

Umesh Kumar Singh Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Jan-23-2001

Reported in : 2001(49)BLJR1255; [2001(89)FLR367]

Judge : M.Y. Eqbal, J.

Acts : Service Laws; [Constitution of India](#) - Article 16

Appeal No. : Civil Writ Jurisdiction Case No. 838 of 2000 (R)

Appellant : Umesh Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : R.K. Marathia, G.P. 2

Advocate for Pet/Ap. : A.K. Sinha, Senior Adv. and T.K. Mishra, Adv.

Disposition : Writ application dismissed

Judgement :

ORDER

M.Y. Eqbal, J.

1. In this writ application the petitioner has prayed for quashing the order dated 13.3.95 and 8.10.98 as contained in Annexures-5 and 6 to the writ application, whereby the salary of the petitioner was stopped and was discharged/removed

from the service.

2. Petitioner's case inter alia is that he was appointed as Clerk in the vacant post lying in the office of District Superintendent of Education, Gumla, in terms of the appointment letter issued by Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi. Subsequently, services of the petitioner was said to have been confirmed and confirmation letter to that effect was issued on 8.4.1994 and petitioner was said to have received salary for one year and thereafter all of a sudden salary of the petitioner was stopped by the competent authority. Petitioner then filed representation for payment of salary, which was stopped since 1994 and ultimately filed writ petition being CWJC No. 1066 of 1996 (R). The said writ application was withdrawn by the petitioner and he again filed writ application being CWJC No. 2367 of 1997 (R). It is stated that after receiving notice of the writ application, the Regional Deputy Director of Education, Ranchi, terminated the service of the petitioner by the impugned order without any rhyme or reason.

3. Petitioner's further case is that in the year 1998 an inquiry was set up for terminating such candidates who were illegally appointed by the authority and pursuant to that inquiry several persons have been terminated but the services of the petitioner was not terminated.

4. A counter-affidavit has been filed by the respondents stating inter alia that the services of the petitioner was terminated after holding an inquiry and after giving opportunity to the petitioner to file show-cause but the petitioner never filed any show-cause. The case of the respondent is that petitioner procured false and fabricated letter under the signature of Director in the name of Regional Deputy Director of Education, Ranchi and got himself appointed on the basis of forged appointment letter. Copy of the appointment letter annexed as Annexure-1 to the writ application, is alleged to be a forged and fabricated document. The respondent further denied allegation that services of the petitioner was confirmed. When the illegal and forged appointment of the petitioner came into the light his payment of salary was immediately stopped and F.I.R. was lodged on 24.8.95 against the petitioner. Since the date of lodging of F.I.R. petitioner was absconding

in fear of his arrest. Petitioner was also given notice to show-cause but he did not file his explanation. Consequently, services of the petitioner were terminated on the ground of taking appointment on forged document.

5. Mr. A.K. Sinha, learned senior counsel for the petitioner assailed the impugned order of termination of the services of the petitioner as being illegal and wholly without jurisdiction. Learned counsel mainly contended that neither any inquiry was commenced nor any departmental proceeding was started before passing the impugned order. According to the learned counsel the impugned order is bad in law on the sole ground that the said order was passed without affording any opportunity of hearing to the petitioner.

6. On the other hand, Mr. R.K. Marathia, learned G.P. 2 submitted that since petitioner got appointment on the basis of forged and fabricated letter of appointment, a regular departmental proceeding is not necessary for terminating the services of the petitioner. Learned counsel submitted that in spite of the fact that the petitioner has committed forgery and F.I.R. to that effect was lodged, respondents sent several notices calling the petitioner to submit explanation, but the later did not choose to file explanation. Ultimately on the basis of evidence the services of the petitioner were terminated.

7. Having regard to the facts of the case and the submissions made by the learned counsels the question falls for consideration is as to whether initiation of regular departmental proceeding is necessary for terminating the services of the petitioner even in cases where the allegation is that the appointment was procured on the basis of forged and fabricated letter of appointment.

8. Before answering the question; it would be necessary to look into some important facts of the case. The appointment letter dated 14.2.94 (Annexure-1) was allegedly issued under the signature of Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi. According to this letter the petitioner was appointed as Clerk in the vacant post on temporary basis with the condition that his services may be terminated at any time without notice. This appointment letter was said to have been issued on the basis of direction of Director, Secondary Education. It is not the case of the petitioner that post of clerk

