

(2001) 03 JH CK 0001
In the Jharkhand High Court
Case No : C.W.J.C. No. 593 of 1999 (R)

Arun Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Citation : (2001) 03 JH CK 0001

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioners against the order, contained in Memo No. 5861, dated 31st December, 1998, whereby and whereunder, the representation of the petitioners for their regularisation has been rejected.

2. The petitioners were working under the Executive Engineer, R.E.O., Works Division, Lohardaga. Their services were initially terminated vide order dated 9th July, 1996. A writ petition, C.W.J.C. No. 300/97 (R) was preferred by them, wherein this Court, vide order dated 17th August, 1998, given liberty to petitioners to move the authorities who, in their turn, were directed to decide the representation. Though the petitioners stated to have been taken in service on dally wage, but their claim for regularisation having rejected, the present writ petition has been preferred.

3. The respondents in their impugned letter of rejection (Annexure-8), have taken one of the grounds that there was an order to terminate the services of daily wage employees illegally appointed after 1st August, 1985, fide Resolution No. 5940, dated 18th June, 1996. The other ground shown is that there was a ban of appointment in the workcharge establishment made, vide Memo No. 6394, dated 23rd October, 1987.

4. Similar plea has been taken in their counter affidavit, though it is accepted

that the officials of R.E.O., including the Division where the petitioners are functioning, require employees for proper functioning of the Division.

5. The non-application of mind on the part of the respondents will be evident from the fact that the present Division (R.E.O, Works Circle, Daltonganj) was created on 9.2.1986 and started functioning since 1987. Thereby, the disengagement of workmen after 1st August, 1985, as was issued by one of the resolution is not applicable in the case of newly opened/created Division.

6. From the letter issued by the Executive Engineer, R.E.O. Works Division, Lohardaga, dated 9th July, 1996 it will be evident that he mentioned that the work will suffer if the daily wage employees are removed.

7. "This is reiterated in the counter affidavit filed by respondent No. 6, the Executive Engineer, as also the letter dated 6th November, 1998 (Annexure-7).

8. Admittedly, no regular appointment made since the creation of the Division and for the last 14 years, the authorities are continuing with the ad hoc arrangement by engaging persons on daily wage. Such interim arrangement cannot be allowed to continue for years together. This issue has neither been taken into consideration, nor decided, when the respondents issued rejection orders, vide letter dated 31st December, 1998 (Annexure-8).

9. Accordingly, the order, contained in memo dated 31st December, 1998 is set aside with direction to the respondents to fill up all the vacant posts of RE.O. Works Division, Lohardaga, on regular basis, in accordance with law, immediately but not later than a period of six months from the date of receipt/production of a copy of this order.

10. If one or other petitioner applies, for regular appointment and is found eligible, the case of such petitioner be considered for regular appointment, if necessary, on relaxation of age and on giving preference over outsiders in the light of Government decision, contained in resolution dated 18th June, 1993. On failure, on completion of six months period, the authorities will be liable to pay the employees the minimum of the scale of pay of the posts, one or other daily wage employees are performing with other admissible allowance(s).

11. The writ petition is allowed with aforesaid observations and directions.