

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10441 of 2011

=====

Ashok Kumar Sinha, S/O-Sri Rajendra Prasad Singh, R/O Village-Chapra, P.O-
Rampur Hari, Dist.- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Industrial Development Commissioner, Govt. Of Bihar, Patna
3. Director, Handloom, Sericulture, Industry Dept., Govt. Of Bihar, Patna
4. The Principal, Bihar Industries of Silk & Textiles, Nathnagar, Bhagalpur
5. Drawing & Disbursing Officer, Bihar Institute of Silk & Textiles, Nathnagar, Bhagalpur
6. Treasury Officer, Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar, Adv. Mr. Uday Pratap Singh, Adv. Mr. Jyoti Ranjan Jha, Adv.
For the Respondent/s	:	Mr. Pawan Kumar, AC to GA-1

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 16-03-2018

Heard learned counsel for the petitioner and learned
counsel representing the State and its authorities who are respondents
in the writ petition.

2. Petitioner has moved this Court in its writ
jurisdiction for issuance of a writ in the nature of certiorari to quash
the order contained in memo no.1097 dated 29.06.2009, as contained
in Annexure-6 to the writ application, by which the Director,
Handloom and Sericulture, Bihar, Patna has declared the appointment
of the petitioner being illegal and reiterated the order of termination of
his service contained in memo no.528 dated 05.05.2005 stating that
the earlier order remains unchanged. The petitioner has also prayed



for a mandamus commanding the respondents to pay arrears of his salary for the period October, 1997 to 29.06.2009 when he claims to have attained the age of superannuation at the age of 60 years, he has also prayed for all consequential benefits flowing from such retirement from service.

3. The facts which are appearing from the records and have been brought to the notice of this Court in course of hearing are not much in dispute. The petitioner claims that he was appointed as a Storekeeper vide Annexure-1 to the writ application in the given scale on a purely temporary basis. The order of appointment was issued under the signature of the Joint Director (Industry), Muzaffarpur, pursuant to which he submitted his joining on or about 22.03.1986. He also claims that the appointment was made by the Joint Director (Industry) only after calling for names from the employment exchange, Kalambagh Road, Muzaffarpur in order to fill up the vacancies of the post of Storekeeper-cum-Clerk.

4. The petitioner submits that on completion of ten years of continuous service even though not regularized he got his first time bound promotion vide order dated 04.07.1997 with effect from 04.03.1996. He also passed Hindi Noting & Drafting Examination in the year 1988. He was held entitled for time bound promotion and grant of increments. He however was not paid his



salary since October, 1997 and despite the repeated requests and the representations made to the Director, Handloom and Silk regarding non-payment of salary he was not paid any amount.

5. It is further case of the petitioner that vide letter dated 11.07.2001 a departmental proceeding was initiated against the petitioner and the Chief Audit Officer was made enquiry officer. He has brought on record Annexure-2 which is said to be an enquiry report submitted by the Chief Audit Officer in the matter of illegal appointment of this petitioner. A perusal of the enquiry report would show that the Chief Audit Officer came to a conclusion that on the basis of the statements of the employees and the materials available on the record by way of evidence it does not appear to be a case of illegal appointment. He has dealt with all the aspects of the matter and in his final conclusion he opined that in the present case the appointment of the petitioner cannot be said to be illegal at this stage.

6. Despite there being an enquiry report in favour of the petitioner, an order of termination of his service was passed by the Director vide his order dated 05.05.2005 (Annexure-3 to the writ application). Petitioner challenged the order of termination dated 05.05.2005, as contained in Annexure-3 to the writ application, by filing a civil writ application giving rise to C.W.J.C. No.7120 of 2005 before this Court. The learned Court while hearing the said writ



application on 22.04.2008 found that the impugned order has been passed without giving any opportunity to the petitioner to show the reasons or a note of difference, if any, was not prepared by the disciplinary authority. The learned Writ Court in its concluding paragraph held as under:

“This Court finds it difficult to accept the submissions on behalf of the Respondents. Once it is admitted that the issue of the validity of the appointment of the petitioner made as far back as 1986 by a reasoned report have been submitted in his favour on 16.02.2002, even if the Respondents had the occasion to issue a fresh show cause notice to the petitioner, they were compulsively required to deal with the earlier enquiry report. To proceed on basis of any fresh enquiry and hold the appointment to be illegal even while acknowledging the existence of the earlier enquiry report and failure to consider or furnish any reasons to differ with the same, on the face of the matter makes the present order of termination arbitrary and not sustainable in law. The order dated 9.3.2005 is, accordingly, set aside.”

