

(1998) 09 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 6904 of 1996

Anil Kurhar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1999) 1 PLJR 487

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : Sudhir Kumar Jha, Rama Sinhla and C.S. Singh, for the Appellant;
Hashwardhan Sahay, for the Respondent

Judgement

B.P. Singh, J.—The Petitioners claim that they were appointed in 1987 as Milk Recorder Cattle Field Assistant and on other such posts in the department of Animal Husbandry, Governemnt of Bihar. It is not disputed that the engagement was on daily wage basis, but the Petitioners contend that they have been working against the said posts for the last ten years and at one point of time an order was passed to the effect that their services be regularised. The grievance of the Petitioners is that when an enquiry was made by the Director, Animal Husbandry, as to how these appointments were made at different levels, the concerned authority terminated the engagement of the Petitioner, who were engaged in the district of Bhoj-pur saying that they were no more required.

2. Learned Counsel for the State, on the other hand, submits that these appointments were not made in accordance with law as the vacancies were never notified, nor was there any selection process to assess the relative merit of the candidates. These appointments are wholly illegal and invalid, and this Court in exercise of writ jurisdiction should not grant relief to the Petitioner.

3. The manner in which the State has been administered in the last few decades leaves much to be desired. Illegalities have been rampant in every field of administration, particularly in the matter of appointment to government service.

More person have been appointed in irregular and illegal manner than in accordance with rules and I can say, from my judicial experience that majority of appointments have been made on ad-hoc basis, daily wage basis or some other such basis rather than in a regular manner following the relevant rules. In such case the first casualty has been Article 16 of the Constitution of India since the posts are not advertised and the candidate not, subjected to any fair processes of selection.

4. In large number of cases the illegal appointments have been quashed by this Court, but we are yet to find those causes where the persons, who made such illegal appointments have been punished. The Supreme Court has observed that the Courts can take judicial notice of the fact that the appointment made in utter disregard of the rules are made on monetary consideration. Those who live in this State know that the observation of the Supreme Court is a reality, and nothing is more true than what has been said by the Supreme Court. Yet the officers of the Government of Bihar have been making appointments with impunity in utter disregard of the rules. Sometimes they make such appointments for their own personal gain, and sometimes at the behest of higher-ups.

5. This Court is flooded with litigations wherein such illegal appointments have been terminated. It also appears to have become a practice that once an illegal appointment is granted on monetary consideration the appointee has to meet similar demands of every successor of appointing authority who replace the original appointing authority from time to time. This is not as if these facts are not within the knowledge of the authorities, but they do not bother to take notice of the fact and to initiate remedial steps.

6. In the situation as it prevails in the State if a very sympathetic view is taken, in favour of those illegally appointed against Class-IV and Class III posts there will be no scope for regular appointments. Very often a question is posed as to how the appointee is to be blamed for the illegality committed by the appointing authority. Those who know the reality of the situation also know that the appointing authority never visits the house of the appointee with an offer of appointment. The appointments are made on monetary consideration. It is invariably the appointee who approached the appointing authority directly or indirectly, therefore, in the case of an illegal appointment it can be assumed that the person appointed has purchased the office and, therefore, he is also partly responsible for the illegality committed by the appointing authority.

7. Having said all this, one cannot lose sight of equitable consideration that arise particularly in case where such appointments have been continued for years together. The modus operandi is that such appointments are initially made for a limited period, then extended, and then appointments made on ad-hoc basis, later converted on temporary basis and ultimately regularised so that the appointee may claim permanency in government service.

8. The Supreme Court has clearly pointed out in its judgment that regularisation does not create permanency in government service. By regularisation an irregular action is corrected, and by irregular action is meant an action which was not strictly in compliance with the requirement of rules but which did not go to the root of the matter. Appointments made without advertising the posts or without following a fair procedure of selection are not merely irregular but illegal and invalid as they breach Article 16 of the Constitution of India. The principles of equality of opportunity in matters of employment under the State is completely defeated if a full process of selection is not followed. In an un-fair selection process the opportunity is extended to only the favoured one and not necessarily to the deserving one.

9. I am now confronted with a situation where the Petitioners claim to have worked for more than ten years and now they are no more required. Learned Counsel for the Petitioners submitted that there is availability of posts and the posts against which the Petitioners were working have to be filled up. In all probability those posts will be filled up after the Petitioner have left again in the same illegal manner.

10. The Courts have taken notice of long period of engagement of government servant on daily wage or temporary basis and some sort of preference is provided in their favour as a matter of equity. Learned Counsel for the Petitioners has drawn my attention to the recent decision of the Supreme Court reported in Arun Kumar Rout and Others Vs. State of Bihar and Others, . He has submitted that similar direction may be issued in this case as well.

11. Having heard the learned Counsel for the Petitioner as well as the learned Counsel for the State, this writ petition is being disposed of with the following directions.

12. If the posts which were held by the Petitioners are required to be filled up in future, they must be filled up only in the regular manner following the rules. The Supreme Court has observed that an ad-hoc or temporary employee should not be substituted by another ad-hoc or temporary employee and once removed, a temporary or ad-hoc employee must be replaced by a person regularly appointed.

13. Therefore if the Government proposes to fill up the posts which are sanctioned but vacant, they should be filled up by following the normal procedure of recruitment. This does not prevent the State Government from sanctioning additional posts, if considered necessary. Fifty percent of the sanctioned posts should be reserved for being filled up by persons who have continuously served the department on temporary, ad-hoc or daily wage basis or in other such capacity for a period of five years or more. Their merit has to be considered having regard to their educational qualification, experience etc. but the norms should be laid down before the process of selection begins. The remaining fifty percent posts may be filled up by the Government in accordance with rules. These directions are confined to the sanctioned posts only which according to the

Petitioners exist in the District of Bhojpur and against which the Petitioners claim to have worked.

14. This writ petition is disposed in the above terms.