

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12033 of 2003

1. Sanjay Kumar Sinha, s/o K.N. Dutta, r/o Moh-Krishnapuri colony, PS-Chapra (Saran), Dist-Saran and was working at District Employment Exchange, Purnea
2. Saroj Kr. Das, s/o Sri Luro Das, r/o vill+PO-Safapur, PS-Nayagaw, Dist-Begusarai and was working at District Employment Exchange, Purnea
3. Binoda Nand Kumar, s/o Sri Sahdeo Kumar, r/o vill+PO Mankandpur via Champanagar, Dist-Bhagalpur and was working at District Employment Exchange, Begusarai
4. Ram Gulam Mandal, s/o sri Asharfi Mandal, r/o vill-Ahathalaya road, PO-Katihar, Dist Katihar and was working at District Employment Exchange, Katihar
5. Sheo Kr Rajak, s/o Sri Prabhu Rajak, r/o moh-Raygassanpur Chaintola, PO Bankipur, PS Kadamkuan, dist-Patna and was working at District Employment Exchange, Madhubani
6. Niranjan Kr. Srivastava, s/o Sri Gautam Pd. Srivastava, at PO-Bhatgai, PS-Taraiya, Dist Saran Chapra and was working at Sub-Divisional Employment Exchange, Patna
7. Subodh Kr. Yadav, s/o sri Mithileshwar Pd. Yadav, r/o vill-Phulwaria, PO-Dounili Pur Waria via Lakhminia, Dist-Begusarai and was working at District Employment Exchange, Madhepura
8. Ajit Kumar, s/o late Jagdish Prasad, r/o Makhdumpur, Digha Ghat, Dist-Patna and was working at District Employment Exchange, Madhubani
9. Badrinath Pandey, s/o sri Kapildeo Pandey, r/o Bihari Sao lane, PS-Pirbahore, dist-Patna and was working at District Employment Exchange, Jehanabad.
10. Masiur Rahman, s/o late Wali Alam, r/o moh-Katra Mandai, Sultanganj, PS-Sultanganj, Dist-Patna
11. Anil Prasad, s/o sri Shyam narayan Prasad, c/o Sri Sheo Balak Prasad, r/o Kadamkuan, Nala road, Kadamkuan, Patna
12. Kumar Anirudh Singh, s/o sri Swarath Singh, r/o vill-Jamalpur, PS-Marhaura, Dist-Saran
13. Indu Shekhar Chaudhary, s/o late Panchaweshwar Choudhary, r/o Balia, PO, Shyam Sagar factory, Madhubani
14. Janardan Pd. Singh, s/o lat Bhagwat Pd. Singh, r/o vill-Chiniawal, PS-Punpun, Dist-Patna
15. Indrasan Bharti, s/o sri Rajal Mahto, r/o Gongaripar, PS-Manpur, Nalanda
16. Ravi Bhushan sharma, s/o sri Makhan Lal Sharma, r/o Prithwipur Chiraiyatand, Jakkampur, Patna
17. Binod Kumar, s/o sri Kapildeo Choudhary, r/o Rajeev nagar, Digha, Patna
18. Ajeet Shankar, s/o sri Prabha Shankar Prasad, r/o Binda Bhawan, Dhiyawan, Chapra, Saran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Department of Labour Employment and Training, Govt. of Bihar, Patna
3. The Director, Directorate of Employment and Training, Patna
4. The Joint Director, Directorate of Employment and Training, Patna
5. The Deputy Director, Directorate of Employment and Training, Patna
6. Assistant Director, Sub-Regional Employment Exchange, Patna



7. Assistant Director, Employment, Sub-Regional Employment Exchange, Saharsa
 8. Assistant Director, Sub-Regional Employment Exchange, Gaya
 9. Assistant Director, Employment, Sub-Regional Employment Exchange, Muaffarpur
 10. Assistant Director, Sub-Regional Employment Exchange, Dalmia Nagar
- Respondent/s
- with

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Civil Writ Jurisdiction Case No. 1663 of 2004

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Reeta Kumari, w/o late Ashok Kumar, r/o vill-Naurojpur, PS-Sare, Dist-Nalanda, c/o Mukesh kumar, Teacher, Mohalla-Qumruddinganj, PS-Laheri (Muraipur), Dist-Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Department of Labour, Employment and Training, Government of Bihar, Patna
3. The Director, Directorate of Employment and Training, Patna
4. The Joint Director, Directorate of Employment and Training, Patna
5. Deputy Director (Employment) , Directorate of Employment and Training, Patna
6. Assistant Director, District Employment Exchange, Munger
7. The District Employment Officer, Munger

