
(2001) 10 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 5841 of 2001

Ajay Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Citation : (2002) 1 PLJR 278

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ram Balak Mahto and S.S. Kishore, for the Appellant; J.D. Singh, for the Respondent

Judgement

Aftab Alam, J.—The 16 Petitioners before this Court seek to challenge an order issued by the Director, Indira Gandhi Institute of Cardiology, Patna issued under his memo No. 244/2001, dated 31.3.2001 (Annexure-12). By this order the Petitioners who were working in the Indira Gandhi Institute of Cardiology (hereinafter referred to as the Institute) against different Class III and Class IV posts have been disengaged w.e.f. 1.4.2001, stating that their services were no longer required.

2. The Petitioners were working on daily wage basis and their engagements were made without following the rules of recruitment in government service. Hence, normally this Court might not have interfered with the order of their removal from service. But there are other features in this case on the basis of which I feel persuaded to take the view that this matter warrants intervention by this Court.

3. The Petitioners were engaged during the period 1975 to 1992 (the year from which each of the Petitioners is working continuously is stated in Annexure-1 to the writ petition). According to the Petitioners' case they are at present working against the following posts which were sanctioned by G.O. No. I/P-I-11-91-155 (1) dated 31.3.1995.

1. Library Assistant - One post

2. Record Keeper -Two posts
3. Tailor - One post
4. Liftman - Four posts
5. Male Sweeper - Four posts
6. Male Ward attendant -Eight posts

4. It is further to be noted that earlier the Government had taken initiative to consider the case of the Petitioners for regularisation and in that connection a Committee was also constituted by memo No. 136(21) dated 18.7.2000. At that stage the Petitioners came to this Court making the grievance regarding the exclusion of the Director of the Institute from the Committee. It was contended on behalf of the Petitioners that in the matter of appointment of staff the Director of the Institute cannot be disassociated, more so when the person already serving in the Institute on daily wage/casual basis are to be regularised. This Court upheld the Petitioners' contention and disposed of that writ petition by order dated 7.8.2000 giving the following direction:

Considering the facts and circumstances of the case, I direct the State Government to reconstitute the Committee of which the Director, Indira Gandhi Institute of Cardiology, should be a member. As a matter of fact, he should not only be an ordinary member, rather his views should have primacy in selection and, therefore, his view in the matter should be given due weightage, for he is the person who is supposed to know the staff who are working in the Institute on daily wage/casual basis. Though in the matter of regularisation, seniority has to be given due consideration, there may be justification to bypass the claim of the senior depending on his past service and conduct. However, in such cases the reason for bypassing the claim should be briefly indicated. I would also clarify that such regularisation can be made only against sanctioned posts and there also must be need for appointment. The fact that the persons have been continuing for long period, prima facie, shows that there is need for making regular appointment.

The Respondents are directed to consider the cases of the Petitioners for regularisation in the light of the observations and directions noted above.

5. It is significant to note that in that case it was not indicated on behalf of the State that it was intended to remove the Petitioners and to fill up the posts against which they were working from before on the basis of an open advertisement.

6. Following the directions of this Court as quoted above, the Committee was reconstituted to consider the case of regularisation of the employees working on daily wages in the Institute.

7. There are also materials on record showing that the department wrote to the members of the Committee asking for the relevant materials so that the

Government might issue necessary guide-lines for regularising the services/ promotion of the casual employees of the Institute.

8. The admitted position, however, is that no report has come from the Committee and in the meanwhile, following a decision of by the Government, the impugned order was issued removing all the Petitioners from service.

9. In the counter affidavit filed on behalf of the State a justification for the Petitioners' removal is sought to be offered by stating that their engagements were illegal and irregular and some recent decisions of this Court are cited in support of removal of illegally engaged employees. Those decisions have no application to the special facts and circumstances of this case.

10. Further, in paragraph 13 of the counter affidavit it is stated as follows:

13. That the final report of the Committee is awaited. However it has been decided that for filling up the posts in the Institute on regular basis, the posts will be advertised so that equal opportunity is given to all eligible candidates. The employees who had worked on daily wages will be given waeitage (sic) on the basis of their experience in accordance with recommendation of the Committee.

11. In the supplementary counter affidavit an assurance is given to the Court that the entire process of filling up the posts in the Institute on regular basis will be completed expeditiously and the employees who had worked earlier on daily wage will be given due weight age as per their experience.

12. As regards retaining the Petitioners in the meanwhile, it is stated that reengaging the Petitioners on daily wages while the process of filling up the posts on regular basis is underway might create further complications as large number of persons were engaged on daily wages without considering the work load and the actual requirement. The counter affidavit did not elaborate about the "complications" that might arise by retaining the Petitioners till the posts were filled up on a regular basis but Mr. G.R 1 submitted that reengaging the Petitioners may create a vested right in them and they may claim regularisation in service even without giving an outsider any chance of consideration. In my view, the apprehension of G.R 1 is misplaced and retaining the Petitioners till the posts are duly filled up will not create any vested right in them for regularisation in service.

13. Having given this matter my careful thought and on a consideration of the materials brought to the notice of the Court and on hearing Counsel for the parties I propose to make the following directions:

(i) The Petitioners will be re-engaged to work on daily wage basis against the posts on which they were working before the issuance of the impugned orders dated 31.3.2001. The reengagement of the Petitioners in pursuance of this order will not create in their favour any equity and will not give them any vested right for regularisation against the posts.

(ii) In pursuance of the earlier order passed by this Court in C.W.J.C. No. 11649 of 1999, the Respondent authorities will identify the Class III and Class IV posts which are not only sanctioned but also need to be filled up having regard to the current and future needs of the Institute.

(iii) The Committee constituted for the purpose will evolve an objective and uniform criteria for giving weightage for the past satisfactory service to the Petitioners and other similarly situated employees. The Committee may perhaps decide to give certain marks or points for each year's satisfactory service and will also decide whether or not the marks awarded for past experience should be subject to any maximum.

(iv) The Petitioners will be entitled to relaxation in age to the extent they have earlier worked in the Institute or in any other Government employment.

(v) The Petitioners will get marks as may be determined by the Committee subject to the recommendation made by the Director of the Institute or a person nominated by him as to whether or not the past service of the Petitioners or any one of them was satisfactory.

(vi) The Respondent authorities will be free to issue the advertisement so as to attract outsiders as well who may also be considered along with the casual employees already working in the Institute.

(vii) The whole process of selection and appointment against posts required to be filled up in the Institute on the lines indicated above, must be completed by June 30, 2002.

14. Till then, the Petitioners will be retained on the same terms and conditions on which they were working prior to 1.4.2001.

15. In the result, this writ petition stands disposed of with the aforesaid observations and directions.