

Arvind Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-30-2015

Appellant : Arvind Kumar

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5727 of 2010
Arvind Kumar, Son of Sri Vishwanath Raut, Permanent resident of Village Gopinathpur Dokra, Post Saraiya Factory, Police Station Saraiya, District Muzaffarpur, Bihar Petitioner Versus 1. The State of Jharkhand 2. The Secretary, Road Construction Department, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, Dist. Ranchi 3. The Special Secretary, Road Construction Department, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, Dist. Ranchi 4. The Engineer-in-Chief, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, Dist. Ranchi 5. The Chief Engineer, Road Construction Department, Government of Jharkhand, Ranchi, officiating from CMPDIL Premises, Kanke Road, Post Kanke, Police Station Gonda, District Ranchi 6. The superintending Engineer, Road Circle, Daltonganj, officiating from Daltonganj, Post Daltonganj, Police Station Daltonganj, District Palamau Respondents ----- CORAM: HONBLE MR. JUSTICE SUJIT NARAYAN PRASAD ----- For the Petitioner : M/s Ritu Kumar & R.K. Singh, Advocates For the Respondent-State : M/s

Bhawesh Kumar, (S.C.II) & Rahul Kamlesh, J.C. to S.C. II ----- 06/Dated:

30. 01.2015 This writ petition has been filed for quashing the office order as contained in Memo No. 628 dated 04.10.2010 issued by the Superintending Engineer, Road Circle, Daltonganj, by which the petitioner has been terminated from service.

2. Heard the parties and perused the documents on record.

3. Learned counsel for the petitioner submitted that in pursuance of the order passed by Honble Patna High Court, Ranchi Bench in CWJC No. 2338 of 1998 (R) dated 27.11.1999, direction was issued to the State of Bihar to take necessary steps for filling up the vacant posts in the Road Construction Department. In pursuance of the said direction, the Superintending Engineer, Road Circle, Daltonganj issued a notice on 12.01.2006 inviting applications for filling up the vacant Class-III posts in Road Circle, Daltonganj. The petitioner being qualified, immediately applied in pursuance to the notice dated -2- 12.01.2006 and accordingly an interview letter was issued to him dated 19.01.2006 to appear for interview/examination along with all requisite documents. The case of the petitioner was considered by the four men Committee in its meeting held on 25.01.2006, the name of the petitioner was recommended for being appointed as Tracer, a Class-III post. The petitioner thereafter, has joined in pursuance to the order of appointment dated 28.01.2006 and started discharging his duty. 4. The petitioner was issued a letter dated 16.12.2009 issued by the Special Secretary, Road Construction Department, Jharkhand, Ranchi informing him that an enquiry is to be made regarding his appointment. Accordingly, the petitioner was directed to give reply with respect to the fact that as to why his appointment be not cancelled on the ground that he was neither a party in MJC No. 977/02 nor has been appointed on the recommendation of the Establishment Committee constituted under the Chairmanship of Deputy Commissioner, Palamau, & also he was not working on daily wages in the department. No advertisement was made with regard to vacancies. The procedure laid down in the Resolution No. 16441 dated 03.12.1980 and 3577 dated 25.04.1997 issued by the Personnel, Administrative Reforms and Rajbhasha Department was not followed.

5. The petitioner thereafter gave reply stating therein that the reason mentioned in the show cause is not applicable in the case of the petitioner because the petitioner has been appointed after following all due procedures, and has been appointed by the competent authority.

6. It has further been stated in the reply that the direction passed in CWJC No. 2338 of 1998 (R) dated 27.11.1999 was not only confined to the writ petitioners of the said case rather the Honble High Court was pleased to direct to fill up all those vacancies lying vacant in the Road Construction Department and in pursuance to the same, the Superintending Engineer, Road Circle, Daltonganj being the competent authority had issued a notice inviting applications for filling up the said post in terms of thereof, the petitioner was also appointed. So far as the applicability of Resolution No. 16441 dated 03.12.1980 and 3577 dated 25.04.1997 is concerned, it has been stated that both the said resolutions were related to appointment of Class-1V -3- post whereas the petitioner was appointed to Class-III post i.e. as Tracer.

7. The petitioner thereafter received an office order contained in Memo No. 628 dated 04.10.2010 whereby and whereunder his services has been terminated with immediate effect and it has been decided to lodge F.I.R. against him since he along with others were appointed without following the procedure.

8. While assailing the order of termination dated 04.10.2010, the counsel for the petitioner has taken the following grounds:- vi) The petitioner was appointed on the basis of general direction issued by the Honble High Court in CWJC No. 2338 of 1998 (R) dated 27.11.1999. vii) The appointment was made after following the principles laid down under Article 16 of the Constitution of India i.e. by issuing the notice dated 12.01.2006. viii) The petitioner has been appointed by the duly constituted Committee. ix) The ground taken by the authorities in the show cause reply is not applicable so far as it relates to the petitioner. x) The petitioner cannot be terminated from service without initiating a regular proceeding.

