The facts of this case are on entirely different footing from that of the case of Ashok Kumar and it is squarely covered by the decision in Sudhir Kumar's case reported in 2000(3) PLJR 717.

8. In the aforesaid facts and circumstances of the case this writ petition is dismissed. It is, however, directed that in case the petitioner applies for any appointment in the police service the authorities will consider his application after giving necessary relaxation of age for the period which he has worked.

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