(2007) 02 PAT CK 0206

Patna High Court

Case No: CWJC No. 4725 of 2000

Ashok Kumar		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: Feb. 21, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226, 309

Citation: (2007) 2 PLJR 770

Hon'ble Judges: J.N. Bhatt, C.J

Bench: Single Bench

Advocate: Rajendra Pd. Singh and Dilip Kr. Tiwari, for the Appellant; Amarendra Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Dr. J.N. Bhatt, C.J.
The petitioner has assailed the order of termination from service as contained in memo no. 375 dated 2.4.1999 passed by the respondent no. 2, the District Education Officer, Sitamarhi contending that it is illegal, arbitrary, without jurisdiction, as well as, without application of mind on non est grounds and, therefore, unconstitutional. Let there be highlighted the material facts at this juncture so as to appreciate the merits of the petition.

(1) According to the case of the petitioner, the Regional Deputy Director of Education, Education Department, Tirhut Division, appointed the petitioner upon recommendation of the Divisional Establishment Committee in terms of the Notification No. 3435 dated 13.8.1974 issued under the proviso to Article 309 of the Constitution of India.

(2) That vide letter no. 16441 dated 3.12.1980 the State Government in its Personnel and Administrative Reforms Department has laid down the procedure for appointment on Class-IV posts. According to the said Circular dated 3.12.1980 the appointing authority

will make appointment on the basis of recommendation of the Employment Exchange, as contended on behalf of the petitioner.

(3) It is the case of the petitioner that his name was enrolled in the Employment Exchange and pursuant to the request by the respondent no. 2 his name along with others came to be forwarded by the Employment Exchange concerned. It is, therefore, the petitioner made an application before the Regional Deputy Director of Education, Tirhut Division, (R.D.D.E.) for appointment on Class IV post.

(4) Upon performing the formalities vide memo no. 175 dated 19.6.1995 issued under the signature of the R.D.D.E., Tirhut Division, Muzaffarpur and upon recommendations of the Divisional Establishment Committee, the petitioner came to be appointed on Class IV post of Peon and as such posted in the office of the Area Education Officer, Runni Saidpur.

(5) The petitioner contends that the Area Education Officer did not allow him to resume the post on the premise that the post was not vacant and, thereafter, he informed the R.D.D.E., Tirhut Division, Muzaffarpur.

(6) By memo no. 4240 dated 20.3.1997 issued under the signature of the R.D.D.E., Tirhut Division, Muzaffarpur, the petitioner was posted in the High School Sonoul Sultan with an order that the payment should be made from the date of joining.

(7) Again when in the High School, in Sonoul Sultan the post was not found vacant the respondent no. 2 vide his order contained in Memo No. 1367 dated 20.6.1997 posted the petitioner on adjustment in High School, Barganiya, as well as, passed the order for payment of salary to the petitioner, where he joined his duty and started working.

(8) Thereafter, the respondent no. 2 gave a show cause notice to the petitioner as to why the payment of salary be not stopped as the appointment of the petitioner was not accepted as legal and he was asked to submit his explanation within three days.

(9) In the meantime, the Headmaster of the High School, Barganiya directed the petitioner to be put under suspension and his Headquarters came to be fixed in the office of the S.D.E.O. and directed the petitioner to report in the office of S.D.E.O., where the petitioner had reported.

(10) Thereafter, by the order contained in memo no. 375 dated 2.4.1999, the respondent no. 2 terminated the service of the petitioner along with others stating that their appointments were not legal.

2. Therefore, the petitioner filed the writ petition under Article 226 of the Constitution of India. This court has enjoyed me pleasure of hearing of the learned Counsel.

3. The factual profile, as well as, the material circumstance and the chronology of events emerging from the record have been considered. The only question, which needs consideration and adjudication in this writ petition, is as to whether the appointment of the petitioner could be said to be legal or not ?

4. On behalf of the respondent, it has been contended that the Regional Deputy Director of Education, who appointed the petitioner is not the competent authority for making appointment against/ on the Class-Ill & IV posts in the Nationalized High Schools. The competent authority for making such an appointment is the District Education Officer concerned (D.E.O.). The Regional Deputy Director of Education is, however, a competent authority for making such appointment against the post of Divisional Cadre. There is no dispute about the fact that the competent authority for appointment to the post on which the petitioner came to be appointed in a Nationalized High School as a Class IV employee was the District Education Officer, which is not done.