9. Per contra the respondents have contested the case by way of filing a counter affidavit.

10. While defending the order of termination, it has been stated by the learned counsel for the respondent-State that the petitioner was appointed without following due procedure of law. Honble Patna High Court, Ranchi Bench although had directed to fill up vacant post but posts were directed to be filled up by the State Government and not by the functionary/authorities of the department as it has got no competency to make appointment.

11. The further submission has been made that the appointment was made without issuing any advertisement rather on the basis of notice pasted in the notice board of the office, no roster was approved from the office of Deputy Commissioner, who is the competent authority, no selection Committee was framed for any such appointment rather in presence of only two persons, the candidates -4- were called and the Superintending Engineers held appointment procedure.

12. The further submission has been made by placing reliance to the letter No. 313 (S) WE dated 27.01.2006 and 1406(S) dated 07.04.2006 issued by the Principal Secretary, Road Construction Department, Ranchi and the Chief Secretary respectively directing to make appointment in Class-IV post not against Class-III post otherwise the same will hit Article 16 of the Constitution of India.

13. Learned counsel for the State further submitted that too many discrepancies have been found out in course of enquiry, and thereafter, a decision was taken to terminate the services of the petitioner with a direction to institute an F.I.R.

14. After hearing the parties at length, the question which is to be decided in this case is as to whether- iv.) The appointment of the petitioner can be said to have been made after following the due procedure envisaged under Article 16 of the Constitution of India. v.) As to whether appointment for Class-III post can be made by the Superintending Engineer of Circle of the Department without getting its approval from the State Government. vi.) As to whether the appointment was made in accordance with the order / direction made by this Court in CWJC No. 2338 of 1998 (R).

15. So far as point no. 1 is concerned, the petitioner was appointed on Class -III post admittedly without issuance of advertisement, rather on the basis of notice pasted in the notice board of the Department.

16. In the matter of public appointment, the principle of equity and providing equal opportunity to all is sine quo non. Article 16 provides equal opportunity to all, in the matters of public employment. The Constitution does not envisage any employment outside the Constitutional Scheme and without following the requirement as laid down therein.

17. The admitted position in the case is that, no open advertisement was issued, thereby other similarly situated candidates -5- have been deprived in participating in the interview, since the appointment has been made on the basis of notice pasted on the notice board of the department which itself suggests that no wide publication of notice regarding availability of vacancy and inviting applications in pursuance to the same, has been made.

18. It is settled principle of law that the appointment to any post under the State Government can only be made after publishing appropriate advertisement, inviting applications from eligible candidates and holding of selection by body of experts or specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit be followed with respect to the candidates who apply in response to the advertisement.

19. In the instant case, admittedly no advertisement has been issued rather only on the basis of one notice pasted in the notice board by the Superintending Engineer, Road Circle, Daltonganj, the petitioner had made application and he had been selected while the respondent- State has taken a specific plea in the counter affidavit that there was no other application form except that of the petitioner and another of Shree Praveen Kumar Singh, the said statement is being quoted hereinbelow- 5 (d). That it is pertinent to mention here that there was no other application found except that of the petitioner and another of Sri Pravin Kumar Singh. No denial has been given by the petitioner, although, a rejoinder affidavit has been filed.

20. Thus, the appointment of the petitioner has been made in violation of principle laid down under Article 16 of the Constitution of India and it is settled that any appointment made contrary to the principle laid down under 16 of the Constitution of India cannot be said to be in accordance with law. The judgment of Honble Supreme Court in case of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Others reported in (2006) 2 SCC482 wherein at para-12 it has been held- The appointment to any post under the State can only be made after a proper advertisement has been made inviting -6- applications from eligible candidates and holding selection by a body of experts or specifically constituted committee whose members are fair and impartial through the written examination or interview or some other rational criteria for judging inter se merit of the candidates who has applied in response to the advertisement made

21. Further, in case of National Fertilizers Ltd. Vs. Somvir Singh (2006) 5 SCC493 Honble Apex Court dealt with a case where appointment was made without advertisement. At para 13 Honble Apex Court held as follows-

13. . Admittedly, no advertisement was issued in a newspaper nor was the employment exchange notified as regards existence of vacancies. It is now trite law that State within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities. It is also well settled that no recruitment should be permitted to be made through back door.

22. In view of settled proposition of law, the appointment of the petitioner cannot be said to be in accordance with law being in violation of Article 16 of the Constitution of India.

23. So far as the point no. 2 is concerned, the petitioner has been appointed by the Superintending Engineer, on the basis of a notice published by the Superintending Engineer of the Concerned Circle. To assess the fact that as to whether the Superintending engineer is the competent authority to make appointment in Class III post or not, it is relevant to discuss the Circular of the

Government issued on 6 th December, 1995 which deals with a process of appointment in Class-III post in the Regional Offices of the Government. The procedure has been given to fill up the post through a competitive examination to be conducted by Public Service Commission. Further, the State of Jharkhand has also issued direction in this regard wherein specific direction has been issued to fill up the vacant post after issuance of advertisement and after following the due procedure.

