

STATE OF BIHAR AND ORS.
v.
CHANDRESHWAR PATHAK
(Civil Appeal No.7392 of 2014)

AUGUST 07, 2014

[T.S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

Service Law:

Appointment – Temporary appointment of constable made by order of Director General of Police without advertising the post – Set aside by single Judge of High Court – Appeal of constable allowed by Division Bench of High Court – Held: Appointment even on temporary post without inviting applications from all eligible candidates violates the mandates of Arts. 14 and 16 of Constitution – In the instant case, in the absence of any advertisement or selection process, appointment of respondent is not protected and could be validly terminated – Single Judge of the High Court was justified in dismissing the writ petition while Division Bench erred in interfering with the same – Constitution of India, 1950 – Arts. 14 and 16.

The respondent was temporarily appointed to the post of constable by the Inspector General of Police, Criminal Investigation Department, by his order dated 14.01.1988 with the stipulation that his service could be terminated without assigning any reason or show cause. In the year 2000, the High Court of Patna considered the issue of backdoor appointments made in the police department in another case which led to review of irregular appointments. Accordingly, a show cause notice dated 10.09.2003 was issued to the respondent and since no valid reason was shown in his reply, the order dated

A 26.09.2003 was passed terminating his services. The writ petition filed by the respondent was dismissed by the single Judge of the High Court, but his appeal was allowed by the Division Bench.

B In the instant appeal filed by the State Government, the question for consideration of the Court was as to whether the appointment of the respondent made without any advertisement or selection process could be considered to be a valid appointment to a public post protected under Arts. 14 or 311 of the Constitution of India.

Allowing the appeal, the Court

D HELD: 1.1. No person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates, and if done so, such a course violates the mandates of Arts. 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. [para 14] [399-H; 400-A-C]

E *State of Orissa & Anr. vs. Mamata Mohanty* 2011 (2) SCR 704 = (2011) 3 SCC 436 – relied on.

F 1.2. In the instant case, the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter against which S.L.P. has been dismissed by this Court. [para 13 and 15] [389-G-H; 399-A; 400-D-E]

H 1.3. Accordingly, it has to be held that in the absence

of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same. The order passed by the Division Bench of the High Court is set aside and that passed by the single Judge of the High Court restored. [para 16-17] [400-E-G]

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Case Law Reference:

2011 (2) SCR 704 relied on **para 14**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.7392 of 2014.

From the Judgment and Order dated 05.01.2012 in LPA No. 945/2010, 05.01.2012 in CWJC No. 204/2004 of the High Court of Patna.

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Gopal Singh, Manish Kumar for the Appellants.

Manoj R. Sinha, T. Mahipal for the Respondent.

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The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. Leave granted.

2. This appeal has been preferred by the State of Bihar against the order dated 05.01.2012 of the Division Bench of the High Court of Judicature at Patna in L.P.A. No.945 of 2010, which has the effect of quashing the order dated 26.09.2003 passed by the of Criminal Investigation Department, Patna, Bihar, terminating the services of the respondent herein.

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3. The respondent was temporarily appointed to the post of constable by the Inspector General of Police, Criminal Investigation Department, Patna, Bihar, vide his order dated 14.01.1988 with the stipulation that his service could be terminated without assigning any reason or show cause. In the

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A year 2000, the High Court of Patna considered the issue of
backdoor appointments made in the police department in
another case which led to a direction by the Department of
Home (Police), Government of Bihar dated 04.09.2000 to the
Police Headquarter, Bihar to review irregular appointments and
B to remove such appointees from service.

4. Accordingly, a show cause notice dated 10.09.2003
was issued to the respondent-writ petitioner asking him why his
appointment should not be cancelled and since no valid reason
was shown in his reply, order dated 26.09.2003 was passed
C terminating the services of the respondent.

