

Sunil Kumar Singh Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : May-16-2016

Appellant : Sunil Kumar Singh

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mrs. Ritu Kumar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 5743 of 2010 Sunil Kumar Singh, son of Sri Braj Kishore Singh, permanent resident of villager Inderwa, Post Belwa, Police Station Piprahi, District Sheohar Petitioner -V e r s u s- 1. The State of Jharkhand; 2. The Secretary, Road Construction Department, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, District Ranchi; 3. The Spcial Secretary, Road Construction Department, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, District Ranchi; 4. The Engineer-in-Chief, Road Construction Department, Government of Jharkhand, Ranchi, officiating from Project Bhawan, Post Dhurwa, Police Station Jagarnathpur, District 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; 7. The Executive Engineer, Road Division, Garhwa, officiating from Garhwa, Post Garhwa, Police

Station Garhwa, District Garhwa; 8. The Assistant Engineer, Road Sub Division, Ranka at Garhwa, officiating from Garhwa, Post Garhwa, Police Station Garhwa, District Garhwa; Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mrs. Ritu Kumar, Advocate. For the Respondents : - Mr. Himanshu Kumar Mehta, A.A.G. and Mr. Sharad Kaushal, J.C. to A.A.G. C.A.V. On : - 08/03/2016 Delivered On :

16. 05/2016 ... Per Pramath Patnaik, J.

Being aggrieved by the impugned order of termination dated 04.10.2010 (Annexure-11), issued under the signature of the respondent no. 6, the captioned writ application has been filed for quashing of the said order and for direction to the respondents for reinstatement of the petitioner in service with all consequential benefits.

2. The facts, as disclosed in the writ application, in a nutshell, is that in pursuance to the order dated 27.11.1999 and 16.12.1999, passed in C.W.J.C. No. 2338 of 1998 (R) by the Hon'ble Patna High Court, Ranchi Bench as well as the order passed in M.J.C. No. 977 of 2002, a notice was published and widely circulated vide letter dated 20.03.2006, by the office 2 of the Respondent No. 6 calling applications for filling up the vacant Class IV posts at Road Circle, Daltonganj. The petitioner being eligible candidate, applied in pursuance to the said notice for being appointed against a vacant Class IV posts annexing all the certificates including Matriculation certificate. Thereafter, another notice was also published and widely circulated vide letter dated 28.04.2006 calling applications for filling up the rest of the vacancies of Class IV posts by the Respondent no.6. The petitioner was called for interview by the duly constituted committee and the petitioner along with others were appointed on Class IV posts by the office order dated 19.07.2006 by the Respondent No.

6. The joining of the selected candidates including the petitioner was to be accepted after verification of their educational certificates as well as the School Leaving Certificate and the certificate of Employment Exchange. It is evident from Annexure-4 that all certificates of the petitioner bear his father's name as Braj Kishore Singh and not as Shri Rajendra Prasad Singh. The petitioner immediately

gave his joining in pursuance to the office order dated 19.07.2006 and duly discharged his duties to the utmost satisfaction of his authorities without any complaint whatsoever and the service book of the petitioner was duly opened and maintained he was given the revised scale of pay and benefits of a regular employee. Surprisingly, the petitioner received a letter dated 16.12.2009, issued by the Special Secretary, Road Construction Department, Jharkhand, Ranchi informing him that he was appointed in pursuance to the order passed in C.W.J.C. No. 2338 of 1998 (R) by the Hon'ble Patna High Court, Ranchi Bench dated 27.11.1999 and 16.12.1999 and MJC No. 977 of 2002 and direction given by letter dated 27.10.2006, dated 11.03.2006 and 07.04.2006 in which one of the writ petitioner was Sunil Kumar Singh whose father's name was Sri Rajendra Prasad Singh whereas the name of his father is Sri Braj Kishore Singh and, as such, his case is not covered by the said order and the petitioner was directed to file his show cause on the proposed punishment of termination from services. The petitioner immediately filed his detailed show cause reply, but to the utter surprise and consternation, the services of the petitioner was terminated vide order dated 04.10.2010, issued by the respondent no. 6 vide Annexure-11 to the writ application.

3. Heard Mrs. Ritu Kumar, learned counsel for the petitioner and Mr. Himanshu Kumar Mehta, learned Additional Advocate General appearing 3 for the respondents.

4. Mrs. Ritu Kumar, learned counsel for the petitioner, during course of her arguments, has submitted as under : - (i) There had been no misrepresentation on the part of the petitioner for his appointment and he had never mentioned his father's name as Sri Rajendra Prasad Singh, rather he was appointed as the son of Shri Braj Kishore Singh and before his joining, his certificates including School Leaving Certificate, Matriculation Certificates and other certificates were verified, which is evident from his appointment letter (Annexure-7). (ii) Learned counsel for the petitioner submits that despite satisfactory explanation in pursuance to the show cause notice, the respondents passed an arbitrary order, which smacks of colourable exercise of power. (iii) Learned counsel for the petitioner submits that the petitioner has been terminated from services vide impugned order without