.... Respondent/s

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Appearance :

(In CWJC No.12033 of 2003 & CWJC no. 1663 of 2004)

For the Petitioner/s	: Mr. Mrigank Mauli
	: Mr. Kumar Ravish
	: Mr. Kashyap Kaushal
For the Respondent/s	: Mr. Niraj Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 14-08-2018

1. The aforesaid two writ petitions have been filed for setting aside the order dated 21.10.2003, as corrected vide Memo dated 23.10.2003 as well as the order dated 12.12.2003 (in the second case), whereby and whereunder a decision has been taken to terminate the services of the petitioners herein.



2. The short facts of the case are that the petitioners were appointed in various Regional Employment Exchanges in various districts in the year 1991-92, however 25 of such employees were terminated on 09.09.1992 which was challenged in writ petitions bearing no. 12059 of 1992 and 10380 of 1992 and the same were allowed by an order dated 16.08.1994 passed by this Hon'ble Court and the order of termination of said 25 employees was set aside. Subsequently, the respondents had issued show cause notice to the petitioners and others in the year 1994, however in the month of September 1995, those petitioners who had been terminated, were reinstated in services. Thereafter, one of the class-IV employees had filed a writ petition bearing CWJC no. 2409 of 1996, which was disposed of by an order passed by this Court on 16.01.1998 and the respondents were directed to complete the inquiry and thereafter, take a decision regarding promotion of class-IV employees to the post of class-III. Subsequently, the respondents had issued fresh show cause notice in the year 2000 to the petitioners and others as to why their services be not terminated and thereafter, upon consideration of their replies, the inquiry committee comprising of four members had submitted a detailed report dated 05.07.2003, wherein 56 class-IV employees were found to have been validly appointed. Amongst the said 56 class-IV employees, all the petitioners of the aforesaid two



cases except petitioner no. 4 were present. Though, the inquiry committee had found the appointment of the petitioners to be valid, their services were terminated vide the impugned order dated 21.10.2003, 23.10.2003 and 12.12.2003 by an unreasoned and non-speaking order, not spelling out any reasons for terminating the services of the petitioners herein.

3. The aforesaid orders dated 21.10.2003/23.10.2003 were challenged before the Hon'ble Jharkhand High Court in W.P.S. no. 31 of 2004 by similarly situated employees, whose services had been transferred to the State of Jharkhand on account of bifurcation of the erstwhile State of Bihar and the Hon'ble Jharkhand High Court by a detailed order dated 20.02.2004 had allowed the writ petition and set aside the impugned orders of termination which are also under challenge in the present case. At this juncture, it would be appropriate to reproduce the relevant paragraphs of the judgment dated 20.02.2004 :-

3. There are altogether 22 writ petitioners. Their case is that they being eligible for appointment on Class III posts got themselves registered in different employment exchanges. In 1989 the Assistant Director, Directorate of Employment and Training made requisition for appointment against the vacant class-III posts from the employment exchange and advertisements to that effect were also made in the local newspaper. Pursuant to that names of



the petitioners were forwarded by the Employment Exchange. Their further case is that a Selection Committee was constituted who considered the names of the eligible candidates including the petitioners and after interview a panel of selected candidates were prepared. Petitioners were thereafter issued appointment letters in 1991. Petitioners submitted their joining and started working at different vacant posts. However, the Director, Directorate of Employment and Training, Patna suddenly issued memo No. 2054 dated 9.9.1992 by which services of 25 persons including petitioner Nos. 1, 2, 3, 6, 8, 10, 12, 13 and 14 were terminated on the ground that their appointments were made in excess of the sanctioned strength of the clerks. Several writ petitions were filed before the Patna High Court challenging the order of termination being CWJC No. 12059/1992, CWJC No. 12649/1992 and CWJC No. 10380/1992. Those writ, petitions were heard and disposed of on 16.8.1994.

