

(2001) 04 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 8793 of 1996

Arun Kumar Rai

APPELLANT

Vs

The Secretary, Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 PLJR 479

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : P.K. Verma, for the Appellant; Mihir Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—This writ petition is directed against the order cancelling the order of appointment of the petitioner, contained in letter no. 563 dated 11.11.1989 (Annexure-5) after five years of his continuous and satisfactory service. Petitioner has also sought for direction to the Respondents to reinstate him back in regular service with all consequential benefits from the date of impugned termination, and to pay arrears of salary which he is legally entitled from the date of the impugned order and back wages for the period during which he had worked. In short, the relevant facts are that on 28.7.1984, petitioner was appointed as contingent worker by the Superintending Engineer, Electrical Supply Circle, Darbhanga in the Electric Supply Subdivision, Darbhanga under Mithila Area Electricity Board. The said appointment of the petitioner was subsequently approved by the General Manager-cum-Chief Engineer, Mithila Area Electricity Board and the petitioner had been doing the duty of preparation and distribution of electric bills and other work like making respective entries in the ledgers etc. The petitioner remained engaged in performing his work for the whole day since 10 A.M. to 5 P.M. in the office of Assistant Engineer, Electricity, Mithila Area Electricity Board. He had been on average preparing, distributing, accounting and posting more than 1500 bills per month. He had completed more than 240 days

continuously in service and he possessed requisite qualification to hold the post. His name was also recommended by the Superintending Engineer to the Board for regular appointment. In the meantime the Board required information with regard to the contingent workers working in different zones or divisions. In pursuance thereof, the Assistant Electrical Engineer, Darbhanga furnished the detailed service record of the petitioner and recommended his case on account of continued necessity of his service. The Board vide its circular no. 78 dated 29.3.1989 (Annexure-1) had taken a general policy decision that services of all such persons who have been working on muster roll and contingent basis on whole time basis for a year or more (or the minimum prescribed statutory period) will be regularised provided there are vacancies against which they can be regularised. The Electrical Executive Engineer, Darbhanga vide letter no. 622 dated 30th May, 1989 forwarded his case with his recommendation of satisfactory performance of duty since 1984 continuously as contingent worker to the Superintending Engineer, Electrical, Darbhanga, who after considering all the facts submitted it to the General Manager-cum-Chief Engineer vide letter no. 643 dated 2.6.1989. Letter no. 622 dated 30th May, 1989 has been annexed as Annexure-2. In pursuance to the said policy decision and on consideration of the facts and details regarding the petitioner he was given appointment on the post of Khaiasi in the pay scale of Rs. 550-720/- and was posted for joining in the office of Assistant Electrical Engineer, Darbhanga (Gangwara) vide General Manager-cum-Chief Engineer Officer order dated 23.9.1989. A true copy of the said appointment letter has been annexed as Annexure-3. In compliance to the said order, petitioner joined along with medical certificate and was being paid regular salary since September and October. In the said letter of appointment it was, however, mentioned that the appointment of the petitioner was provisional and the same shall be terminated in case of disapproval by the Board. Later, on the notice served by the Bihar State Electric Supply Worker's Union for fulfilment of their nine points demand with effect from 9.8.1989 a negotiation was held with the Union at different level and a memorandum of settlement between the Union and the Management of the Board was entered into vide Annexure-4. It is stated that the services of the petitioner along with number of other persons, who belonged to Sidheshwar Faction were terminated at the instance of other workers Union and he was communicated with the impugned order saying that his appointment was cancelled in view of the same being illegal. It is contended that the said settlement with Chakardhari faction of Union was, in fact, due to internal rivalry on account of appointment of muster roll employee, and that the name of the petitioner and one Ganesh Shanker Singh Vidyarthi who were contingent worker had been included along with 12 other muster roll employees, at the end of the list. According to the case of the petitioner, the fight was, in fact with respect to muster roll employees and they have been dragged simply because they belonged to Sidheshwar Faction. The petitioner initially filed a Title Suit No. 122 of 1989 against the said order of his termination in the Court of 1st Additional Munsif, Darbhanga in which injunction was allowed and the Court directed to maintain status quo on 18.11.1989, but the Respondents did not

allow the petitioner to join the duty. Petitioner filed Miscellaneous Case No. 6 of 1991, which was rejected vide order dated 6.10.1993 and thereafter finding that the suit was unnecessarily lingering he filed an application for withdrawal of the suit for availing speedy and efficacious remedy under Article 226 of the Constitution and filed the present writ application.

2. Question regarding maintainability of the writ petition on withdrawal of the suit was raised by the Respondent-Board which was disposed of vide judgment and order dated 19th December, 1997 holding that the writ is maintainable.

