

(2000) 02 PAT CK 0102
In the Patna High Court
Case No : C.W.J.C. No. 715 of 2000

Abhay Shankar Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2000) 2 PLJR 136

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Chakrapani, for the Appellant; Dilip Kumar, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—There are 15 Petitioners in this writ application who were engaged as Khalasies on daily wages in and after August 1988 in Bihar Sharif Division of Public Health Engineering Department of the State of Bihar allegedly to meet the requirement of the department from time to time. The Petitioners have challenged and sought quashing of decision of the Government issued on 20.12.99 contained in Annexure-14 by which their representations were rejected and a decision was taken to retrench them from service after complying with Section 25-F of the Industrial Disputes Act. The Petitioners have also challenged the consequent notice dated 30.12.99 contained in Annexure-15 and the final order of retrenchment dated 31.1.2000 as contained in Annexure 19.

2. The relevant facts in short are that within a few months of their engagement on daily wages a policy decision was taken by the Government on 4.4.89 to terminate all the daily wage employees appointed in the department after 1.1.88. In spite of objection by the Executive Engineer to such policy, the Secretary of the Department on 12.6.89 (Annexure-4) insisted on strict implementation of the said policy and as a result services of the Petitioners were terminated on 16.6.89. Petitioners challenged the termination order through a

writ petition bearing C.W.J.C. No. 6248/89. In the said writ application interim order of status quo was passed and the case was admitted for hearing on 6.12.89. It appears that during the pendency of the writ Petitioner on 8.2.1990 through Annexure-9 a policy decision was taken to take back the services of such employees who were working against sanctioned posts and by order dated 24.2.90 the Petitioners were taken back in service. Thereafter the Chief Engineer on 10.4.91 issued an order canceling the order dated 24.2.90 by which Petitioners had been taken back in service but on account of an interim order of this Court dated 4.7.91 passed in the pending writ application the Petitioners continued in service. The said writ application was finally disposed of by order dated 6.5.99 (Annexure-12). A perusal of the said order shows that a ground was taken on behalf of the Petitioners" that similarly situated other daily wage workers had been taken back in service by the Respondents and hence there was hostile discrimination practiced against the Petitioners. On this submission the court did not give any finding of its own but disposed of the writ petition by giving the Petitioners opportunity to make a detailed representation giving particulars of such cases in order to substantiate their claim that similarly placed persons have been subsequently taken back and (sic) continuing. In case of such a representation being filed within one month the Respondent No. 3, the Chief Engineer was directed to make a detailed enquiry and if the Respondents found the facts alleged by the Petitioners to be true then in that case the Petitioners were to be entitled to the same and similar treatment and in that case Petitioners" continuance would not be affected by the impugned order.

3. The representation filed by the Petitioners in terms of the order of this Court has been rejected by the impugned order contained in Annexure-14 with a finding that the decision dated 19.12.1990 (Annexure-9) to take back the daily wage employees working on sanctioned post has been reversed by a subsequent decision dated 3.1.97 and accordingly services of all the daily wage employees engaged after 1.8.88 was to be terminated. It has been further mentioned in Annexure-14 that the Petitioners failed to show that any similarly situated person was engaged in the P.H.E.D. Division, Bihar-sharif. The counter affidavit contains still more specific statement that no similar daily wage employees are now in service.

4. Learned Counsel for the Petitioners first submitted that the impugned order contained in Annexure-14 should have been passed by the Engineer-in-Chief, Respondent No. 3 in the earlier case who was directed to enquire into the representations of the Petitioners and therefore rejection of their representation by other authority of the Government is bad in law. This ground has not been pleaded in the writ petition but it is mentioned at one place in the show cause filed in response to the notice dated 30.12.99 (Annexure-15). In the aforesaid circumstances I had directed the State Counsel to produce the relevant file for perusal of this Court. The file was produced and with reference to the same learned Counsel for the State submitted that since during the relevant time there was no person holding the office of Engineer-in-Chief-cum Special Secretary,

hence the matter was routed through the Chief Engineer and after enquiry the final decision was taken on the representations of the Petitioners by the Secretary of the Department and the impugned order contained in Annexure-14 was issued accordingly. In the aforesaid facts I do not find any illegality in the action of the Respondents. Further on a very careful perusal of this Court's order dated 6.5.99 it is obvious that although the representation was required to be made to the Engineer-in-Chief-cum-Special Secretary, Respondent No. 3 in that case and he was directed to make an enquiry with regard to such representation but the authority to arrive at relevant findings was given in general terms in favour of the Respondents and hence I do not find any illegality in Annexure-14 on the ground noticed above.

5. The next contention on behalf of the Petitioners is that in the impugned order contained in Annexure-14 the Respondents have referred to a decision dated 3.1.97 by which earlier decision dated 9.2.90 was cancelled and this should not be permitted because in the earlier writ proceedings Respondents had not mentioned regarding the decision of the Government dated 3.1.97. In my view, the aforesaid ground is also devoid of any merit. The Respondents cannot be restrained from taking a decision of the Government into consideration while disposing of Petitioners representation only on the ground that for any reason such a decision of the Government could not be brought to the notice of the Court at the time of disposal of the earlier writ petition.

6. It was next contended that in a judgment of this Court contained in Annexure-17 the Petitioners of that case were granted relief against termination in spite of Government's decision dated 3.1.97, on the ground of equity and long continuance in service. In my view, the said judgment is not applicable in this case because the service of the Petitioners was sought to be terminated within a year of their engagement on daily wage basis and though they continued in service during the pendency of their earlier writ petition but by the final judgment the Respondents were required to dispose of their representation on the basis of observations given in the said judgment.

7. It was lastly submitted that although by Annexure-14 the Government has directed to terminate the service of the Petitioners in accordance with Section 25-F of the Industrial Disputes Act but notice contained in Annexure-14 is merely a show cause notice and not one in accordance with Section 25-F of the Industrial Disputes Act and further no compensation as required by Section 25-F of the Industrial Disputes Act has been paid to the Petitioners prior to termination of their services by impugned order dated 31.1.2000 contained in Annexure-19. After going through the facts of the case, I find substance in this submission of the Petitioners. The notice contained in Annexure-15 is not in accordance with Section 25-F of the Industrial Disputes Act as it calls for a show cause from the Petitioners as to why their services should not be terminated whereas a notice u/s 25-F requires merely an intimation of the proposed retrenchment. Further the Respondents have failed to pay the amounts of compensation required by

Section 25-F of the Act prior to termination. For these two reasons the impugned notice contained in Annexure-15 and the termination order contained in Annexure-19 are hereby quashed. As a result, the Petitioners will be deemed in continuous service and shall be entitled to their due wages for the period of illegal retrenchment. However, the Respondents shall be at liberty to take fresh steps in accordance with Section 25-F of the Industrial Disputes Act and in accordance with decision contained in Annexure-14.

8. This application is allowed only to the extent indicated above without any order as to costs.