

Bihari Paswan Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-25-2004

Judge : Narayan Roy, J.

Acts : Service Law

Appeal No. : CWJC No. 8581 of 1999

Appellant : Bihari Paswan

Respondent : State of Bihar and ors.

Advocate for Def. : JC to GP 7

Advocate for Pet/Ap. : Gyanand Roy, Adv.

Disposition : Application dismissed

Judgement :

Narayan Roy, J.

1. Heard counsel for the parties.

This writ application is directed against order dated 29.4.1999, whereby and whereunder appeal filed by the petitioner against order dated 4.7.1991 has been dismissed.

2. It is submitted by learned counsel for the petitioner that the petitioner was appointed on the post of peon by virtue of order dated 17.6.1991 in the office of the Superintending Engineer, Minor Irrigation Department, Muzaffarpur and immediately thereafter he was terminated by virtue of order dated 4th July, 1991 and the appeal filed by the petitioner against the order of dismissal has been dismissed vide order, as contained in annexure 1. It is further submitted that the petitioner initially was working on daily wages in the Minor Irrigation Circle, Muzaffarpur and he was empanelled and owing to his past services the District Establishment Committee considered his case for absorption and the District Magistrate directed the Superintending Engineer, Minor Irrigation Circle, Muzaffarpur to adjust him against vacancy of Class IV post, and, accordingly, he was appointed on 17.6.1991. It is further submitted that the petitioner was appointed as per existing vacancy, and, therefore, he could not have been terminated within a month of his appointment.

3. A counter affidavit has been filed on behalf of the respondents stating therein that the petitioner was appointed/adjusted against Class IV post contrary to the guidelines issued by the State Government, as contained in annexure 4 to the writ application. It is further stated that in view of the Government decision, the posts were to be filled up after exhausting the persons enrolled in muster roll, the number of which was about 3000 and, in no case, the petitioner could have been given preference over those persons.

4. From annexure 4, it appears that the State Government issued guidelines vide its letter dated 6th May, 1991 and thereafter the petitioner was appointed on 17.6.1991 ignoring the guidelines, issued by the State Government and when this matter was realised by the authorities, the petitioner was terminated within a month of his appointment.

5. Since about 3000 persons were enrolled as muster roll workers in the Minor Irrigation Department, normally, the vacancies could have been filled up from amongst them, and, in no way, the petitioner could have been given preference over them.

6. The procedures adopted by the authorities while appointing the petitioner in the Minor Irrigation Department appears to be contrary to the guidelines and mandates of law, and, in that view of the matter, it is held that the appointment of the petitioner on Class IV post was ab initio void.

7. Considering the facts and circumstances of the case and for the reasons aforementioned, therefore. I do not find any reason to interfere with the orders impugned.

8. This application is, accordingly, dismissed.

9. However, it will be open to the petitioner to approach the authority concerned for his appointment afresh, in case vacancies would be available.

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