4. Petitioners' further case is that thereafter petitioners were reinstated in service on 2.9.1995. Petitioners were again called upon to submit show cause with regard to validity of their appointment. In 2003 a Committee was constituted by the Labour, Employment and Training Department, Government of Bihar for making enquiry and the said Committee submitted its report on 5.7.2003. The Committee after considering the individual show cause and other documents of 61 persons, declared the appointment of 56 persons including all the 16 writ petitioners legal and valid. Copy of the inquiry report has been annexed as Annexure-13 to the writ petition.



However, after bifurcation of the State and the allotment of cadres, the impugned order dated 21.10.2003 was issued under the signature of Director, Labour, Employment and Training, Bihar Patna whereby the appointment of 24 clerks in Jharkhand was declared illegal and the Government of Jharkhand was directed to take necessary action in the matter. On the basis of aforesaid letter of the Director, the impugned order of termination was issued by the Government of Jharkhand terminating the services of the petitioners.

5. In the counter affidavit filed by the State of Bihar, it is stated that the Enquiry Committee under the Chairmanship of the then Joint Director (Employment) has declared 27 appointment of clerks as legal and 43 appointment as illegal and for rest 18 appointments decision was left either on the Director, Employment and Training or on the Government. It is contended that the Committee was constituted for making inquiry in the light of the order passed in CWJC No. 5530/2000. Respondents' further case is that the appointments of the petitioners were made during the period when Bihar was undivided and therefore decision with regard to validity of appointments have been considered and decided by the Government of Bihar.

6. Separate counter affidavits have been filed by the Directorate of Employment, Government of Jharkhand. It is contended that the inquiry with regard to validity of appointment has not been done by the State of Jharkhand as the same was being done by the Government of Bihar and the Government of Jharkhand has



issued impugned order of termination on the basis of direction issued by the Government of Bihar. It is contended that respondents-Government of Jharkhand was not involved at any stage of inquiry in the matter of petitioners who were working in the State of Jharkhand have neither gone into the merit of appointment of the petitioners nor they conducted inquiry of their own.

7. I have heard Mrs. Ritu Kumar and Mr. A.K. Sahani, learned counsels for the petitioners and also Mr.B.S. Lal, learned Additional Advocate General and the learned counsel for the State of Bihar.

8. In course of argument learned counsel for the State has not disputed the fact that post of clerks were advertised and requisitions were also sent to the Employment Exchange for sending the names of registered candidates. Pursuant to that names of petitioners were sent by the Employment Exchange and a Selection Committee was constituted. Annexures-2 and 3 of the writ application are the minutes of the Selection Committee held on different dates and a panel of selected candidates were prepared and appointment letters were issued in 1991. Petitioners joined their services. However, in 1992 all of a sudden, the Director Employment issued order of termination dated 9.9.1992 by which service of 25 persons including some of the petitioners were terminated on the ground that their appointments were made in excess to strength of cadre of clerks and thereby holding their appointment illegal. Several persons including some of the petitioners have challenged said order of termination by filing



several writ petitions which have been finally heard and disposed of by the Patna High Court on 16.8.1994. A copy of the said judgment has been annexed as Annexure 7 to the writ application (WPS No. 31/2004). The Court in the aforesaid judgment was of the view that the termination order suffers from non application of mind for the reason that prima facie the appointment appears to have been made against the vacancy existing in the respective office of the Employment Exchange. The Court therefore, set aside the order of termination. The operative portion of the judgment is worth to be quoted herein below :

'There cannot be any dispute to the proposition which has been contended by Mr. Warish but, in the peculiar facts and circumstances of the cases, from bare perusal whereof it is apparent that the impugned order suffers from non-application of mind as also that it is difficult to completely ignore the materials produced by the petitioners in support of the fact that their appointments were made against the vacancies existing in the respective offices of the employment exchange, I am of the view that the respondents authorities should have given an opportunity to the petitioners to explain their cases before cancelling their appointments. As that has not been done, the impugned order cannot be sustained and it is, accordingly quashed.

However, as the impugned order has been quashed on technical ground, the matter regarding the payment of salary to the petitioners shall depend on the result of the enquiry which the respondents are directed to



conclude by a reasoned order within a period of four months from the date of receipt/ production of copy of this judgment/ order after giving show cause notice to the petitioners respondent No. 2 is further directed to place all the materials on the record as regards the total number of sanctioned strength of clerk in the Directorate as well as the appointments made thereon as claimed in the counter affidavit. These facts should also form part of the enquiry being held by the respondents.

In the result, these writ applications are allowed with the aforementioned direction."