24. The contention of the petitioner in the reply to show cause notice and reference of Circular dated 03.12.1980 and 25.04.1997 cannot be accepted in view of the reason that- When the Government has issued a Circular regarding the -7- appointment of Class-IV post by fixing the procedure, then there cannot be any relaxation to the said procedure for filling the Class-III post, rather for filling the Class-III post, process should be more strict in comparison to the Class-IV post, even assuming that the said Circular deals with for filling up the Class-IV post it does not mean that the petitioner will be appointed in Class-III post by not following the due procedure of law. The facts remains that since there is no advertisement hence any appointment made contrary to provisions as contained in Article 16 of the Constitution of India cannot be said to be legal as answered in point no. (i). Further from perusal of order passed by this Court in CWJC no. 2338/1998(R) the direction has been given to State Government and not upon the superintendent Engineer.

25. From perusal of the circular dated 06.12.1995, it is evident that the process of appointment of class-III has been given, wherein also no power has been conferred upon the Superintendent Engineer of the Circle. Even otherwise also the superintendent Engineer of a Circle cannot be said to be a competent authority for making appointment due to the reason of specific procedure earmarked by the Government in the Circular dated 06.12.1995.

26. Hence, the superintendent Engineer is not competent authority to make appointment in Class-III post. Point no. (ii) answered accordingly.

27. So far as point no. (iii) is concerned, the learned counsel for the petitioner has made emphasis that the appointment has been made in terms of the order passed

by Honble Patna High Court, Ranchi Bench in CWJC No. 2338 of 1998 (R) wherein the direction has been given to fill up the vacant post in the Road Construction Department. To answer this point it is specific to see the order contained at Annexure-1, which is quoted hereinbelow- ..admittedly petitioners were appointed by the respondents without following procedure and the recruitment rules under articles 16 of the Constitution of India and therefore no legal right accrued to the petitioner to continue in service and the order of removal cannot be set aside. However, even assuming that advertisement was -8- issued without taking approval of the Government, the admitted position is that about 3281 posts in the Road Construction Department are lying vacant. This fact has been stated in para 117 of the writ petition and the same has not been controverted. Having regard to the fact that when 3281 posts are lying vacant in the Road Construction Department there is no reason why respondent will not proceed to make appointment against the vacant posts after following the procedure provided under the law. This writ application is therefore, disposed of with a direction to respondents including the state of Bihar to take necessary steps for filling up all those posts lying vacant in the Road Construction Department. Taking judicial notice of the fact that roads of the entire state are in dilapidated condition and it needs mass repair and reconstruction it is desirable that the respondents shall fill up all the vacant posts lying vacant in the Road construction Department as early as possible and preferably within a period of six months, if there is no other legal impediment in this regard.

28. However, this Honble Court has been pleased to direct to fill up the vacant post lying vacant in the Road Construction Department but the said direction has been issued upon the State of Bihar and not upon the functionary/authority. Further the direction has been given to fill up the vacant post after fulfilling the procedure provided under the law. Hence the requirement of law is that the procedure is to widely publish the advertisements- iii) So that all the eligible candidates may appear in the interview/selection process, iv) To follow the reservation policy, iii). To follow the Roster, 29. Though, there is a direction of this Honble Court to fill up the vacant post but in the instant case the advertisement itself has not been issued in pursuance of the order passed by Honble Patna High Court, Ranchi Bench in CWJC No. 2338 of 1998 (R), wherein a direction was

given to fill up all those vacancies lying vacant after following due procedures in accordance with law.

30. The authorities have conducted the enquiry for knowing the fact that whether illegality was committed by the concerned Superintending Engineer and when the authorities came to know that the -9- irregularity was committed then on the basis of that irregularity, a show cause was issued upon the petitioner as to why his appointment will not be struck down.

31. The petitioner after receipt of the same has given due reply but failed to satisfy the authority regarding the procedure as provided under the law, rather the instance has been given by the petitioner in reply to the show cause notice that his appointment has been made in terms of the order passed by Honble Patna High Court, Ranchi Bench in CWJC No. 2338 of 1998 (R). After receipt of reply, the respondents have found that the appointment is in contrary to the direction passed by this this Court in in CWJC No. 2338 of 1998 (R). The appointment itself has been done without following the settled procedure as provided under the law i.e. issuance of advertisement, constitution of duly constituted committee or by the commission and without following the procedure of reservation. Hence the authority came to conclusion that appointment of the petitioner is illegal and as such the impugned order has been issued with a direction to institute F.I.R. for commission of illegality.

32. In that view of the matter, I find no reason to interfere with the impugned order.

33. Accordingly, this writ petition is dismissed in terms of the observations & directions made hereinabove. (Sujit Narayan Prasad, J.) Tarun

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