

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1990 of 1998

=====

1. Sunil Choudhary Son Of Sri Manik Chand Choudhary, Resident Of Village- Khaje Etwar Sarai, P.O.- Sohsarai, P.S.- Rahui, District- Nalanda

2. Bhim Kumar S/O- Late Lal Babu Mahto

3. Priyanka Devi D/O- Late Lal Babu Mahto

4. Lalti Devi W/O Late Lal Babu Mahto Resident Of Village- Sahadat Nagar, P.O.- Jaitia, District- Patna

5. Raju Kumar S/O- Late Lal Babu Mahto All Resident Of Village- Sahadat Nagar, P.O.- Jaitia, District- Patna

6. Pinki Devi D/O- Late Lal Babu Mahto

7. Md. Halim Ansari, Son Of Late Mohiuddin Resident Of Village- Pathan Toli, P.S.- Bidupur, District- Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar.

2. The Commissioner-Cum-Secretary, Revenue And Land Reforms Department, Government Of Bihar, Patna

3. The Director, Consolidation, Bihar Revenue Land Reforms Department, Government Of Bihar, Patna

4. The Joint Director, Consolidation, Head Quarter, Revenue Land Reforms Department, Government Of Bihar, Patna

5. The Deputy Director, Consolidation, Head Quarter, Revenue Land Reforms Department, Government Of Bihar, Patna

6. The Deputy Director, Consolidation, Vaishali, Hajipur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shyma Prasad Mukherjee, Sr. Advocate
With Mr. Shanti Pratap

For the Respondent/s : Mr. Gyan Shankar, AC to GP- 6

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 13-02-2015

1. Heard Mr. Shyma Prasade Mukherjee, learned senior counsel appearing on behalf of the petitioners and Mr. Gyan Shankar, learned Assistant Counsel to Government Pleader No.6, appearing on behalf of the State of Bihar.



2. There are three petitioners in the present application under Article 226 of the Constitution of India to seek quashing of a letter vide memo no. 106 dated 23.2.1998 (Annexure-1) issued under the signature of Director, Consolidation, Bihar, Consolidation Directorate, Revenue and Land Reforms Department, Government of Bihar, Patna whereby, he has directed the Deputy Director, Consolidation, Vaishali at Hajipur not to take work from them with immediate effect and they be not paid their salary, on the ground that they were illegally appointed. The petitioners also seek a direction to the respondents, restraining them from interfering with their peaceful discharge of the duties against Class III and Class IV posts in the Office of the Deputy Director, Consolidation, Vaishali at Hajipur.

3. The question of law has been raised by Senior Counsel appearing on behalf of the petitioners that power to make appointment against Class III and Class IV posts in the office of the Deputy Directorate, Consolidation, Vaishali at Hajipur was vested in Deputy Director, Consolidation by virtue of a Government decision dated 28.8.1971 (Annexure-24). The Director, Consolidation in such circumstance did not have the jurisdiction to issue the impugned letter, as such power vested on the Deputy Director, Consolidation only, the letter delegating the administrative power on the Deputy Director having not been withdrawn.

4. Petitioner No.2 Lal Babu Mahto died during the pendency of the writ application and has been substituted by his legal heirs, respondent Nos. 2(i) to 2(v). For the purpose of present order, the word “petitioners” would include the deceased petitioner- Lal Babu Mahto.

5. It is the case of the petitioners that on the direction of the Joint Director, Consolidation petitioner no.1 was appointed as Class III employee on daily wage basis by the Deputy Director, Consolidation (Headquarter) and was posted in the Consolidation Office, Hajipur. Similarly, petitioner no.2 (since deceased) was appointed on daily wage basis for three months by an order dated 18.7.1987 issued by the Deputy Director, Consolidation. The said order, it appears, was issued under the orders of the Joint Director, Consolidation (Headquarter). Petitioner no.3 on the other hand, was appointed by an order dated 15.7.1987 issued by the Deputy Director. These orders/appointment letters have been brought on record by way of Annexures to the writ application. On perusal of these orders/appointment letters appointing these petitioners on daily wage basis, it transpires that in case of petitioner nos.1 and 2, orders for appointing the petitioners on daily wage basis was issued under the directive of the Joint Director, Consolidation, whereas in case of petitioner no.3, the Deputy Director regularized him on daily wage



basis for a period of three months purely on temporary basis. The nature of appointment of petitioner no.3 is quite unusual. On the one hand, the order dated 15.7.1987 shows that petitioner no.3 was being engaged on daily wage basis, at the same time, it indicates that he was being regularized, that too for a period of three months on temporary basis. This is a fundamental principle that in case of daily wage engagement, service of such person engaged terminates everyday and his engagement on everyday is a new engagement.