9. It appears that after the termination order was quashed by the Patna High Court petitioners were reinstated in service in 1995. Curiously enough respondents again issued show cause notice to the petitioners in 1996 asking them to show cause as to why their appointments may not be declared illegal on the ground that their appointments were made in excess of the sanctioned strength. In the meantime, some of the petitioners were issued memo dated 5.8.1998 under the signature of Director informing them that their appointments have been found within the sanctioned limit. Copy of this memo have been annexed as Annexures-10 and 10-A to the writ application. It further reveals that after lapse of more than four years petitioners were again Issued show cause dated 31.5.2000 to file show cause as to why their services be not terminated. Petitioners again moved Patna High Court by filing CWJC No. 5896 of 2000 challenging the said notice and the writ petition was disposed of on 12.7.2000 with a direction



to the petitioners to file their show cause which shall be considered and disposed of by the respondents in accordance with law.

10. In the meantime, appointment of all those persons including the petitioners have/been considered by duly constituted committee of the Directorate of Employment and the Committee submitted their report on 5.7.2003. Copy of the inquiry report has been annexed as Annexure-13 to the writ application. In the said report appointment of all the petitioners excepting 2-3 persons have been declared legal and valid. Petitioners were reinstated in service and continued to work as such till 2003. Thereafter, the impugned letter dated 21.10.2003 was issued under the signature of Director, .Employment and Training, Bihar by which appointment of 24 clerks including the petitioners have been found to be illegal and such Government of Jharkhand was directed to take necessary action in the matter. Copy of the said order dated 21.10.2003 is Annexure-14 to the writ application (WPS No. 31/2004).

11. From perusal of Annexure-14, it appears that the Director after discussion and after considering the show cause found that the appointment of 24 persons is illegal. Nothing has been mentioned in the said order regarding any separate inquiry conducted either by the Director or any person on his behalf. As noticed above when duly constituted committee after making thorough inquiry submitted an elaborate inquiry report holding appointment of these petitioners legal and valid but the Director after discussion declared such appointment as illegal. Nothing has been said



in the said memo as to for what reason the appointment of those petitioners was found illegal.

12. As noticed above, the only ground taken by the respondents for terminating the services of the petitioner in the year 1992 was that the appointment was made beyond the sanctioned strength. It is not the case of the respondents that appointments were made without following the Recruitment Rules and the Procedure or in violation of Articles 14 and 16 of the Constitution of India. When such appointment of petitioners was made in the year 1991 by duly constituted Selection Committee in accordance with the select list and the petitioners joined service and continued for the last 9-10 years then termination of service by the authorities of the State of Jharkhand merely on the basis of non-speaking order received from the Director of Employment, Government of Bihar is wholly unjustified and unwarranted in law.

13. Taking into consideration the entire facts and circumstances of the case and the documents annexed with the writ petition, I am of the opinion that the action of the respondents in terminating the services of the petitioners is illegal, arbitrary and unjustified. This writ application are therefore, allowed and the impugned order of termination is set aside. Petition allowed.

4. It is submitted by the learned counsel for the petitioners that the aforesaid order dated 20.02.2004 has been upheld by the



learned Division Bench of the Hon'ble Jharkhand High Court in appeal.

5. At this juncture, the learned counsel for the petitioners, faced with the issue of the appointment of petitioner no. 4 having not been found to be valid by the inquiry committee, seeks to withdraw the petition as far as petitioner no. 4 is concerned, hence the present writ petition is dismissed *qua* the petitioner no. 4.

6. It is pointed out that the petitioner in the second case has died and his wife has been substituted in the said writ petition.

7. *Per contra*, the learned counsel for the respondents has submitted that the impugned orders of termination are valid, however he has not been able to controvert the fact that the inquiry committee had found the appointment of the petitioners in the aforesaid two cases (apart from the petitioner no. 4) to be valid. The learned counsel for the respondents has also not been able to controvert that the impugned orders of termination has been quashed by the Jharkhand High Court.

7. For the reasons mentioned hereinabove as also having considered the facts and circumstances of the case, I find that the present case is squarely covered by the aforesaid judgment dated 20.02.2004. Thus, this Court is of the view that the impugned orders of termination dated 21.10.2003/23.10.2003 passed by the



respondents are fit to be quashed and accordingly, the said orders of termination are set aside.

8. Both the writ petitions are allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.10.2018
Transmission Date	NA