5. Challenging the above order, the respondent herein
preferred a writ petition before the High Court of Patna which
was heard by a learned single Judge. By order dated
D 09.04.2010, the learned single Judge dismissed the writ
petition with the following observations:

*"This Court is not satisfied that the petitioner has made
out a case for interference with the order of termination
from what appears to be an illegal appointment based on
the spoils systems.*

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*Apart from the illegal entry into services, the alleged
regularisation is of no avail to him as it is apparently a
single case considered without others to dole out an
individual benefit.*

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*The submission that he had served for 16 long years
and, therefore, his case should be considered
sympathetically does not appeal to this Court.*

G *The petitioner must perish by the same sword by which
he came.*

*Reliance of the petitioner on an order of this Court in
C.W.J.C. No. 5279/04 interfering with a similar order of
termination on the ground that it had been passed after*

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15 years is best answered by the judgment of the Supreme Court in (2005) 4 SSC 209 (Bind Kumar Gupta vs. Ram Ashray Mahato & Ors.) where the Supreme Court declined to interfere with an order of termination passed after 15 years of service, in case of an illegal appointment."

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However, on appeal, the Division Bench allowed the writ petition following an earlier order dated 18.05.2005 in another case, i.e., C.W.J.C. No. 5279 of 2004 filed by one of the similarly placed employee.

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6. We have heard Mr. Gopal Singh, learned counsel for the State of Bihar and Mr. Manoj R. Sinha, learned counsel for the respondent.

7. Learned counsel for the appellant submitted that the Division Bench erroneously followed the judgment in C.W.J.C. No. 5279 of 2004 which was distinguishable as therein no show cause notice was issued while in the present case, a show cause notice was duly issued to the respondent. Referring to the order of appointment, it was submitted that the present was a case of backdoor appointment without any advertisement or selection process. It was also pointed out that another Division Bench of the same High Court in *Hemkant Jha etc. etc. vs. The State of Bihar & Ors.* (L.P.A. No. 625 of 2003 etc.etc. decided on 18.7.2007) dealt with a group of identical matters, on remand by this Court, and upheld termination of services of police constables appointed without any selection. Therein, it was observed:

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"6 On going through the impugned judgments, the relevant facts and the judgment in the case of Sudhir Kumar, it is found that on facts, there is no meaningful and serious challenge to the relevant facts that concerned employees in these matters have been appointed on the post of Constable without any advertisement and without following procedure of appointment. No general or order

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- A or regulation of the State Government is available to support the contention that appointment of the appellants is akin to compassionate appointment for which the State Government has taken a policy decision and prescribed rules. In facts, there is no controversy or issue in these matters because on admitted facts it is clear that the
- B appointment of the appellants on the post of Constable were made through a backdoor method in complete disregard of procedure for appointment laid down in relevant rules in the Police Manual and in violation of constitutional mandate of equality in public employment.
- C The State has rightly relied upon various judgments including that of a Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3), reported in (2006) 4 SCC 1, to submit that such appointments do not confer any right on the appointees and in such cases of appointments made without following due process as per mandate of the Constitution or the relevant rules for appointment, the Court cannot direct for grant of benefits like absorption, regularisation or re-engagement. Those principles, though considered in that case in the context of absorption, regularization, will apply with equal force where such illegal appointment has been terminated and the Court is called upon to consider such order and the connected issue of ordering for reinstatement, i.e., for continuation of such illegal appointments. That Constitution Bench judgment has emphasized the relevant aspects in paragraphs 33 and 39 and in paragraph 54 it has been clarified that those decisions which run counter to the principles settled in that decision, or in which directions run counter to that decision, will stand denuded of their status as precedents. The same principle of law flows from a Division Bench judgment of this Court in the case of Amrendra Singh vs. State of Bihar, 1999 (3) PLJR 984.
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- H 7. Having found that the appellants employees

concerned are backdoor appointees as held by the learned Judges in the impugned orders and they have no right to their posts, we are now required to consider the submissions advanced on behalf of the appellants that the impugned orders should be set aside because the termination orders were issued by the various Superintendent of Police not of their own free will but rather under the directions of the higher authorities including the State Government and that principles of natural justice were not within relation to some of the petitioners/appellants.