3. Meanwhile aforementioned another contingent worker Sri Ganesh Shankar Singh Vidyarthi, whose services was also regularised in view of the general policy decision and subsequently terminated with this petitioner by virtue of the aforementioned settlement filed C.W.J.C. No. 1859 of 1991 in this Court. This Court vide judgment dated 28.6.1996 set aside the order of cancellation of the appointment of said Sri Singh dated 8th March, 1990/2nd May, 1990 and held that the petitioner (Sri Singh) is entitled for arrears of salary from the date of termination till the date of his reinstatement and directed the Respondents to pay the same within a period of three months. The Respondent-Board preferred LP.A. No. 657 of 1996 which after some argument was permitted to be withdrawn vide order dated 19.3.1997. It is contended that the case of the petitioner is on identical footing and his appointment has also been cancelled by the impugned order on erroneous and nonest ground as has also been found by this Court in the case of aforementioned Sri Ganesh Shankar Singh.

4. Initially a counter affidavit was filed on behalf of Respondent no.1 in which it is stated that the petitioner was not appointed as contingent worker, rather the fact available in the records show that he was engaged for distribution of electrical energy bills occasionally for particular area for payment of Rs. 0.25 paise per bill. It is stated that the petitioner was never discharging his duty satisfactorily, therefore, he was simply detached from the distribution of energy bills. It has also been denied that the petitioner was ever engaged or his appointment was terminated at the instance of agreement with the Union, it is also contended that his case was never recommended to the Board for regular appointment. In fact, Respondent no.2 had simply forwarded the application without any comment for regular appointment vide letter no. 622 dated 30th May, 1989.

5. An another voluminous counter affidavit has been filed on behalf of the Respondent-Board in which the stand of the Respondent-Board is that the petitioner was not entitled for regulation of his service but still by mistake and misrepresentation of the Board's order, he was given an order of appointment by way of regularisation which has ultimately been cancelled. According to the Respondents, petitioner was absolutely a contract labourer engaged for distribution of bill @ 25 paise per bill. In support of this the Respondent-Board has produced some payment vouchers of the period 24.10.1987 to 15.12.1988 which could be traced and made available from the local office. It is contended that the said vouchers would show that the petitioner was totally a contract

labourer not engaged either on whole time basis or on muster roll or otherwise. It is also stated that the Assistant Electrical Engineer, Darbhanga (Rural) has certified relating to the period of October, 1988, December, 1988, March, 1989, June, 1989 and August, 1989 that the petitioner was given payment on the basis of the proof of the bills distributed by him. It is contended that the claim of the petitioner that he was also engaged in the preparation of the electric bills and other works like making entries in ledger etc. or that he remained performing the work from 10 A.M. to 5 P.M. for the whole day, is totally incorrect and so his stand that he was preparing, distributing, accounting and posting more than 1500 bills is incorrect. With respect to various communications of his controlling authority, the Executive Engineer, Superintending Engineer, Chief Engineer, it is alleged that the petitioner happens to be son of the employee of the Board, namely, Sri Phudan Rai and he got some of the letters written/transmitted by them, although he was neither in the category of muster roll worker nor in the category of contingent worker. It is contended that the case of Ganesh Shankar Vidyarthi is entirely different because in his case work was being taken of the post of bill clerk and against his name he was described as contingent worker, but there is no such documentary proof in the case of the petitioner.

6. A reply has been filed on behalf of the petitioner to the first counter affidavit, in which it has been reiterated that the petitioner was working as Contingent worker vide order no. 1437 dated 28.7.1984 of the Superintending Engineer and he was performing the duty of distribution and preparation of energy bills and other several works in the office for which he was getting Rs. 400/- per month salary. He used to mark the attendance daily on the attendance register and performed his work satisfactory which would be evident from the letter of the Executive Engineer dated 30th May, 1989 (Annexure-2) and the forwarding of Assistant Engineer dated 18.5.1989 (Annexure-7). It is alleged that it is for the first time allegation in the counter affidavit has been made that the petitioner never discharged his duty satisfactorily. The representation of the petitioner with regard to regular appointment in view of the Government decision was forwarded by the Assistant Engineer vide Annexure- 7 and was also recommended by the Executive Engineer vide Annexure-2. It is stated that the petitioner was not detached with effect from 29.3.1989 and it is only after his service was terminated on 11.11.1989 vide impugned order that the authorities stopped taking works from him. It is also stated that the petitioner got his monthly salary on his joining after being appointed on the post of Khaiasi (Annexure-3) which fact would also be evident from the Executive Engineer's letter contained in Memo no. 17 dated 10.1.1990 in which he stated that the petitioner had drawn his salary for the months of September and October and further sought permission from the Superintending Engineer for payment of monthly salary to the petitioner for the months of November and December, 1989 which was subsequently allowed and was paid to the petitioner.