initiation of proceedings, which is violative of Article 14 and 16 of the Constitution of India. (iv) Learned counsel for the petitioner submits that the petitioner was appointed in pursuance to the order dated 27.11.1999, passed by the Hon'ble High Court, Ranchi Bench in C.W.J.C. No. 2338 of 1998 (R), which was not confined to the writ petitioners of the said case but the Hon'ble High Court has also directed for filling up the vacancies lying vacant in the Road Construction Department, preference for which, relaxation was given to the petitioner in the aforesaid writ application. (v) Learned counsel for the petitioner submits that by virtue of the letter dated 31.10.1996, the Commissioner-cum- Secretary, Road Construction Department, Bihar made it clear that the Superintending Engineer, Road Construction Department would be the appointing authority of the Class III and Class IV posts as per Annexure-8 to the writ application. Therefore, the petitioner has been validly appointed by the Respondent No. 6 but the services of the petitioner has been 4 dispensed with without any opportunity given to him to participate in the enquiry since the petitioner had never claimed himself to be a retrenched person nor the appointments were made in pursuance to the order dated 27.11.1999 passed in C.W.J.C. No. 2338 of 1998 (R), which was not confined only to the retrenched persons or the writ petitioners.

5. Mr. Himanshu Kumar Mehta, learned Additional Advocate General appearing for the respondents-State has reiterated the assertions made in the counter affidavit. It has been submitted on behalf of the respondents that on a complaint received from State Non Gazetted Employees Association on 16.07.2009, regarding alleged illegal appointment of the petitioner and others, a preliminary enquiry was ordered to be conducted by the Superintending Engineer, Road Construction Department, Road Circle, Daltonganj. A detailed enquiry was conducted, wherein, it has been found that the appointment of the petitioner, is prima facie suspicious and irregular. The notice dated 28.04.2006 was not widely circulated, rather, the same was also stuck/hanged on the notice board of the Department. It was noted during enquiry that the petitioner knowingly did not mention his father's name even though he knew that he was posted in the same office. The petitioner was not a party in C.W.J.C. No. 2338 of 1998 (R) and rather one another Sunil Kumar Singh, son of Shri Rajendra Prasad Singh was a party to the said case. The appointment letter said to be issued in compliance of the order

dated 27.11.1999 passed in C.W.J.C. No. 2338 of 1998 (R), the petitioner on Clause-IV post was appointed illegally by the then Superintending Engineer, Road Construction Department, in connivance with the father of the petitioner. It is further submitted that the then Superintending Engineer flouted all the norms of the Government and illegally selected the petitioner for appointment on the Class IV post. During enquiry, conducted by the Superintending Engineer, Road Construction Department, Road Circle, Daltonganj and the Deputy Secretary, Road Construction Department, Jharkhand, Ranchi, it had been found that :- (i) The petitioner was not a person retrenched from the Mechanical Wing of the Road Construction Department, (ii) No roster clearance was obtained from the office of the 5 Divisional Commissioner, Palamau. (iii) No Advertisement was published. (iv) The aforesaid circulars had depicted the appointments to be made from the panel recommended by the Deputy Commissioners, in light of circulars of the Department of Personnel dated 25.04.1997 and 03.12.1980. (v) No Selection Committee was formed for any appointment. Only two persons, the petitioner and the then Superintending Engineer were involved in the whole appointment procedure. The whole Selection Committee formation was only made to give the selection procedure a genuine picture.

6. After hearing the learned counsel for the respective parties and on perusal of the records, it appears that the petitioner has not been able to demonstrate the foundational facts to warrant any interference by this Court: - (i) Admittedly, in pursuance to the order dated 27.11.1999, of the Hon'ble Patna High Court, passed in C.W.J.C. NO. 2338 of 1998 (R), the petitioner was appointed but the petitioner was not a party to the aforesaid writ petition, rather one another Sunil Kumar Singh S/o Sri Rajendra Prasad Singh was party to the said case, therefore, the appointment of the petitioner, which has been made, on the basis of the order passed in C.W.J.C. No. 2338 of 1998 (R), was actually issued illegally by the then Superintending Engineer, Road Construction Department and the same appears to be in connivance with the staff of the office and no norms has been followed nor any advertisement has been published, therefore, the process of selection appears to be faulty. Moreover, no selection committee was formed, therefore, the appointment of the petitioner by the so-called Selection Committee was a sham. (ii) On perusal of the application of the petitioner vide Annexure-5, it appears that

the petitioner did not mention his father's name in spite of the fact that his father was posted in the same office, therefore, the conduct of the petitioner 6 appears to be very suspicious. (iii) Since the very initial appointment of the petitioner is fraught with illegality and the appointment order is obtained by adopting unfair means, termination of the petitioner was after issuance of show cause and after consideration of the show-cause reply, it would not amount to non-compliance of the principles of natural justice being violative of Article 14 and 16 of the Constitution of India.

7. Viewed thus, the impugned order of termination dated 04.10.2010 (Annexure-11), passed by the respondent no. 6 does not warrant any interference by this Court and the instant writ petition sans, merit, is accordingly, dismissed. (Pramath Patnaik, J.) APK

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