6. This is to be noted that while petitioner no.1 was appointed as Class III employee, petitioner Nos. 2 and 3 were appointed against Class IV posts on daily wage basis.

7. It is the petitioners' case that they were appointed against sanctioned post, in order to meet the emergent requirement of work and to expedite the consolidation work, on daily wage basis. The Director, Consolidation, subsequently, by an order dated 13.6.1990 asked the Deputy Director, Consolidation, Vaishali at Hajipur as well as other Deputy Director to cancel the appointments of persons engaged on daily wage basis. The letter dated 14.6.1990 was issued in terms of the decision of the State Government as contained in letter dated 6.6.1988 issued by the Personnel and Administrative Reforms Department, Government of Bihar. In the opinion of the Director, such appointments were completely illegal and irregular.



8. The petitioners thereafter, approached this Court by filing CWJC No. 3814 of 1990, challenging the letter dated 14.6.1990 of the Director, Consolidation. This Court quashed the order dated 14.6.1990 and remanded the matter back to the competent authority. While remanding the matter back the Court made the following observations:-

“Both the questions regularization in service as also whether, their services can be terminated shall be considered afresh and if the authority concerned feel that legitimately there is any ground for termination of their service on the ground of irregular or illegal appointment, they will first proceed to serve a show cause notice and only after hearing the show cause they may proceed in the matter. It is pointed out from the record that the Director Consolidation had himself enquired into the service record of all such persons in order to consider the regularization of their service.”

9. Thereafter the notices were issued to the petitioners by the Director, Consolidation seeking their show cause reply. The petitioners submitted their show cause reply. Thereafter the Director, Consolidation came out with an office order dated 5.11.1992 (Annexure-13) appointing the petitioners on ad hoc basis with regular pay scale against Class III and Class IV posts. The appointment letters dated 5.11.1992 have been brought on record by way of Annexure-13 to the writ application. From the said orders it would appear that the appointment letters were issued in the light of the

orders passed in CWJC No. 3814 of 1999 and MJC No. – 1992 as well as letters of the Director, Consolidation, Bihar, Patna issued vide memo no. 1188 dated 4.9.1992.

10. Before I proceed further, I consider it apposite to point out that there was no specific order given by this Court in CWJC No. 3814 of 1990 to appoint these petitioners. The order of this Court passed in CWJC No. 3814 of 1990 has been brought on record. However, there is averment in the writ application to the following effect in paragraph 25:-

“25. That, the petitioners stated that in light of the aforesaid order of appointment, the aforesaid MJC No. 1178 of 1992 was permitted to be withdrawn vide order dated 22.06.1993.”

11. The letter issued vide Memo no. 1188 dated 4.9.1992 as mentioned in the orders dated 5.11.1992 has not been brought on record. It is the stand of the State-Respondents that no direction was ever issued asking the Deputy Director to appoint these petitioners against any post. Reference in this regard has been made to the impugned letter dated 23.2.1998. It appears that after the petitioners were appointed by virtue of order dated 5.11.1992, again show cause notices were issued by the Director, Consolidation, Bihar, Patna asking them as to why their appointments through letter dated 5.11.1992 be not cancelled as such appointments were against the



procedure prescribed by the State Government, without following the roster points as well as the Constitutional requirement under Article 16 of the Constitution of India. The petitioners filed their show cause replies. The Deputy Director vide order dated 2.7.1993 terminated the services of the petitioners. Again by an order dated 9.12.1993 (Annexure-16), the Director, Consolidation superseded the earlier office order dated 2.7.1993, in compliance of the order passed in MJC No. 1345 of 1993 and CWJC No. 3814 of 1990. It appears that against the order dated 2.7.1993 the petitioners had approached this Court by filing CWJC No. 7363 of 1993. However, since the orders cancelling their appointments were withdrawn by the Deputy Director, Consolidation, the petitioners withdrew their writ application.

12. However, again by impugned order dated 23.2.1998 the Director, Consolidation for the reasons mentioned in the order directed the Deputy Director not to take any work from these petitioners as they were appointed by wrongly referring to and misleading the orders of this Court. He also mentioned in the said letter that Deputy Director was not competent to make any appointment independently.

13. A counter affidavit has been filed on behalf of the Respondents State of Bihar stating therein that the petitioners were



initially appointed illegally without following any norms of reservations and accordingly such appointments were cancelled by order No. 1154 dated 14.6.1990. The order was, however, quashed by this Court and the matter was remanded back. It has been averred that the Deputy Director, Consolidation, Vaishali, Sri Dina Nath Mishra issued appointment letters dated 5.11.1992 appointing these petitioners on regular posts, wrongly quoting the order of this Court dated 10.7.1991 passed in CWJC No. 3814 of 1990 and MJC No. 1178 of 1992 as well as order No. 1188 dated 4.9.1992. It has been asserted in the counter affidavit that the Deputy Director quoted the order of this Court and of the Director mischievously, in his order dated 5.11.1992 to appoint the petitioners with criminal intent, keeping the Directorate completely in dark. It has been asserted that the illegal appointment could be detected in course of inspection done by the Director to verify the appointments made after 1987.