7. A supplementary counter affidavit has also been filed on behalf of the Board in which the Respondents have attempted to accuse the then General Manager for

the alleged irregular appointments. According to the Respondents, the General Manager had acted in defiance of the Board's order and in fact for such action explanations were called for and he has submitted explanation which is still under examination. It has also been pleaded that there was ban on appointment/engagement up till 1988. In paragraph 14 it is reiterated that the persons working on contract basis for distribution of energy bills on part time basis were not at all covered within the ambit and scope of the regularisation contemplated under letter no. 78 dated 29.3.1989. The letter of the Board dated 23.11.1989 has been brought on record as Annexure-Y/1 to show that the petitioner was not at all covered by the scheme of regularisation.

8. A rejoinder on behalf of the petitioner to the said supplementary counter affidavit has been filed in which the allegation against the General Manager insofar as it relates to the petitioner has been denied and it is stated that no action has been initiated against him for his alleged appointment. It is also stated that the decision of the Board for secularization of the employees working for the last one year vide letter no. 78 dated 29.3.1989 (Annexure-1) itself shows that the Board had relaxed the rule of ban on appointment/engagement up till 1988 for the benefits of the employees and, thus the Respondents cannot be allowed to some time reprobate and approbate. It is reiterated that his name has been arbitrarily and wrongly included in the memorandum of settlement between workers Union and management at the instance of Chakardhari faction. In reply to paragraph 14 of the supplementary counter affidavit, it is stated that the Secretary has referred the matter regarding regularisation of two persons who were engaged on contract basis for distribution of energy bill and admittedly those two persons were Ganesh Shankar Singh Vidyarthi and the petitioner and, thus, the Secretary has found the case of these persons on equal footing. Therefore the petitioner is entitled for similar treatment as has been provided to Sri Singh.

9. Learned counsel for the petitioner has, thus, contended that there is no difference at all between the case of the petitioner vis-a-vis said Ganesh Shankar Singh Vidyarthi. The petitioner was contingent worker and performed duties on regular basis and as such, his services were rightly regularised vide order dated 23rd September, 1989 (Annexure-3) subject to only one condition that the same shall be cancelled if disapproved by the Board. It is contended that the Board has never disapproved the said appointment, and, thus the impugned order passed by the General Manager-cum-Chief Engineer is bad in law. It is also contended that, in fact, the reason mentioned in the impugned order for cancellation is completely erroneous and not based on the facts of the case. Services of the petitioner and Ganesh Shankar Singh Vidyarthi was terminated only because of the pressure given by other Workers' Union and this fact is also evident from the fact that in the memorandum of settlement (Annexure-4) their names have been included at the end of the list at serial nos. 13 & 14. According to the learned counsel for the petitioner, the impugned order only vaguely mentions that the appointment of Sri Arun Kumar Rai (petitioner), contingent worker is cancelled

with immediate effect as a consequence of his illegal appointment without assigning any ground/reason as to how the appointment of the petitioner was illegal. It is, thus, contended that the order being a non-speaking one is wholly arbitrary and also mala fide as, in fact, it is in pursuance to the settlement arrived at between Chakardhar faction and the management to which the petitioner was not even party as he belongs to Sidhesh-war faction. It is contended that the impugned order issued within three days of the said settlement when, in fact, the petitioner's appointment was made in the light of the policy decision of the Board dated 29.3.1989, contained in Annexure-1. It is further contended that even bare perusal of the impugned order would show that the petitioner was a contingent worker and not that he was engaged as contract labourer.

10. According to Mr. Jha, learned counsel appearing for the Board, the employment of the petitioner was purely contractual and thus not covered by the policy of the Board contained in Annexure-1 which provides that services of all such persons who have been working on muster roll and contingent basis on whole time basis for a year or more (or the minimum prescribed statutory period) be regularised provided there are vacancies against which they can be regularised. It is submitted that Board's regulation 96 prescribes the criteria for determination as to who is the whole time employee and the case of the petitioner is not covered by the said definition. According to him, the petitioner was not engaged on whole time basis and as such he does not at all fall within the ambit of policy decision contained in Annexure-1, whereas Sri Ganesh Shankar Singh Vidyarthi was engaged on whole time basis and thus, his case stands on different footing. Learned counsel for the Board has submitted that there is no question of mala fide involved in the present case where the appointment of the petitioner has been cancelled on the ground that the same was illegal and not that it has been passed on the basis of memorandum of settlement, contained in Annexure-4 as alleged on his behalf. According to him, the impugned order has been issued in pursuance to the decision taken by the Board disapproving the action of the Chief Engineer and in this regard he referred to Annexures-G/1 to Y/1.