7. Having held the impugned order as contained in Annexure-3 being arbitrary and not sustainable in law the learned Writ Court observed that the respondents are required to grant personal hearing to the petitioner and take a fresh decision in the



matter in accordance with law dealing with adequately the earlier enquiry report dated 16.02.2002.

8. After the aforesaid order of the learned Writ Court, the Director once again passed an order dated 05.09.2008 (Annexure-5) whereby he reiterated the order dated 05.05.2008 which was already quashed by this Court. Once again proceeded to pass a fresh order without recalling the order dated 05.09.2008, this time the respondents gave a notice to the petitioner to appear for hearing, on receipt of the said notice petitioner wrote to the respondents that once the order of termination has been set aside by the learned Writ Court first of all his joining should be accepted and only thereafter the enquiry be proceeded with. This was not acceptable to the respondents and even no reply was given to the petitioner on this issue and finally vide order passed on 29.06.2009 as contained in memo no.1097 (Annexure-6 to the writ application) the respondents once again reiterated the earlier decision dated 05.05.2005 which was already quashed by the learned Writ Court.

9. A perusal of Annexure-6, which is under challenge in the present writ application, would show that the disciplinary authority has differed with the enquiry report giving no reasons for the same and having taken note of his own views on all such aspects of the matter which were dealt with by the enquiry officer, the



disciplinary authority in his concluding paragraph held as under:-

उपर्युक्त सभी तथ्यों एवं परिपत्रों से स्पष्ट है कि श्री अशोक कुमार सिन्हा की भण्डारपाल के पद पर की गयी नियुक्ति अवैध है। अतः श्री सिन्हा की नियुक्ति को रद्द किये जाने से संबंधित आदेश ज्ञापांक 528 दिनांक 5-5-05 को यथावत रखा जाता है।

10. Learned counsel for the petitioner, while assailing the order dated 29.06.2009, as contained in Annexure-6 to the writ application, submits that this order is not only in violation of the specific direction of the learned Writ Court in CWJC No.7120 of 2005 disposed of vide order dated 22.04.2008, but is also in complete contradiction of and in violation of the judgment of the Hon'ble Apex Court in the case of **Punjab National Bank and Others Vs. Kunj Behari Misra** reported in (1998) 7 SCC 84. Expanding his argument, learned counsel for the petitioner submits that the Writ Court has specifically directed the disciplinary authority to deal with the enquiry report however, when the disciplinary authority decided to proceed with the matter afresh no notes of disagreement was prepared by him for service on the petitioner and in fact the petitioner was never made available any notes of disagreement from the disciplinary authority, therefore he had no occasion to know as to why and on what grounds the disciplinary authority disagrees with the enquiry report on any of the charge.

11. Learned counsel has relied upon paragraph 19 of



the judgment of the Hon'ble Apex Court in the case of **Punjab National Bank** (supra) to contend that it was incumbent upon the disciplinary authority, in terms of the judgment of the Hon'ble Supreme Court, to record its own findings on such charge giving tentative reasons for disagreement and to serve upon the delinquent officer giving him an opportunity to represent before it records its finding. This has apparently been not done in the present case.

12. As a matter of fact, when this Court called upon learned counsel representing the State to answer as to whether any note of disagreement was prepared and served upon the petitioner prior to recording the findings in terms of Annexure-6 to the writ application, learned counsel for the State having gone through the statements made in the counter affidavit is unable to find any such plea in response to the contention of the petitioner. This being the position, Annexure-6 is outrightly liable to be quashed as being in teeth of the judgment of the Hon'ble Supreme Court as also having been passed giving a go-bye to the directions issued by this Court in the earlier writ proceeding.