14. It has also been stated that disciplinary action as well as criminal prosecution has been launched against the Deputy Director who had made these appointments.

15. Mr. Shyma Prasad Mukherjee, learned Senior counsel appearing on behalf of the petitioners has contended that admittedly all these appointments were made against the sanctioned posts and as the petitioners had continuously worked against such



posts and therefore their services were rightly regularized by the Deputy Director, after considering the cases of these petitioners in the light of the order of this Court dated 10.7.1991. He has submitted that there is no dispute that the posts were vacant at the time of their appointment. He has further submitted that the petitioners were regularly appointed on 5.11.1992 by the Deputy Director who had the power to make appointment on such posts. He submits that the Deputy Director had all powers, being the Cadre Controlling Officer of the cadre of Class III and IV posts under the Directorate to make appointment and the Director did not have any jurisdiction to issue the directive, which is impugned in the present writ application. Referring to Annexure-24 of the writ application dated 28.8.1971, issued by the Revenue Department, Government of Bihar, he has submitted that power of appointment was conferred upon the Deputy Director and in such circumstance the Director has no jurisdiction to cancel the appointment.

16. Mr. Gyan Shankar, learned Assistant Counsel to Government Pleader No.6, appearing on behalf of the State Respondents, on the other hand, has contended that the Deputy Director while issuing the initial appointment letter as well as the subsequent letter dated 5.11.1992 committed gross misconduct and mischievously referred to certain orders of this Court and an order of



the Director as the basis for issuance of the appointment letter dated 5.11.1992. He has submitted that there was no such order issued by this Court whereby the authorities were directed to appoint these petitioners nor the Deputy Director vide letter no. 1188 dated 4.9.1992 had asked the Director to make such appointment. He has referred to the impugned order dated 23.2.1998 and has submitted that by letter dated 4.9.1992, Deputy Director was merely asked to prepare statement of facts for the purpose of filing show cause reply in the contempt proceeding pending before this Court. He has submitted that once it was detected by the Director, Consolidation that the appointments were fraudulently made by the Deputy Director, Consolidation, Vaishali at Hazipur by misquoting the order of this Court and the order of the Director, he had asked not to take work from these petitioners. He has also submitted that for his misconduct a disciplinary action has been initiated against the concerned Deputy Director.

17. From the rival pleadings on record, it is evident that initial appointments of these petitioners on daily wage basis were made without following any procedure. The subsequent orders dated 5.11.1992 were passed by the Deputy Director, Consolidation, Vaishali at Hazipur referring to orders passed by this Court. Absolutely no norm was followed before appointment of these



petitioners on regular basis vide orders dated 5.11.1992. The only aspect which this Court is required to consider in the present matter is as to whether the grounds as recorded in the order dated 5.11.1992 for their appointment on regular basis are valid or not. There is no dispute about the fact that this Court never directed the Director or Deputy Director or any other authority to appoint these petitioners vide order dated 10. 7.1991 passed in CWJC No. 3814 of 1990. There is no such order passed in MJC No. 1178 of 1992. There is no dispute about the fact that the Director did not ask the Deputy Director to appoint these petitioners through letter dated 5.11.1992.

18. Thus, the very basis for issuance of the appointment letters dated 5.11.1992 are illegal. The manner in which the orders dated 5.11.1992 were issued indicate that they were passed on extraneous considerations. The appointments, in my opinion, were made in total breach of Articles 14 and 16 of the Constitution of India and the procedure laid down for such appointment. In my opinion, I need not go into the question as to whether the Director or the Deputy Direction had jurisdiction to make appointment against these posts. I do not intend to interfere with the impugned orders on the simple ground that the petitioners were apparently appointed illegally and any interference in the impugned order will amount to perpetuating illegality.

19. The question of law raised by Mr. Mukherjee that the power of appointment having been delegating upon the Deputy Director, the Director did not have any authority to cancel such appointments, without withdrawing the delegation, as no much relevance in the facts and circumstances of the case as I find that the Deputy Director apparently misused his position by issuing the appointment letters dated 5.11.1992 by committing misrepresentation of facts in his orders.

20. I therefore, do not find any merit in this application. This application is rejected.

21. It goes without saying that if the vacancies arise in future, the cases of these petitioners maybe considered in accordance with law.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--