

(2002) 01 PAT CK 0097

In the Patna High Court

Case No : C.W.J.C. Nos. 13527 of 2000 and 7223, 8602, 8631, 9142, 9380, 9655, 14268 and 15876 of 2001

Akhilesh Kumar Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0097

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned Counsel for the petitioners and learned G.P. 9 for the respondent in all the cases.

2. All these writ applications have been filed for common cause as the writ petitioners have been terminated from their services and the facts involved in these writ applications are identical, therefore, they have been heard together and are being disposed of by this common order.

3. A common argument has been advanced on behalf of the petitioners challenging the orders of termination of the petitioners contending that the orders of termination are arbitrary unreasonable and wholly without jurisdiction inasmuch that the petitioners have worked under the respondents for several years after being validly appointed on Class IV posts.

4. A counter-affidavit has been filed on behalf of the state stating therein that though the petitioners contained under the respondents for some time. On Class IV posts, they were not appointed after following the provisions of Articles 14 and 16 of the Constitution inasmuch as that the posts were not advertised and their services, therefore, were liable to be terminated as such appointments were ab initio void.

5. From the pleadings of the parties, it appears that the petitioners were appointed in the eighties by respondents concerned on Class IV posts against a scale of Rs. 350-450 on temporary basis and their services were extended from

time to time till passing of the orders impugned. It further appears that the writ petitioners continued under the respondents for pretty long time and they performed their duties satisfactorily and instead absorbing them permanently, they have been terminated.

6. It is not in dispute that the petitioners, some how or the other, continued under the respondents for more than ten years and were getting scale. There is nothing in the order impugned or in the counter-affidavit to show that the services of the petitioners were found unsatisfactory and at any point of time they misrepresented the facts for obtaining the appointment letters nor they played fraud upon the respondents in doing so. Since petitioners continued on Class IV posts against the respondents and were getting scale for several years, in my opinion, equity demands that they should not be terminated. Even assuming that there were certain irregularities in engagement of the petitioners on temporary basis, that could have been rectified immediately after their appointment/engagement, but it appears that the period of engagement was extended from time to time giving legitimate expectations to the petitioners that their services have been regularised.

7. It is almost settled that if an employee continued on a post for several years, his services should not be terminated. In this connection, reference may be made to the case of Roshni Devi and Others Vs. State of Haryana and Others, and also the case of Union of India and Others Vs. Kishorilal Bablani, . In these cases, it appears that even though certain irregularities were found in appointment of the petitioners the authorities by now acquiesced in the infirmities and now appointment of the petitioners cannot be said to be violative of Articles 14 and 16 of the Constitution. Moreover by now all the petitioners have become overage and in case orders of termination are not interfered with, they will not get employment anywhere.

8. Certain orders passed by this Court in similarly situated cases, have been brought on record. In C.W.J.C. No. 6586 of 1998 Sunil Kumar Singh and Ors. v. State of Bihar and Ors., this Court also set aside the order of termination of the writ petitioner who is similarly situated to these petitioners and the order passed by the learned Single Judge in the case of Sun/7 Kumar Singh (supra) was upheld by a Bench of this Court in L.P.A. No. 270 of 2000. Again in the case of Uday Prasad Singh v. State of Bihar C.W.J.C. No. 15526 of 2001 similarly situated writ application was allowed and order of termination was set aside holding that the termination of the services of the petitioner was opposed to the principles of equity. In this connection, reference may also be made to the case of Abhay Kumar Pandey v. State of Bihar and Ore. 2000 (2) P.L.J.R. 115.

9. For the reasons and discussion aforesaid, the orders terminating the services of the petitioners, in my opinion, are not sustainable. In the result, these applications are allowed, orders impugned are set aside and the petitioners are directed to be reinstated on their posts with all monetary benefits.

10. This order, however, shall not be precedent for other cases as it is being passed in the peculiar facts and circumstances of the case.

11. No order as to costs.