

SUPREME COURT OF INDIA

Subodh Kumar Prasad

Vs.

State of Bihar

(S. R. Babu and K.G. Balakrishnan JJ.)

02.03.2001

ORDER

1. Leave granted.
2. The appellant before us was appointed as a Compounder on 12-11-1982 and his services stood confirmed by an order made on 15-12-1994.
3. On 1-1-1997 a show-cause notice was issued to the appellant to give reply to the same by 3-1-1997 and his services were terminated. The ground upon which the services were sought to be terminated is as follows:

"The Civil Surgeon, Hazaribagh, vide Letter No. 2300 dated 23-12-1996 (copy enclosed) has informed the undersigned that according to Letter No. 2681 dated 12-11-1982 no appointment letter has been issued to anyone. Hence your appointment is fake."

4. Ultimately an order was made by the Chief Medical Officer stating that the appointment letter of the appellant which has been shown vide Memorandum No. 2681 dated 12-11-1982 is a letter of the office which is hot in regard to the appointment of anyone. On that basis his services were terminated. He filed a writ petition before the High Court.
5. The learned Single Judge by an order made on 3-9-1998 dismissed the same. It appears that certain records were produced before the court and when the stand had been taken by the appellant that the letter of appointment was not forged, on seeing the issue register in question the learned Single Judge felt satisfied that it could not be the letter of appointment. This view, however, stood affirmed by the Division Bench. Hence this appeal before us.
6. What should have been really examined in the case is the letter of appointment itself and not the mere registers which indicate dispatch of letters. If the letter of appointment issued to the appellant was a fake one there was certainly a cause for disciplinary action, but not by merely looking to the register such conclusion could be inferred for numbers noted therein may have been as a result of a mistake. Therefore, the inquiry should have been as to the

actual nature of the order or the letter of appointment issued to the appellant. That inquiry was not done by the learned Single Judge.

7. Learned counsel for the appellant pointed out the infirmity in the order made by the disciplinary authority and learned Single Judge as well as that of the Division Bench. However, Mr B.B. Singh, learned counsel for the State of Bihar very strenuously urged that many appointments had been made without issuing appropriate orders emanating from appropriate authorities and, therefore, the situation was taken note of by the learned Judges of the High Court and the orders made by the High Court should not be disturbed and he relied upon the decisions of this Court in *Ashwani Kumar v. State of Bihar*, and *U.P. Junior Doctors' Action Committee v. Dr B. Sheetal Nandwani*, .

8. We have carefully looked into the judgments cited by the learned counsel for the respondent. We do not find the relevance of the same so far as this case is concerned. The decision in *Ashwani Kumar* case is concerned with appointments that had been made in excess of sanctioned posts under the Tuberculosis Eradication Scheme by an authority in a manner not authorised. Hence this Court made the order in question, which is not the position in the present case. Nor do we think the decision in *Dr B. Sheetal Nandwani* case has any application because that case was in respect of certain orders issued by the Court which were stated to have been forged, which is not the position in the present case at all.

9. Therefore, we have no option but to set aside the orders made by the disciplinary authority as well as that of the High Court. The result is that the appellant will have to be reinstated in service. He will be entitled to back wages to the extent of 50% which shall be paid within three months from the receipt of the order. It is made clear that if the respondents still feel that it is appropriate to pursue the disciplinary action proposed against the appellant, it is open to take appropriate action in accordance with law. Reserving this liberty as aforesaid this appeal is allowed. No order as to costs. The inquiry, if any, to be initiated shall not be later than six months from today.