

Birendra Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-15-2003

Judge : Narayan Roy, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 4844 of 2003

Appellant : Birendra Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : A.K. Choudhary, GP 8

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

Judgement :

Narayan Roy, J.

1. Heard Counsel for the parties and considered the counter-affidavit filed on behalf of the State.

2. By this writ application the petitioner prays for quashing the Communique as contained in Annexure 1 dated 24th December, 2002 issued under the signature of Director, Secondary Education, Bihar, Patna to the District Education Officer, Gaya whereby and whereunder directions have been issued to lodge First

Information Report against the Headmaster and the teachers who managed to obtain their appointment on the basis of forged documents and to initiate departmental proceeding against the Headmaster of the school and not to pay the salary to the individual teachers including the petitioner.

3. According to the case of the petitioner, he was appointed as Assistant Teacher by the Deputy Director, Secondary Education, Government of Bihar Patna as per recommendation of the Vidyalaya Sewa Board in the year 1988 along with other teachers and thereafter he continued in services and till date he is working as Assistant Teacher. However, his salary has been stopped with effect from December, 2002 pursuant to the impugned direction as contained in Annexure-1.

4. Learned counsel for the petitioner submitted that the petitioner was validly appointed by the competent authority as per the recommendation of Vidyalaya Sewa Board and he is continuing in the services till date and, therefore, the authorities have no jurisdiction to stop his salary till any departmental action is taken against him. It is further submitted that it would appear from the impugned Annexures that a direction was issued to hold an enquiry to identify such teachers who were illegally appointed and to take legal action against them but till date no action has been taken against the petitioner nor any FIR has been lodged and, therefore, his payment of salary could not have been stopped, It is also submitted that till date no notice whatsoever has been given to the petitioner to explain his conduct and in a most arbitrary and unreasonable manner the authorities have issued the impugned direction as contained in Annexure-1.

5. A counter-affidavit has been filed on behalf of the respondent No. 4 the District Education Officer, Gaya stating therein inter alia that as per the direction of the Director, Secondary Education, Bihar, Patna, he has stopped the salary of the petitioner and other persons whose names have been referred in Annexure-1 and directions have been issued to lodge FIR against such persons. Learned Government Pleader No. 8, with reference to the statements made in the counter-affidavit, submitted the vide communication as contained in Annexure A, direction was issued to inquire into the matter and to identify such teachers who obtained their appointments on the basis of forged documents and enquiry as such has

been completed and necessary direction has been issued vide impugned communication to take legal action against such teachers and the Headmasters of the school and since the appointment of the petitioner and others have been found to be ad initio void, directions have been issued to stop payment of salary to them. Learned G.P. 8, at the same time, submits that since appointment of the petitioner and others have been found to be ad initio void, there was no necessity to observe the principles of natural justice and, therefore, no notice whatsoever was given to the petitioner.

6. From the facts as enumerated above, it is not understandable to me as to when the authorities came to a conclusion on completion of enquiry that the petitioner and other similarly situated persons were not validly appointed, immediate action could have been taken to terminate their services and to take legal action if any. Learned G.P. 8, in this context, submits that since there is direction not to pay salary to the petitioner and to lodge FIR, there is no necessity to terminate his services, In case the appointment of a Government employee is found to be forged or illegal, entailing effect would be to terminate his services. This is altogether a different question that directions have been given to take legal action against them and to proceed against them by lodging FIR but till the services of such persons are not terminated, they would be deemed to be continuing in services. So far the facts of this case are concerned prima facie, it appears that the petitioner was not given any opportunity of being heard and thus the principles of natural justice have been violated.

7. On several occasions, this Court has dealt with such matters where payment of salary was stopped. In the case of Ramapati Mishra and Ors. v. State of Bihar and Ors., reported in BLJR 2001(2) 1502, this Court held that salary of a Government employee should not be stopped without any enquiry. The ratio laid down in the case of Ramapati Mishra (supra) however, has been affirmed by this Court in the case of Radha Kumari v. State of Bihar and Ors., reported in 2002 (3) BLJR Page 1743, and it was held that in certain exigencies payment of salary cannot be withheld till conclusion of enquiry. In the instant case, it appears that enquiry is complete and directions have been issued to take legal action against defaulting persons and at the same time direction has also been issued to stop their salary.

The services of the petitioners, however, has not been terminated till date. Since the enquiry is complete and services of the petitioner have not been terminated, in my opinion, the petitioner would be entitled to get his salary till any appropriate decision is taken in the matter to terminate his services.

8. For the reasons and discussions aforementioned, therefore, the order impugned as contained in Annexure-1 and the consequential orders must be held to be wholly without jurisdiction and violative of the principles of natural justice to the extent that salary of the petitioner has been stopped.

9. In that view of the matter, the authorities are directed to pay salary to the petitioner forthwith, till any action to terminate his services is taken against him.

10. With this direction/observation, this writ application stands disposed of.

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