

(1994) 12 SC CK 0079
In the Supreme Court Of India
Case No : SLP (C) No. 17112 Of 1993

Anil Kumar Gupta and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Citation : (1996) 7 SCC 74

Hon'ble Judges : S. C. Agrawal, J; Faizan Uddin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Agrawal J.-Special leave granted

2. We have heard counsel for the parties

3. This appeal is directed against the order dated 1-12-1992 passed by the Patna High Court dismissing the writ petition (CWJC No. 11702 of 1992) filed by the appellants

4. The appellants were employed as daily-wage employees in Water and Land Management Institute (for short "WALMI") of the Irrigation Department of the Government of Bihar. They had been working on the posts of steno-typists, typists, machine operators and peons. The daily-wage employees, including the appellants, filed a writ petition (CWJC No. 8113 of 1990) in the Patna High Court seeking regularisation and equal wages and allowances on a par with the regularly appointed employees of the State Government performing the same or similar duties. The said writ petition was disposed of by the High Court by order dated 4-9-1992, with a direction that they may file a representation making out their grievances and that the authority concerned will consider the same in accordance with law. It was further directed that the said representation should be disposed of within a period of four months from the date of its filing. It appears that a representation was submitted by the daily-wage employees including the appellants. On 5-11-1992 an order was passed by the Director/

Chief Engineer WALMI directing the Executive Engineers of the various zones to terminate the services of all the daily-wage workers except those whose land has been acquired for WALMI Complex by paying in advance pay for a month

5. Feeling aggrieved by the said order the appellants filed a writ petition giving rise to this appeal wherein the High Court, on 27-11-1992, while adjourning the matter to 11-12-1992, directed the Government Pleader to make a categorical statement as to whether the earlier direction of the Court was kept in mind by the authority concerned or not. Thereafter a fresh order dated 4-12-1992 was passed by the Director/Chief Engineer WALMI wherein, after stating that the order passed by the High Court in the earlier writ petition (CWJC No. 8113 of 1990) has been considered fully, it was recorded that while WALMI was under construction, financial aid was received from USAID and World Bank and that now the construction work of the Complex has ended and that financial aid received from USA also has been discontinued and that due to the completion of the construction work and full development of the Complex there was no more work in WALMI as such and it was impossible to regularise the appointments of daily-wage employees. On the basis of the said order the termination of the services of the appellants was justified before the High Court on the ground that since the appellants were employed for the purpose of construction work and since the construction work was over they could not be retained in employment. The High Court has accepted the said plea and has dismissed the writ petition of the appellants by the impugned order

6. Subsequent to the passing of the impugned order by the High Court a third order was passed on 7-1-1993 by the Director (CE) whereby the services of all the daily-wage labourers, including the appellants, were terminated in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 by giving 15 days' wages for each year of service and one month's wages in lieu of one month's prior notice. In the said order it was stated that the services of all the daily-wage labourers were being terminated from 10-1-1993 afternoon. This would show that the earlier order dated 5-11-1992 was superseded by order dated 7-1-1993 and the services of the appellants were terminated with effect from 10-1-1993

7. Shri L.R. Singh, the learned counsel for the appellants, has urged that the justification for terminating the employment of the appellants which was put forward by the respondents before the High Court, namely, that the appellants were engaged for the purpose of construction work of the WALMI Complex is not correct. In order to show that the appellants were employed in connection with the regular work of WALMI, Shri L.R. Singh has invited our attention to the office order dated 5-8-1992 which shows the posting of various employees and daily-wage workers employed in WALMI. On a perusal of the said order dated 5-8-1992 we find that the appellants were employed in connection with the regular work of WALMI and were posted with various officers such as Superintendent, Engineer-cum-Professor (Engineering), Superintendent Engineer-

cum-Professor (Agriculture) etc. This would show that the case put forward by the respondents to justify the termination of the employment of the appellants, namely that they were engaged in connection with the construction work is not correct and that they were actually employed in connection with the regular work of WALMI. It must, therefore, be held that the services of the appellants have been wrongly terminated on the pretext that they were working on the construction side and since the construction work is over their services were no longer required

8. Shri Singh has also submitted that the appellants have not been permitted to work with WALMI ever since the passing of the order dated 5-11-1992 and in spite of the subsequent order dated 7-1-1993 they have not been paid their emoluments for the period 5-11-1992 to 10-1-1993 and that they have also not been paid the compensation as well as one month's pay in lieu of the notice indicated in the order dated 7-1-1993

9. Having regard to the aforesaid facts and the circumstances, we are of the view that the termination of the employment of the appellants on the basis of the orders dated 5-11-1992, 4-12-1992 and 7-1-1993 cannot be upheld and must be set aside. The appellants will be treated to be in employment on the same position which they were holding on the date of the passing of the said orders. They would also be entitled to their wages for the period from 5-11-1992 to 10-1-1992. We are not inclined to direct payment of wages for the period subsequent to 10-1-1993 till their reinstatement. The said period will, however, be counted as period of their service

10. It will be permissible for the respondents to make an assessment of the staff needs of WALMI and in case it is found that the number of employees working on daily-wage basis is in excess of the requirement for regular work in WALMI they can take necessary steps for terminating the services of the surplus staff including the appellants

11. The case of the appellants is that there are vacancies on regular posts against which they were working on daily-wage basis. If it is so the respondents should take steps to fill such regular vacancies by regular selection and the appellants, if they are found eligible, should be considered for such selection and their having crossed the age-limit should not come in their way for such consideration. The appellants may be allowed to continue on daily-wage basis till such regular selection is made or till steps are taken to remove the surplus staff after assessment of the staff needs of WALMI

12. The appellants be taken back if they report on duty on or before 2-1-1995

13. The appeal is allowed accordingly. The application for impleadment is rejected. No costs.