11. Learned counsel for the petitioner, in reply, has submitted that Regulation 96 has got no application to the facts and circumstances of the present case. According to him part-time means a person doing job at two places otherwise it will be job on whole time basis. It is wholly irrelevant as to whether one is required to work for two hours or entire working hours, although in the present case, work from the petitioner has been taken for the entire working hour and sometimes he had to work over time. It is submitted that it is not the case of the Board that the petitioner was doing job at any other place also, which would make him part-time worker and not whole time worker. Learned counsel for the petitioner submitted that the impugned order itself shows that the petitioner was a contingent worker and it has not been shown by the learned counsel for the Board that his engagement as contingent worker was not on whole time basis. In any view of the matter, learned counsel for the Board has failed to point out from

the record of the case that the facts relating to the appointment of Sri Singh was distinct from the facts relating to the appointment of the petitioner. Under such circumstances, the Board cannot be permitted to apply two different standards and withdraw its L.RA. filed in this Court in the case of Sri Singh and contest the present writ petition filed on behalf of the petitioner.

12. This Court finds substance in the submission of the learned counsel for the petitioner. In none of the letters, contained in Annexures-Q/1 to Y/1, reliance on which has been placed by the learned counsel for the Board, the name of the petitioner finds place. In fact, most of the letters deal with the general principle except Annexures- S/1 and T/1 which deal with other persons whose appointment have been terminated by the order of the Board vide Annexure-T/1 and not of the petitioner. It is true that Annexure-Y/1 issued by the Secretary of the Board mentions about regularization of services of two persons who were engaged on contract basis for distribution of energy bills and according to Mr. Jha the person engaged on contract basis cannot be treated as contingent staff, working on full time basis whose services are to be regularised, as per the policy contained in letter no. 78 dated 29.3.1989 (Annexure-1), but the name of the petitioner does not figure in the said letter (Annexure-Y/1). However, it has rightly been submitted by the learned counsel for the petitioner that in any view of the matter, even if the said letter refers about the regularisation of services of two persons who were engaged on contract basis for distribution of energy bills and if one person was the petitioner then obviously the other one was Ganesh Shankar Singh Vidyarthi in whose case the Board finally withdrew L.P.A. before this Court and allowed him to be taken back in the service of the Board with full back wages, whereas in the case of the petitioner the Respondents have acted malafide in treating him differently.

13. Learned counsel for the Board has failed to point out anything on record to distinguish the case of Sri Singh from that of the case of the petitioner except that Sri Singh withdrew Title Suit on rejection of his prayer for injunction before the petitioner and moved this Court in C.W.J.C. No. 1859 of 1991 which was allowed vide judgment and order dated 28th June, 1996 and the impugned order of his termination was set aside and the Court directed that the said petitioner was entitled for arrears of salary from the date of termination till the date of his reinstatement whereas the petitioner withdrew the suit and filed the present writ petition after disposal of the writ petition filed by Sri Singh. In fact, the order impugned by Sri Singh, contained in Annexure-1 to his writ petition shows that he was also appointed as contingent worker and was appointed provisionally in pursuance to the Board's policy decision dated 29.3.1989 and further that the same was cancelled in pursuance to the decision of the Board with retrospective effect and communicated to the petitioner by the General Manager-cum-Chief Engineer's letter no. 87 dated 8.3.1990, whereas the impugned order in the present case does not show that the appointment of the petitioner has been cancelled by the order of the Board. Thus, this Court finds that the case of the petitioner stands on better footing as his appointment was with the condition

that it shall be terminated in case of disapproval by the Board and learned counsel for the Board has failed to show that the Board ever disapproved his appointment. Under such circumstances, this Court does not find any reason much less cogent reason to deny similar relief to this petitioner as has been granted to Sri Singh and against which L.P.A. filed on behalf of the Board has been withdrawn.

14. Learned counsel for the Board has submitted that the petitioner having earlier elected the forum by filing suit cannot get any relief in the present writ petition, as it will be barred by the doctrine of election of forum. It is contended that there is difference in the pleadings of the suit and the present writ petition which also go to show that the action of the petitioner was malafide in withdrawing the suit and changing the forum by filing the present writ petition. As such, according to him, he has not come with clean hands which alone disentitles him from getting any relief from this Court. In this regard, he relied up on two decisions of this Court in the case of Sachidanand Roy and Others Vs. The State of Bihar and Others, and Prahlad Pandey and Others Vs. The State of Bihar and Others, This Court does not find any force in the said submission of the learned counsel for the Board. In fact, this issue stands concluded by the detailed order dated 19th December, 1997 passed by Hon''ble A. K. Ganguli, J., wherein after taking overall view of the matter, it was held that the writ petition is maintainable and cannot be dismissed on the basis of such preliminary objection. Accordingly, writ petition is allowed. The impugned order, contained in Annexure-5 is quashed. Petitioner shall be entitled for arrears of salary from the date of termination till the date of re-instatement. Petitioner shall be reinstated forthwith and paid his due salary within three months accordingly.