

Pramod Kumar and ors. Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Dec-05-2003

Reported in : [2004(1)JCR19(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : W.P. (S) No. 1671 of 2003

Appellant : Pramod Kumar and ors.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Shamim Akhtar, Adv. and;S.C. II

Advocate for Pet/Ap. : Dhananjoy Kumar Dubey, Adv.

Disposition : Petition dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. This writ petition has been preferred by petitioners against the order dated 16th January, 2003, communicated vide memo No. 37 dated 20th January, 2003 whereby and whereunder their representation for payment of salary has been rejected.

2 According to petitioners, they were appointed to the post of Clerk by different letters having common order No. 8/97, communicated vide Memo No. Ani-4-4001/97 Anksh-1/97, Patna dated 19th January, 1997 issued by the Joint Director (Establishment, Directorate of Employment and Training (Employment), Labour, Employment and Training Department, Government of Bihar, Patna. Subsequently, the petitioner Nos. 1 and 2 were transferred to block office, Pakuria and Maheshpur respectively in the district of Pakur vide order No. 119 dated 11th July, 2000. By the same order, the petitioner No. 3 was transferred to Barhi Block in the District-Hazaribagh. Since then they are performing duties, but they have not been paid salary.

3. It appears that two of the petitioners earlier moved before this Court in W.P. (S) No. 75 of 2002 [see Pramod Kumar and Anr. v. State of Jharkhand, 2003 (1) JCR 502 (Jhr). In the said case, the Court noticed an unreported decision of the Patna High Court in the case of Krishna Nand Kumar and others v. State of Bihar and Ors., CWJC No. 7866 of 2001, disposed of on 7th August, 2001. In the said case. Court noticed that the 'Unemployment token allowance scheme, 1981' which was extended from time to time practically came to an end in the year 1996 when the scheme was discontinued. The Court was surprised to note how the petitioners of the said case were appointed on or about 19th March, 1997. The Court further observed that perhaps, taking advantage of the on going steps to absorb the employees of the said scheme in other departments, the petitioners of the said case obtained letters of appointment from the Joint Director (Establishment), Labour, Employment and Training Department, who was not competent to make appointment.

Taking into consideration the aforesaid observation of the Patna High Court in the case of Krishna Nand Kumar and others (supra), the writ petition W.P. (S) No. 75 of 2002 [2003 (1) JCR 502 (Jhr)] preferred by two of the petitioners was disposed of on 10th October, 2002. The Secretary, Labour, Employment and Training Department, Government of Jharkhand, Ranchi was directed to look into the legality and propriety of appointments of petitioners with observation that if the petitioners are found similarly situated like Krishna Nand Kumar and others, not to grant any relief.

Another writ petition W.P, (S) No. 4215 of 2002 preferred by 3rd petitioner, Nand Kishore Kumar was disposed of on 7th October, 2002 with same and similar direction.

The Secretary, Labour, Employment and Training Department, Government of Jharkhand thereafter looked into the records and rejected the claim of petitioners by order dated 16th January, 2003, communicated vide Memo No. 37 dated 30th January, 2003.

4. Counsel for the petitioner referred to the enclosures to the writ petition to suggest that the unemployment token allowance Scheme, 1981 continued beyond the year 1996. It was submitted that because of wrong statement made in the counter affidavit filed by the State of Bihar and suppression of material facts, the Patna High Court in the case of Krishna Nand Kumar (supra) came to a wrong conclusion that the scheme closed in the year 1996. Actually, the aforesaid scheme remained enforce till December, 2001, so the petitioners are entitled for salary at least upto December, 2001. It was further submitted that the Secretary, Labour, Employment and Training Department, Government of Jharkhand without enquiring the matter, rejected the claim of petitioners.

In this case, it is not necessary to decide the question whether the scheme in question was closed in the year 1996 or in the year 2001. It is also not required to be determined whether the appointment of petitioners was made after closure of the scheme and thereby their appointment can be termed as 'still born' or not. It will be evident from the letters of appointment of the petitioners (Annexure-1 series) that all the letters bear common order No. 8/97, common Memo No. Ani-4-4001/97 Anksh-1/97, Patna and common data dated 19th March, 1997.

If more than one person is appointed by one common order, one can understand that, in such case, the order number, memo number and date of appointment will be common. But if persons are appointed by different orders/letters, in such case, the order number Or at least memo number will vary and it cannot be same. This fact has been taken into consideration by the Secretary of the Department, who on enquiry, found that all the appointments were illegally made showing same order number, memo number and date by one Officer, late S.P. Singh, the then Joint

Director (Establishment), Directorate of Employment and Training (Employment), Government of Bihar, Patna.

It will also be evident from the judgment of Krishna Nand Kumar (supra) that those petitioners were also appointed by same common order having same date of appointment by same Officer.

The Secretary, Employment and Training Department, State of Jharkhand on enquiry, found that there was no order (s) of appointment issued from the Department/Directorate and thereby held the order (s) of appointment as 'non-entity' and 'forged'. It was further noticed by the Secretary that the order of transfer and posting was issued vide Memo No. 119 dated 11th July, 2000 to make their appointment valid.

In this respect, I may give one example.' A Government Officer issues illegal/forged order of appointment from a back date with any memo number, though no such order is on the record. The illegal appointee, if wants to join the service, will face difficulty as the authority under whom joining is to be given, will verify the letters of appointment and other documents/certificate etc. To by-pass this process, the Officer simultaneously issues an order of transfer with regard to such fake appointee, posting him to some distance place. In such case, when the illegal appointee gives joining on the basis of a transfer order, the Officer, who will accept joining, will not question the legality of appointment nor verify any certificate but will accept the joining on the basis of order of transfer.

This is how a number of illegal/forged orders of appointment were made in the State of Bihar and illegal appointees were taken in service on the basis of orders of transfer which came to the notice of the State Government in various cases, as also to the notice of this Court.

This is one, of such case of forged appointee, who entered in the services of the State Government from back door on the basis of an order of transfer, which has been noticed by the Secretary, Labour, Employment and Training Department and discussed in detail in the order dated 16th January, 2003.

It has already been pointed out that the so-called orders of appointment of petitioners are all dated 19th January, 1997 having common order number and memo number, which was the memo number, date etc. of Krishna Nand Kumar (supra) as noticed by the Patna High Court.

Surprisingly in the orders of appointment of petitioners though it has been mentioned that they have been appointed as 'clerk' against vacant post and in the forwarding portion, they have been asked to join the post within 15 days but their places of posting has not been mentioned therein. On the other hand, in the order of transfer, the designation of petitioners and others were not shown as 'Clerk', as mentioned in the order of appointment but shown as 'Accounts Clerk'. Their present place of posting (66 candidates in total) shown in the Directorate at Patna which is beyond the imagination. There cannot be 66 Accounts Clerk in one Directorate. Further, the scheme having been closed in the year 1996, there was no occasion to appoint or transfer.

5. In the aforesaid background, no relief can be granted. The writ petition is, accordingly, dismissed.