13. This Court would have quashed Annexure-6 relegating the matter back to the disciplinary authority for fresh consideration on this ground alone, however, learned counsel for the petitioner has contended before this Court that during the ongoing



litigations whereunder the respondent Director was bent upon keeping the petitioner out of service, the petitioner has attained the age of superannuation on or about 29.06.2009 on attaining the age of 60 years and, therefore, the other issues which he has canvassed before this Court for purpose of the reliefs specifically prayed in the writ application be taken into consideration for substantial reliefs. Learned counsel submits that it would not be in the interest of justice to now relegate the petitioner once again to face the proceeding after a period of 9 years of his superannuation, in the facts of this case where the petitioner would be able to show that the charge relating to illegal appointment of the petitioner was leveled not only against this petitioner but against a large number of employees and in the other cases the issues which have been raised in the case of the present petitioner were considered by this Court up to the Division Bench and then even by the Hon'ble Apex Court in the case of Kallu Kisku and others.

14. Learned counsel submits with specific reference to the pleadings in the writ application particularly the statements made in paragraph 20 and 25 of the writ application as also the statements made in paragraph 9 of the supplementary affidavit showing that he has specifically contended that in similar case of several persons of this organization affected by dismissal from service including Kallu



Kisku and others were allowed and the Hon'ble Apex Court also declined to interfere with such appointments.

15. Learned counsel for the petitioner submits that specific pleadings of the petitioner in the writ application as also in the supplementary affidavit have not at all been answered much less denied by the respondents in their counter affidavits. As a matter of fact, when this Court called upon the learned counsel representing the State to show from the pleadings in the counter affidavit as to whether there is any response by way of denial in any other manner to the specific statements in the writ application, having gone through the statements made in the counter affidavit once again the learned counsel for the State admits that there is no specific denial of the facts pleaded in paragraph 20 and 25 of the writ application as also paragraph 9 of the supplementary affidavit filed on behalf of the petitioner.

16. Learned counsel for the petitioner has also relied upon a decision of the coordinate Bench of this Court in the case of **Surendra Narayan Singh Vs. State of Bihar and Ors.** reported in **2011(2) PLJR 688** wherein the learned Writ court held that where similarly situated person of the same institute whose regularization was also refused but was allowed by the Writ Court in CWJC No.5409 of 1987, the respondents were obliged to consider the case of



the regularization of the petitioner like others and the petitioner could not be left out. The learned Writ Court has been found that the facts were not materially different, the writ petition was accordingly allowed and the respondents were directed to consider regularization of the petitioner's services in the said case as soon as possible preferably within a period of four months from the date of production of the copy of the order before the Director, Handloom and Sericulture, Bihar, Patna. Learned counsel submits that this petitioner was also working in the same institute and therefore he would also be entitled for the same benefits of regularization and consequential reliefs.

17. This takes the Court to look into the other issues which have been raised by learned counsel for the petitioner. Learned counsel submits that in fact in the case of **Vasant Kumar Vs. The State of Bihar and Ors.** reported in **2010(1) PLJR 857**, a Division Bench of this Hon'ble Court was called upon to consider an issue as to whether the appellants who had been dismissed from service in similar circumstance from same organization had been able to make out a case for regularization by contending that similarly situated persons who had been appointed on adhoc basis in similar manner had been allowed the benefits of regularization pursuant to order passed by this Court in CWJC No.9871 of 2009 which was implemented by



the respondents giving benefit to the persons similarly situated but when the case of the appellants were placed before the respondents they rejected the case of the appellants saying that they do not meet the requirement laid down in the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Ors. Vs. Uma Devi and Others** reported in (2006) 4 SCC 1. The Hon'ble Division Bench in paragraph 4 and 5 of the said judgment held as under:-

“4. If the orders of the Hon'ble High Court were accepted by the respondents as correct and implemented giving benefit to persons similarly situated as the appellant in that event the respondents clearly erred in law in treating the appellant differently and ignoring his claim for regularization only because he had not approached this Court through a writ petition. Such action of the respondents was in violation of Articles 14 and 16 of the Constitution of India. At the relevant time when Annexures-12/B and 12/C were passed by the concerned respondents in the year, 1997 and 1998, it was their legal duty to treat all similarly situated ad hoc employees in like manner.

5. In view of the aforesaid discussion, we find that the appellant was dismissed from service in the year, 2005 on account of illegal discrimination vis-à-vis similarly situated ad hoc



employees regularized by Annexures-12/B and 12/C. There is no denial that those employees are still continuing in service as regular employee. As per law settled in the case of Uma Devi (supra), the old transactions of regularization of services, already concluded are not to be reopened on account of judgment in Uma Devi's case. Hence in this case requirement of justice warrants grant of relief to the appellant so that equality clause in the Constitution of India is not offended."

