
(2018) 07 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (S) No. 160 of 2017

Ashok Kumar Pandey

APPELLANT

Vs

CMD-cum Chairma

RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Citation : (2018) 07 JH CK 0075

Hon'ble Judges : DR. S. N. PATHAK, J

Bench : Single Bench

Advocate : K.K. Ojha, Gurivelli Bhima Rao, Mukesh Kumar Sinha

Final Decision : Disposed Off

Judgement

1. The petitioners have approached this Court with a prayer for a direction upon the respondents to regularize the services of the petitioners against

the vacant and sanctioned post on which some of them are working continuously without any breakage in service in between the year 2000-2017.

Further prayer has been made for quashing the order contained in letter No. 471 dated 04.04.2018 (Annexure-13) issued under the signature of Dy.

General Manager (Personnel) by which the petitioners have been disengaged from the services.

2. The short facts of the case lies in a narrow compass. The petitioners had been working as skilled and unskilled daily wages employees on ad hoc

basis since long in different Districts of State of Jharkhand. Despite the continuous service being rendered by the petitioners, without any breakage

though, being appointed on the sanctioned and vacant post, their services were not regularized by the respondents even after their best pursuance and

the representation made from time to time before the respondents. It is specific

case of the petitioners that for regularization of the services of the petitioners and other similarly situated persons, an agreement was entered between the President of Labour Union and Deputy General Manager (Personnel) and a declaration was announced on 26.08.2014 whereunder, it was declared that after formulation of Appointment Rules within interval of fortnight the process of regular appointment be finalized. In spite of the aforesaid declaration, the services of the petitioners could not be regularized. Thereafter, vide office order 113 dated 19.01.2016 issued under the signature of DGM (Personnel), the number of sanctioned post of Mandays (skilled) was approved for 470 posts and for unskilled was 1391. Thus from the aforesaid order it is beyond dispute that the sanctioned post is existing on which the respondents are taking the services of the petitioners by subjecting their case to discrimination with similarly situated persons, who had been working on Contractual basis.

It is further the case of the petitioners that as the services of the petitioners were not regularized, the petitioners made several representations through the Union before the Chief General Manager on 14.09.2015 and 29.12.2015, wherein it was requested to the respondents to find out the solution for adjustment of the mandays workers unless and until, the mandays workers are not being adjusted the vacant post may not be advertised for regular appointment, but the respondents are sitting tight over the matter. It is specific case of the petitioners that services of the similarly situated persons have been regularized and the respondents have adopted pick and choose method and have not considered the case of the petitioners by discriminating the petitioners, who have working continuously since long without any breakage in service. Ignoring the pending the respondents have come out with an advertisement for inviting online application from eligible candidates for appointment on technical post. Hence, the petitioners have been constrained to move before this Court for redressal of their grievances. During the pendency of the writ petition the petitioners have also been disengaged from the services.

3. Mr. K.K. Ojha, learned counsel for the petitioners strenuously urges that the case of the petitioners ought to have been considered for regularization as the petitioners were working on the sanctioned and vacant post and continuously working since long without any break in service. Learned counsel

further argues that the respondents have illegally and arbitrarily floated an advertisement for appointment on skill/unskilled Labourer without showing any consideration for regularization of the services of the petitioners that the period of contract of the services of the petitioners were being extended for the period of 90 days and the petitioner had been continuously working without any official break in service. It is further submitted that vide office Order No. 732 dated 17.04.2017, the contract of mandays workers including the petitioners, who were working on non-technical post on ad hoc basis was not extended and the petitioners were stopped from discharging their duties after filing of the instant writ petition. Learned counsel further argues that the respondents after relying upon the case of Uma Devi & Ors. Vs. State of Karnataka reported in (2006) 4 SCC have issued Letter No. 441 dated 04.04.2018 but they have not implemented the same in its true spirit and the same has not been followed in its pith and substance, which has been held by the Hon'ble Apex Court.

Learned counsel emphatically argued that the respondents have adopted pick and choose method as the services of the some of the similarly situated persons have been considered and regularized but the case of the petitioners has been discriminated, which is not permissible in the eyes of law. In order to buttress his argument, learned Counsel places heavy reliance on a reported Judgment of Hon'ble Apex Court in case of Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh & Ors., reported in AIR 2018 Supreme Court 233. Learned counsel further argues that a direction may be given to the respondents to consider the case of the petitioners sympathetically and on the basis of doctrine of legitimate expectation and also for taking into consideration the continuous services of the petitioners.

