
(2005) 02 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 364 of 2000

Anugrah Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2005) 2 PLJR 197

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad, Pramod Kumar and Ritesh Kumar, for the Appellant; Rajeshwar Prasad for the State, for the Respondent

Final Decision : Allowed

Judgement

Shashank Kumar Singh, J.—Heard Learned Counsel for the petitioner and the State. This is a peculiar case in which the State of Bihar has failed to comply with the direction of this Court rather by filing a counter affidavit, the Executive Engineer has tried to controvert the factual aspect, without any supporting document.

2. Petitioner was appointed on muster roll on daily wages in Public Health Engineering Department (hereinafter to be referred to as "PHED") on 1.4.1987. Annexure-2 would go to show that on 31.5.1990 the Executive Engineer, PHED recommended for his absorption in the Work Charge Establishment. Annexure-3 is an order dated 29.9.1990 passed by Superintending Engineer for regularisation of service of petitioner in the Work Charge Establishment. However, in spite of the same, subsequently, the petitioner alongwith other was retrenched from service. The aforesaid aspect was challenged before this Court by filing C.W.J.C. No. 6248 of 1989. A Bench of this Court passed a detailed order and disposed of the matter on 6 May, 1999. Paragraph-3 of the said order is quoted in its totality to bring home the point that the court in view of accepted facts had found that out of 17 petitioners, petitioner No. 1 Anugrah Prasad (who

is petitioner in the present writ application) who was appointed alongwith other petitioners on daily wage basis had been regularised vide memo No. 316 dated 20.9.1990. Respondent No. 2 thereafter issued a memo being 1614 dated 22.9.1990 directing the petitioner to join under Work Charge Establishment as a Jeep driver which was approved by the Superintending Engineer vide memo No. 77 dated 18.2.1990. The court, as would be clear from the aforesaid order went to hold that therefore, there are 16 persons remaining. The court further found that though the order was passed by the Executive Engineer regarding taking back those 16 petitioners in service, however, in view of some agreement between the Gope Gut and otherwise they were terminated from service. The court found that cases of other similarly situated persons were being reconsidered for regularisation, as such the court without upholding the order dated 16.6.1989 i.e. the order of the Executive Engineer, Bihar Sharif terminating the appointment of the petitioner in the aforesaid case and order dated 10.4.1991 i.e. the order of the Chief Engineer directing termination in view of said agreement, directed the petitioners also to file representation for consideration of their cases also and after considering the representation the Engineer-in-Chief-cum-Special Secretary, PHED was directed to dispose of the same by a speaking order.

3. As would be clear from the order of this Court as quoted above, petitioner No. 1 in the aforesaid case i.e. the present petitioner did not file any representation as he construed and rightly so that his service was regularised and as such, the court finding it regularised, had issued direction only with regard to other 16 petitioners of that case. Now by passing an order their services have been dispensed with vide Annexures-9 and 10 including that of present petitioner. Quashing of the same has been preferred.

4. Learned Counsel for the State, on the other hand, has also placed the same judgment in C.W.J.C. No. 6248 of 1989 and rather contended that paragraph-3 is the submission of the petitioner's counsel, not the direction and as the last paragraph is the only direction of the court which has permitted the petitioners of the case to file representation meaning thereby to all the 17 writ petitioners including the present petitioner and as such, according to him, rightly as other 16 petitioners had filed representation and the petitioner had chosen not to file representation, in his behalf the same has been disposed of and as such, now the petitioner should not have any grievance. Rather he should have submitted to the jurisdiction of the Engineer-in-Chief-cum-Special Secretary as directed by this Court. He has also relied on certain paragraphs of the counter affidavit specially paragraph-7 thereof to show that the petitioner has not been appointed on Work Charge Establishment, as such, question of his regularisation of service does not arise. He has also relied upon paragraph-24 of the aforesaid judgment to show that the order as contained in Annexures-9 and 10 was also subject matter of C.W.J.C. No. 715 of 2000 (Abhay Shankar Kumar vs. The State of Bihar and Ors.). The same was disposed of on 22.2.2000 and L.P.A. was preferred. The L.P.A. Court also did not interfere in the order impugned and dismissed the L.P.A.

on 4.5.2000. As such, it is prayed that in the present case also similar order may be passed. In reply it has been argued that as the case of the petitioner stood on a different footing that he already stood regularised by the competent authority i.e. Superintending Engineer he was in the regular establishment and his case was not required to be reconsidered. A further submission has been made that the earlier writ application has been filed one by one by all the 16 remaining petitioners and their cases were definitely different as they were never regularised in the Work Charge Establishment nor approved by the Superintending Engineer still the writ court gave relief to them rather passed an order as contained in Annexures-15 and 19 which were termination order were quashed and the petitioners were deemed to continue in service and were entitled to their wages for the period of illegal retrenchment. However, Respondents were given liberty to take fresh steps u/s 25F of the Industrial Dispute Act and in accordance with the decision as contained in Annexure-14 of the said writ application.

5. According to Learned Counsel, even if that aspect is taken into consideration, the retrenchment has been found to be bad i.e. one aspect of the matter and for the period of illegal termination, salary was directed to be paid. However, in the present case, relying on Annexure-7 and in view of Annexures-2, 3, 5 and 6 as the petitioner is a regular employee of the PHED, as such, his service even by only giving notice under the Industrial Dispute Act cannot be dispensed with.

6. this Court in view of submission of Learned Counsel for the parties and in view of stand in the writ petition and the counter affidavit and the argument of counsel for both sides is of the considered view that as this matter has already been settled by this Court and as it has already been decided that by Annexures-2 and 3 his service stood regularised in the Work Charge Establishment and his joining accepted and duly approved by the Superintending Engineer, today a settled aspect cannot be unsettled and a different meaning/ connotation cannot be given to the judgment of this Court as contained in Annexure-7 to the writ application. Petitioner should be deemed as a regular employee and his retrenchment which has been done pursuant to Annexure-9 and 10 stand quashed. Any consequential order i.e. giving notice under Industrial Disputes Act or otherwise also stands quashed.

7. The petitioner shall be paid his regular salary for the period he has discharged his duties and his joining should be accepted forthwith. If work was not being taken from him the counsel agrees that salary for the said period will not be claimed but, it goes without saying that for the period the petitioner was removed from service as the said break is not of the petitioner's making the same should not be treated as a break in service for calculating the period of his continuous length of service, i.e. for, the said period also he be deemed to be continuing in service. The writ application is allowed.