18. Attention of this Court has also been drawn to the judgment of the Hon'ble Apex Court in the case of **State of Bihar and Ors. Vs. Kallu Kisku and Ors.** rendered in **Special Leave to Appeal (Civil) No.11083 of 2009** arising out of the judgment and order dated 27.02.2008 in LPA No.950 of 2007 passed by this Court. In the said case, the State was aggrieved by the order passed by a Division Bench of this Court dismissing their appeal against the order of the learned Single Judge who had quashed the show cause notice issued by the Director, Handloom and Silk (now Sericulture), Department of Industries, Government of Bihar and the consequential order passed for termination of the services of the respondents. A copy of the judgment of the Hon'ble Apex Court has been brought on record by way of Annexure-18 to the supplementary affidavit. A



perusal of the order shows that in the said case the respondents were the employees working as Keet Palak, Padchar-sah-Ratri Prahari, Clerk etc. and they were also appointed by the Assistant Director, Industries (Silk), Bhagalpur in between 1985 to 1995 in the regular time scales on purely temporary basis with a stipulation that their services could be terminated without any prior notice and intimation. After long lapse of time, the Director issued notices dated 03.07.2000 to the respondents and called upon them to show cause as to why their appointments may not be declared illegal on the ground that the Assistant Director was not competent to appoint them. After considering their explanation, the proposed action of termination was confirmed. Having gone through the facts and the materials available on the record, the Hon'ble Supreme Court refused to interfere with the judgment of this Court by holding as under:-

“We have heard learned counsel for the parties and scrutinized the record. It is not in dispute that as on today some of the respondents have completed 22 years of service while others have completed 16 years service. Therefore, at this belated stage we do not find any justification to entertain the petitioners’ challenge to the impugned order or the one passed by the Learned Single Judge and thereby enable them to terminate the services of the respondents and that too by ignoring that no action is shown to have



been taken against the officer responsible for the alleged illegal appointments.”

19. Learned counsel therefore submits that in view of the specific case that the persons similarly situated and falling in the same seniority list placed below him if were regularized and given benefits which were available to the regular employees, by not conferring similar benefits to the petitioner the respondents have acted in violation of Article 14 and 16 of the Constitution of India and their action is liable to be held illegal and arbitrary.

20. Learned counsel representing the State has even though attempted to protect the interest of the State forcefully, but on the face of the pleadings which are available to him in form of the counter affidavit he is unable to controvert most of the submissions of the learned counsel for the petitioner. Learned counsel for the State is unable to controvert the contention that Annexure-6, which is impugned order in the present case, has been passed without offering any note of disagreement giving tentative finding and without calling upon the petitioner to respond on any such note of disagreement. Thus, it is in violation of the judgment of the Hon'ble Supreme Court in the case of **Punjab National Bank Vs. Kunj Behari Misra** (Supra). From Annexure-16 appended to the supplementary affidavit of the petitioner, learned counsel for the State contended that after the



order as contained in Annexure-4 to the writ application was passed by this Court, the petitioner was called upon by giving a notice for purpose of hearing, but instead of attending the hearing he wrote a letter as contained in Annexure-17 calling upon the respondents to allow him to join first before proceeding with the enquiry. On the issue of similarity, learned counsel for the State submits that in the case of Kallu Kisku and others as it appears from the judgment of the Hon'ble Supreme Court the issue was that they were not appointed by the competent authority whereas in the case of the present petitioner the appointment has been held illegal not only on that ground but also on other ground such as the petitioner had not been over aged. When this Court called upon the learned counsel for the State to point out as to whether in the counter affidavit any such plea has been taken on behalf of the respondents showing that the grounds for holding the petitioner's appointment illegal materially differs with the ground taken in the case of Kallu Kisku and others, learned counsel for the State is unable to show any distinction from the pleadings placed on record.