4. Per contra, counter-affidavit has been filed. Mr. Mukesh Kumar Sinha, learned counsel for the respondents vehemently opposes the contention of the learned counsel for the petitioners and argues that petitioners are contractual workers and they are working on Mandays for which the initial period of engagement is 89 days and further extension was allowed only after one day break after 89 days which makes it clear that petitioners are not working continuously as being claimed by them. Learned counsel for the respondents further submits that Employment Notice No. 03/2016 is open advertisement and applications were invited without any discrimination, it was

open for the petitioners to participate in the said recruitment process and not any single person, who was working on contractual or daily-wager have been regularized by the respondent-JUVNL, rather some of the contractual workers, who have come out successful in the open examination conducted by the respondents have been appointed afresh. Learned counsel for the respondents further argues that by working as Mandays, the petitioners do not have any legitimate right for regularization of their services. The petitioners are trying to mislead the Hon'ble Court, claiming that they are working continuously since long whereas they are contractual labourers, where contract been extended from time to time, which does not create any right for regularization. The petitioners were never appointed on vacant and sanctioned post and they are given extension after one day break in service.

Learned counsel for the respondents places heavy reliance on a reported judgment of Hon'ble Apex Court in case of Uma Devi & Ors. Vs. State of Karnataka reported in (2006) 4 SCC and in case of Raj Balam Prasad & Ors. Vs. State of Bihar & Ors. reported in 2018 (1) Supreme 12 and submits that the case of the petitioners cannot be considered and regularized. Learned counsel lastly argues that the petitioners have been disengaged from the services and it is settled principles of law that those who are not in service, cannot claim for regularization and as such, the writ petition is liable to be dismissed.

5. Be that as it may, having gone through the rival submissions of the parties and on perusal of the records, this Court is of the considered opinion that nothing has been brought on record to show that the petitioners were appointed on sanctioned and vacant post. Rather, admittedly, they were appointed as contractual labourers on Mandays and getting extension from time to time. The petitioners were never appointed by way of an advertisement, the appointments were admittedly in complete contravention of statutes. Regularization in services can be done in view of the Scheme or any policy decision of the State. The reliance of the learned counsel for the petitioners in case of Sheo Narain Nagar & Ors. Vs. The State of Uttar Pradesh & Ors. (supra) is of no help. It is not a case of irregular and illegal appointment. There was no post available on which the services of the petitioners could have been regularized and appointment in contravention of

the policies of the State Government is not tenable in the eyes of law and as such, rightly their services were disengaged.

The Hon'ble Apex Court in case of Raj Balam Prasad & Ors. Vs. State of Bihar & Ors (supra) has clearly held that regularization can be claimed

while in service, not after termination. The services of the petitioners remained disengaged, they cannot claim regularization thereafter. The services

of the temporary employees would come to an end at the end of that period, grant of extension to work for some more period cannot make an

employee permanent and as such, such employee cannot claim regularization.

The Hon'ble Apex Court in case of State of Tamil Nadu & Anr. Vs. A. Singamuthu, reported in (2017) 4 SCC 113 has clearly held that : Long

continuance in service irrelevance of temporarily appointed part-time masalchis reiterated, part-time of casual employment is meant to serve

exigencies of administration and continuance in such service for long period confers no right to regularization especially when scheme of regularization

is missing from rule-book and regularization casts huge financial implications on public exchequer.

The Hon'ble Division Bench of this Court in case of Sintu Poddar & Anr. Vs. The State of Jharkhand & Ors., reported in 2017 (4) JLJR 241 has held,

which read as under:

Without any public advertisement and without following any rules or regulations or circulars appellants were appointed as Class-IV employees and

they are backdoor entrants. It has become a fashion to get employment by hook or crook, there are administrative heads also who are more charitable

than law. Charity beyond law is a cruelty to others. Those who are getting illegal appointment or public employment without any public advertisement

cannot be regularized that that there are few employees whose services were regularized rejected as there cannot be equity in illegality

recommendation of authorities is also not helpful as those officers who have given illegal appointments are now recommending for regularization.

6. As a cumulative effect of the aforesaid rules, guidelines and judicial pronouncement, this Court is of the opinion that no error has been committed by

the respondents for not considering the case of the petitioners as there is no dispute of the facts that these petitioners were appointed without

following the rules, regulations and procedure for public advertisement i.e.

without advertisement and the claim of the petitioners is only on the basis of long continuance in service.

7. Resultantly, the writ petition stands dismissed.Â Â

8. As a sequel to the dismissal of the instant writ petition, pending interlocutory application, if any, stands disposed of.