5. Let it be noted that merely enrolment in the Employment Exchange is not enough for making recruitment. The relevant prescribed procedure and rules for the purpose of recruitment are to be strictly followed, which is prescribed in letter no. 16441. dated 3.12.1980, and according to the said letter any appointment on Class IV post is to be made out of the Combined District Panel prepared in accordance with the rules. Thus, the appointment against Class IV post could only be made in accordance with the rules prescribed.

6. In the present case, the procedure prescribed was not followed and as such tie hors the procedure and as a result of which the petitioner''s appointment came to be declared as illegal.

7. The contention has been raised that the Circular No. 16441, dated 3.12.1980, which is projected for termination of service of the petitioner cannot be relied on because the letter dated 3.12.1980 does not provide that the appointment will be made out of a Combined District Panel prepared by a Committee headed by the District Magistrate.

8. At this stage, it would be interesting and material to refer the relevant provision of recruitment rules known as Education-Creation of Ministerial Service Cadre Recruitment, Promotion and Transfer Rules, 1974. which came into force with immediate effect, which shall be applicable to all ministerial servants working in subordinate officers under Director (Higher Education), Bihar, Director (Secondary Education) Bihar and Director (Primary Education), Bihar.

9. The cadre is defined in Clause (c) of Rule 3, which means cadre of ministerial employees constituted under rule 4 and controlling officer is defined in clause (d) of Rule 3, whereas, in Part-II of the Rules, provisions have been made for the formation of cadre and in Part-III under Rules 6 & 7, the provision of appointment and promotion is incorporated.

10. It will be interesting at this juncture to refer the provisions of Rule 8, which reads hereinunder:

"Direct Appointment to the permanent or temporary posts shall be done on the recommendation of the committee constituted under rule 7 as per procedure and standard prescribed by the State Government from time to time. The head of offices under the cadre who are authorized to make appointment to ministerial posts shall do so from the recommended list. Those office heads who are not authorized to make appointment, the controlling officer of the cadre shall directly make appointment. Against permanent posts appointment shall be made on probation and the duration of probation shall generally be of two years. The panel for direct appointment shall be valid for one year."

11. In view of the aforesaid provision, a Committee shall be constituted by the State Government consisting of the Members as highlighted in Clauses (a), (b), (c), (d) of Rule 7.

12. It is, therefore, clear that for the direct appointment of ministerial staff on the post of Class IV a Committee has to be constituted by the State Government for the purpose of consideration of the matters relating to appointment and promotion to each of the cadres of ministerial service.

13. It is very apparent and clear from the record of the present petition that the appointment of the petitioner was not made upon the recommendation of the Committee as provided under Rules 7 & 8.

14. It will be further interesting to note that statutory powers have been conferred upon the State Government for prescribing the standard from time to time for the purpose of procedure and standard in case of direct appointment to permanent or temporary post to be made on the recommendation of the Committee constituted under Rule 7. So is not the case in the present petition.

15. The Government is empowered to prescribe the standard and norms for the purpose of direct recruitment on the vacant post in Class IV cadre. The Circular dated 3.12.1980 is issued in consonance with the provision of Rules 7 & 8. It cannot be said that the standard and norms prescribed by the Government in terms of the clear provisions under Rule is not in accordance with law since there is no dispute about validity of it.

16. After having taken into consideration the overall factual profile emerging from the records in the backdrop of the aforesaid provision and, more so, when there was no vacant available post, much less, permanent, the termination order recorded by the respondent-authority could not be said to be illegal and on the contrary any appointment made without following the recruitment norms, standard and rules would be not legal. Of course, when the illegal appointment is made, it is the discretionary whether the concerned party should be heard or not. However, in this case before termination

explanation was sought, which was considered by the Government.

17. After having taken into consideration the aforesaid discussions and the latest proposition of law of the Hon''ble Apex Court rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , this court has no hesitation in holding that the appointment of the petitioner was not legal and as such the impugned order of his termination cannot be said to be bad in law requiring interference by this court in the writ petition under Article 226 of the Constitution of India. With this observation, the application shall stand dismissed. Rule is discharged. No cost.