

(1995) 05 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5364 of 1994

Abadh Singh

APPELLANT

Vs

Bihar State Co-operative Marketing Union Limited and Others

RESPONDENT

Date of Decision : 15-05-1995

Acts Referred:

Citation : (1995) 05 PAT CK 0018

Judgement

A.K. Ganguly, J.—After hearing learned Counsel for the parties and considering the materials on record, this writ petition is being disposed of at the stage of admission itself by passing the following order:

2. The grievance of the writ Petitioner, here is that even though his services were regularised by Respondent No. 3, the Managing Director, Bihar State Co-operative Marketing Union Limited, Patna with effect from 1-1-1984 as a night guard, he is not given the benefit of regularisation in the shape of pay-scale nor is he considered for promotion in the next higher post like other similarly placed night guards.

3. The Petitioner's case is that vide memo No. 168 dated 7th February, 1977 he was appointed as a temporary night guard by Respondent No. 5, the Range Officer, Munger and thereafter by Anr. memo No. 1139/Munger dated 1st May, 1977 the case of the Petitioner was recommended for regularisation by the said Respondent No. 5 and ultimately by an order dated 28th January, 1984, as stated above, the services of the Petitioner along with various other similarly placed night guards were regularised with effect from 1st January, 1984 by Respondent No. 3. The said order regularising the services of the Petitioner as night guard is annexed as Annexure-2 to this writ petition. The Petitioner's name appears as against serial No. 126 in the said list. The Petitioner's further case is that pursuant to the said regularisation the Petitioner gave his joining report to the Range Officer (Respondent No. 5) and the said joining report was accepted by Respondent No. 5 but he is not given any benefit of the said regularisation by Respondent No. 5. In paragraph 9 of the writ petition it has been asserted that

he is one of the senior most night guards in the department. The Petitioner has also made averments in the writ petition that he has made several representations to the authorities but the authorities turned a deaf ear to those representations made by the Petitioner.

4. In this case counter affidavit has been filed by the Respondents. In the said counter affidavit filed by the Respondents, no particular reason has been assigned in support of the stand taken by them in refusing the benefit of regularisation of services to the Petitioner. In the counter affidavit the sole case of the Respondents is that the Petitioner was appointed in an irregular manner as a result of which even though his services were regularised, the benefit of such regularisation cannot be given to him.

5. It goes without saying that the Petitioner was appointed in the year 1977 and is working till today. In the back-ground of this fact the plea of irregular appointment cannot be sustained now after a gap of about 18 years of continuous service. Even assuming arguendo, that such a plea was available at some point of time, the same cannot survive now. Allowing the Respondent to defeat the Petitioner's claim on such a plea is opposed to both reason and fairness. "Indeed fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1) of the Constitution", The Manager, Government Branch Press and Another Vs. D.B. Belliappa,

(emphasis added).

6. It has not been stated in the counter affidavit that any adverse report was ever communicated to the Petitioner or he was subjected to any proceeding or any punishment was ever awarded against him. In that view of the matter, the Respondents cannot, in the eye of law, refuse the benefit of regularisation to the Petitioner even though the same has been granted to other similarly situated persons. In this connection learned Counsel for the Petitioner has referred to various unreported judgments of this Court including the judgment dated 6-4-1993 passed in C.W.J.C. No. 9837 of 1992 (Deep Narain Prasad and Anr. v. Bihar State Co-operative Marketing Union Limited and Ors.). From a perusal of the said judgment it appears that in that case also the applicant was a temporary night guard and was denied the benefit of regularisation. He came to Court and a Division Bench of this Court by an Order dated 6-4-1993 directed that the services of the Petitioner should be regularised with immediate effect. It appears that against that judgment, an appeal was preferred before the Supreme Court and vide Special Leave to Appeal (Civil) No. 10132 of 1993 the same was dismissed by the Supreme Court by an order dated 16th August, 1993. Another unreported judgment of a Division Bench of this Court dated 15-2-1993 passed in C.W.J.C. No. 8563 of 1992 (Abu Affan v. Bihar State Co-operative Marketing Union Limited) was cited by the learned Counsel for the Petitioner. In that case also this Court directed that the services of the Petitioner should be regularised with immediate effect on the ground that there was no adverse remark/allegation made by anyone against the Petitioner.

7. Learned Counsel for the Respondents has also relied upon an unreported judgment of this Court dated 4-5-1994 passed in C.W.J.C. No. 12046 of 1993 (Uttam Kumar and Ors. v. Bihar State Co-operative Marketing Union Limited). In the said unreported judgment a Division Bench of this Court has held that regularisation of service cannot be made a mode of appointment. The said decision was rendered on the basis of various other judgments of this Court as also of the Supreme Court.

8. To my mind, the said unreported judgment of this Court dated 4th May, 1984 passed in C.W.J.C. No. 12046 of 1993 has no application to the facts of the case in hand inasmuch as here the Petitioner is not seeking appointment on the basis of regularisation. The Petitioner has been appointed in the year 1977. Thereafter his services have been regularised in 1984. The case of the Petitioner is that once his services have been regularised, the benefit of that regularisation cannot be denied to him. In that view of the matter, the Petitioner's case stands on a much stronger footing than the cases in which the decisions were rendered in C.W.J.C. No. 9837 of 1992 and C.W.J.C. No. 8563 of 1992. The services of the Petitioners in those cases were not regularised when they came and even then, in the facts of those cases, the court issued a mandate directing the Respondents to regularise the services whereas in the instant case, the Petitioner's services have already been regularised by the Respondents. In that view of the matter, this Court holds that having regularised the services of the Petitioner in 1984, the Respondents cannot deny the benefit of such regularisation on the basis of the plea that the appointment of the Petitioner in 1977 was not regular.

9. For the reasons stated above, this writ petition succeeds. The Respondents are directed to give the benefit of regularisation of services to the Petitioner with effect from 1st January, 1984. The Petitioner must be placed in the pay-scale as indicated in the order of regularisation dated 28th January, 1984 (Annexure-2) and the Petitioner must be given all the consequential benefits including the arrears of pay to be calculated on the basis that he had been placed in the pay-scale of Rs. 375-5-445-E.B.-7-480 with effect from 1st January, 1984. It is further made clear that the Petitioner must be considered for promotion in accordance with law along with other persons whose services have been regularised by the said order dated 28th January, 1984. The Respondents are directed to give benefit of pay-scale and salary and other consequential benefits to the Petitioner within a period of two months from the date of receipt/production of a copy of this order. The Respondents are also directed to consider the case of the Petitioner for promotion in the light of the observations made in the judgment within a period of three months from the date of receipt/production of copy of this order and pass a reasoned order.

10. This writ petition is thus allowed. There will be no order as to cost.