was advertised and he alongwith others applied for the said post and thereafter after following the procedure of appointment and recruitment Rules the petitioner was selected and panel was prepared and thereafter letter of appointment was issued. When the Deputy Commissioner, Gumla received information to the fact that the petitioner and one Awadhesh Kumar Singh got appointment on the basis of forged appointment letter, he immediately by letter dated 1.8.94 informed the Director, Secondary Education, Bihar and stopped payment of salary to the petitioner. The Director, Secondary Education immediately confirmed the forgery by his letter dated 23.9.94. The Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi also confirmed about the forged appointment letter inasmuch as these letters were never issued either under signature of Director, Secondary Education or Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi. The said authorities then took a decision for lodging F.I.R. against the petitioner and a criminal case was instituted against them. After institution of criminal case the petitioner absconded and disappeared and did not attend his duty. A show-cause notice was issued against the petitioner vide office letter No. 1135 dated 26.7.97 asking the petitioner to give explanation on the charges of forging and fabricating appointment letter. The said letter was followed by series of letters no. 1998 dated 23.8.97, 1986 dated 16.10.97, 1771 dated 27.12.97, but the petitioner did not submit any explanation. The respondents again sent registered show-cause notice dated 27.12.97 but the petitioner refused to accept the notice and the registered envelope was returned un-served with the endorsement of refusal. The respondent-authority thereafter by the impugned letters terminated the services of the petitioner on the ground of procuring appointment on forged and fabricated letter. It is worth to mention here that in 1997 petitioner filed CWJC No. 2367/97R against the stoppage of salary and the said writ application was placed for hearing on 13.12.99. This Court dismissed the writ application on the ground that no valid ground was made out for the grant of any relief to the petitioner. Curiously enough the petitioner even did not disclose in course of hearing, that his services was terminated much before i.e. 8.10.98. Not only that in 1996 also the petitioner had filed CWJC No. 1066/96R with a grievance of non payment of salary since 1994. In para 12 of the instant writ application the petitioner has admitted that after aforesaid CWJC No. 1066/96R

was filed the respondent lodged F.I.R. at Gumla stating that petitioner's appointment is false. The said writ application was withdrawn by the petitioner unconditionally without taking any leave of the Court for filing fresh writ application. This fact shows that in 1996-97 petitioner was fully aware about the lodging of F.I.R. and institution of criminal case against him on the charge of getting appointment on the basis of forged and fabricated appointment letter. Since the petitioner had nothing to refute the charges made against him, he did not submit his explanation inspite of show-cause notice issued to him which was followed by series of reminders.

9. It is therefore, prima facie established that the petitioner procured service on the basis of forged and fabricated letter of appointment. It is also evident that no advertisement whatsoever as issued nor the procedure for appointment was followed and the alleged appointment letter was issued in violation of Article 16 of the [Constitution of India](#). The respondent authority therefore rightly lodged the F.I.R. and terminated the services of the petitioner after giving show-cause notice to the petitioner. I am therefore answering the question by holding that when it is prima facie established that services is procured by a person by committing forgery and on the basis of forged and fabricated documents then no departmental proceeding is necessary to be initiated before terminating the services of that person and it will not amount to violation of principles of natural justice.

10. In the case of Nand Kishore Raut v. State of Bihar, 1999 (1) BLJR-441, a full Bench of the Patna High Court has held that if appointments are made illegally, irregularly and without following the procedure of appointment and by the person not authorised to appoint, such appointments do not create any right on the incumbents and the principles of natural justice does not apply to such cases.

11. In the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain and Ors., 1995 (1) SCC 638, the Apex Court after considering a similar question held that in the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary

government servant does not become a permanent government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant.

12. As noticed above, in the instant case besides the fact that prima facie it is established that appointment letter (Annexure-1) is forged and fabricated document, the said appointment letter gave temporary employment to the petitioner which was liable to be terminated without notice. In such circumstances also the termination of services of the petitioner by the impugned order cannot be assailed on the ground of violation of principles of natural justice.

13. Having regard to the entire facts and circumstances of the case, I am of the considered opinion that if a person get appointment on the basis of forged and fabricated letter of appointment then services of such person can be terminated without initiating any full fledged departmental proceeding and the same will not amount to violation of principles of natural justice. I am also of the opinion that when appointment is made illegally, irregularly and in violation of Article 16 of the [Constitution of India](#), then such appointment can be terminated without initiating full fledged departmental proceeding. Such termination of services will not amount to violation of principles of natural justice. Notwithstanding the settled proposition of law the respondent authorities, in the instant case held an enquiry and called for explanation from the petitioner but nothing fully well about the inquiry and the show-cause notice, petitioner did not choose to submit explanation. Respondent authorities therefore took a decision to terminate the services of the petitioner. The impugned order therefore does not suffer from any illegality or infirmity on this ground also.

14. For all the reasons above, I do not find any merit in this writ application, which is accordingly dismissed.

15. Writ application dismissed.