

(2016) 05 PAT CK 0116

PATNA HIGH COURT

Case No: Letters Patent Appeal No. 1704 of 2010 in Civil Writ Jurisdiction Case No. 2199 of 2009

State of Bihar

APPELLANT

Vs

Anil Kumar Singh

RESPONDENT

Date of Decision: May 9, 2016

Citation: (2016) 2 BBCJ 305 : (2016) 3 BLJud 187 : (2016) 4 PLJR 41

Hon'ble Judges: Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench: Division Bench

Advocate: Mr. Ajay Kumar Sharma, AC to PAAG, for the Appellants; M/s. B.B. Singh and S.K. Ranjan, Advocates, for the Respondents

Final Decision: Dismissed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—State is in intra-Court appeal against the judgment and order dated 11.05.2010 passed by learned Single Judge of this Court in CWJC No. 2199 of 2009 whereby the learned Single Judge of this Court has been pleased to quash the termination order issued under Memo No. 413 dated 30.12.2003.

2. We have heard learned counsel for the State and the learned counsel for the writ petitioner/respondent.

3. Having perused the judgment and order under appeal, we are of the view that the learned Single Judge has not committed any error that requires interference. The learned Single Judge has clearly found that the termination order issued against the writ petitioner/respondent was without any show cause notice and without any proper enquiry. It was not a case that the writ petitioner/respondent had worked for over 10 years on basis of forged appointment letter. It is not in dispute that the writ petitioner/respondent had been working on daily wages in a Project School and it was pursuant to directions issued by the District Magistrate that the District Education Officer adjusted him against permanent vacant post in one of those

Schools and appointment letter was issued in his favour.

4. Learned counsel for the State submits that the appointment was illegal and void ab initio and that being the position, the writ petitioner/respondent had no right and he could not demand a hearing in the matter.

5. We are not in agreement with the submission. Whether the appointment was legal or illegal, that itself is a question that has to be decided. The fact needs to be adjudicated. The fundamental principle of natural justice is that no action can be taken against a person, no order can be passed against the adverse interest of the person without hearing him. That is the minimal requirement. A person cannot be condemned unheard. Whether an appointment is void or illegal, as noted above, is an issue itself to be decided. The Apex Court, in the case of **Basudeo Tiwary v. Sido Kanhu University & Others since reported in (1998) 8 Supreme Court Cases 194**, directly on the issue, answered the same. In that case, the question was whether the appointment of a person in the University was valid or not. In that case, this Court had held that the appointment, as made by the University, was illegal and, as such, termination was upheld. Their Lordships held that the High Court failed to consider the question with regard to non-observance of rules of natural justice. The case arose in respect of Section 35 (3) of the Bihar State Universities Act, 1976 and this is what their Lordships held in paragraph 13 :

"13. Admittedly, in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained."

6. Similar is the view of the Division Bench of this Court in the case of **Ram Krishna Dubey v. State of Bihar & Others since reported in 2008 (1) PLJR 841**.

7. In view of the aforesaid, we do not find any error in the judgment of the learned Single Judge. This appeal is consequently dismissed.