21. Having heard learned counsel for the parties and upon perusal of the records, this Court finds that the facts as appearing would lead to an irresistible conclusion that Annexure-6, which is an order passed by the disciplinary authority on 29.06.2009, is wholly



illegal and in complete contravention of the settled judicial pronouncement of the Hon'ble Supreme Court in the case of **Punjab National Bank Vs. Kunj Behari Misra** (supra). It is an admitted position that prior to passing of Annexure-6 the same respondents had passed order dated 05.09.2008 whereby he had reiterated the earlier order contained in memo no. 528 dated 05.05.2005. The order dated 05.09.2008 by which the order dated 05.05.2005 was reiterated is Annexure-5 to the writ application, almost nine months after passing of Annexure-5 the same disciplinary authority came out with another order dated 29.06.2009, as contained in Annexure-6, even without recalling the earlier order dated 05.09.2008. A cumulative reading of Annexure-5 as well as Annexure-6 would show that the disciplinary authority was acting in haste and even though the learned Writ Court had specifically indicated in its order as contained in Annexure-4 that the disciplinary authority is required to deal with the earlier enquiry report dated 16.02.2002, without adhering to such directions and without serving a note of disagreement on the petitioner, the disciplinary authority passed an order as contained in Annexure- 5 on 05.09.2008 itself without giving any opportunity of hearing to the petitioner and without serving any note of disagreement, after few months he again passed another order which is Annexure-'6', this time enlarging the discussions but again without giving any note of



disagreement. Passing of the orders as contained in Annexure-5 and 6 one after another clearly indicates that the disciplinary authority was bent upon keeping the petitioner out of service. After the termination order was set aside by this Court, the petitioner was required to be given joining for purpose of completion of enquiry at least in terms of the judgment of the Hon'ble Supreme Court in the case of **Managing Director, ECIL Vs. B. Karunakar** reported in (1993) 4 SCC 727. The petitioner requested the disciplinary authority vide Annexure-17 attached to the supplementary affidavit to allow him to join, but he was not allowed to join and a fresh order was passed on 29.06.2009. All these facts duly supported by the documents available on the record clearly show that the disciplinary authority had acted de hors the principles of natural justice which is an integral part of any jurisprudence including service jurisprudence.

22. In the aforesaid view of the matter, this Court is of the considered opinion that Annexure-5 as well as Annexure-6 to the writ application are liable to be set aside and those are accordingly set aside by this Court.

23. Now in order to consider the prayer of the petitioner regarding the consequential reliefs, this Court finds from the Division Bench judgment of this Court reported in 2010(1) PLJR 857 that the case of this petitioner as stated in the writ application and



not denied by the respondents is similar to the case of the Kallu Kisku and others therefore, the ratio of the said judgment would be fully applicable in the case of the present petitioner also. This Court also finds that when on similar grounds the other employees like the petitioner who were working in the Handloom and Silk Directorate were sought to be terminated and were terminated, the Hon'ble Supreme Court refused to interfere with the judgment of this Court on finding that the respondents who were the employees had completed 22 years of service or about 16 years of service and therefore at this belated stage the challenge to the order setting aside such termination by this Court was not fit to be entertained.

24. The Hon'ble Apex Court also observed that the order setting aside such order of termination be not allowed to be challenged by ignoring that no action is shown to have been taken against the officer responsible for the alleged illegal appointments. From the facts and pleadings available on the record, this Court finds that the State has not at all been able to show that the case of the present petitioner is different from the case of Kallu Kisku and others which has travelled up to the Hon'ble Supreme Court.

25. I would, therefore, direct the respondent Director, Handloom and Sericulture, Department of Industry, Bihar, Patna to pass an appropriate order in respect of the petitioner also keeping in



mind the aforesaid discussions and the judgment of this Court reported in 2010(1) PLJR 857 as also the judgment of the Hon'ble Apex Court in the case of Kallu Kisku and others and grant him similar benefits which have been allowed to those employees who were similarly situated as has been contended by the petitioner specifically in the writ application and has not been denied by the respondents in the counter affidavit. The claim for payment of outstanding salary shall also be considered along with other claims. Such an order shall be passed by the Director, Handloom and Sericulture, Department of Industry, Bihar, Patna within a period of two months from the date of receipt/production of a copy of this order. The petitioner shall also be entitled to the consequential reliefs pursuant to such order which shall be passed by the Director in similar terms as have been granted to the other similarly situated persons.

26. The writ application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.03.2018
Transmission Date	N/A