8. The submissions noticed above must be decided in the background of facts of each case. In the present case, the facts noticed in brief disclose that large scale backdoor appointments were detected to have been made during the tenure of a particular Director General of Police. An enquiry was held and thereafter as a result of such enquiry directions were issued by the higher authorities to the Superintendents of Police, the competent authority to make appointments to the post of Constable, to issue show cause notices wherever such backdoor appointments were detected and to take action for their termination. The issue is whether the State Government and the successor-Director General of Police could have held such enquiry and issued such directions or not. In order to ensure rule of law and obedience to constitutional mandate governing public employment, the State and its officials must be held duty bound to take such steps and there is no legal infirmity in such action."

8. It has been pointed out that S.L.P.(c) Nos. 1237-1240 of 2008 etc.etc. and S.L.P.(c) Nos. 3334-3337 of 2008 filed against the above judgment were dismissed by this Court on 04.02.2008 and 04.04.2008 respectively and on that basis

A S.L.P.(c) No. 21543 of 2008 was also dismissed by this Court on 04.09.2013 in a connected matter.

B 9. Learned counsel for the respondent supported the impugned order and submitted that having regard to the fact that the respondent had already served for 15 years, termination of his services was not called for.

C 10. The only question for consideration is whether the appointment of the respondent made without any advertisement or selection process can be considered to be a valid appointment to a public post protected under Articles 14 or 311 of the Constitution of India?

D 11. On due consideration, we are of the view that the impugned judgment cannot be sustained for the reasons that follow.

12. The order of appointment, in the present case, is as follows:

E *"In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No. 6/86 F3 Sh. Chandeshwar Pathak, s/o Sh. Devnarayam Pathak of Village Haraji, P.O. Haraji, PS- Dimbara, District- Chhapra was appointed as Constable temporarily from 14.01.1988*
F *afternoon on the condition that his previous character found satisfactory and as and when necessary, his service shall be terminated without assigning any reason or show cause. His pay scale shall be Rs.425-10565 EB-10-605 with the basic pay of Rs.425/-. He has been*
G *allotted the CT No. 390."*

H 13. It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete

or any selection process was undertaken before appointment of the respondent. A

14. In *State of Orissa & Anr. vs. Mamata Mohanty* (2011) 3 SCC 436, it was observed as under:

"APPOINTMENT / EMPLOYMENT WITHOUT ADVERTISEMENT:" B

35. *At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supdt. v. K.B.N. Visweshwara Rao, Arun Tewari. v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Telecom District Manager v. Keshab Deb, State of Bihar v. Upendra Narayan Singh and State of M.P. v. Mohd. Ibrahim).* C D E F G

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc H

A *basis without inviting applications from all eligible*
candidates. *If any appointment is made by merely inviting*
names from the employment exchange or putting a note
on the notice board etc. that will not meet the requirement
of Articles 14 and 16 of the Constitution. Such a course
violates the mandates of Articles 14 and 16 of the
Constitution of India as it deprives the candidates who
are eligible for the post, from being considered. A person
employed in violation of these provisions is not entitled
to any relief including salary. For a valid and legal
appointment mandatory compliance with the said
constitutional requirement is to be fulfilled. The equality
clause enshrined in Article 16 requires that every such
appointment be made by an open advertisement as to
enable all eligible persons to compete on merit.”

D 15. No contrary view of this Court has been cited on behalf
of the respondent. Moreover, another Division Bench of the
same High Court has upheld termination in similar matter as
noted earlier against which S.L.P. has been dismissed by this
Court as mentioned earlier.

E 16. Accordingly, it has to be held that in the absence of
any advertisement or selection process, the appointment of the
respondent is not protected and could be validly terminated.
Learned single Judge was justified in dismissing the writ
petition while the Division Bench erred in interfering with the
same.

G 17. Accordingly, we allow this appeal, set aside the order
dated 05.01.2012 passed by the Division Bench of the High
Court in L.P.A. No. 945 of 2010 and restore the order dated
09.04.2010 passed by the learned single Judge of the High
Court in C.W.J.C. No.204 of 2004.

18. There shall be no order as to costs.