

(2001) 01 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 11766 of 1999

Babu Ram Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 1 BLJR 549 : (2001) 2 PLJR 256

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioners, who are four in number seek quashing of the orders as contained in Annexures 6 and 8. By Annexure 6 the Director, Employment & Training, Bihar directed the District Magistrates concerned including the District Magistrate of Siwan district, to which the present case relates, to relieve the clerks working under his jurisdiction under the Unemployment Token Allowance Scheme. By Annexure 8 which is the consequential order, the petitioners have been relieved from their posts.

2. The case of the petitioners is as follows. In October 1981, advertisement was issued by the Deputy Development Commissioner (DDC), Siwan inviting applications for appointment of Clerks. The petitioners submitted their applications. By order contained in Annexure 2, on 2.4.83 they were appointed on the post in Siwan Collectorate. In course of time, they were confirmed in services by the District Establishment Committee of the Collectorate on 11.11.94 by Annexure 3 with effect from back dates as mentioned in the order. Earlier on completion of ten years of service they were granted first time bound promotion on 7.12.93 by Annexure 5. In the seniority list of the clerical staff of the Collectorate their names were shown vide Annexure 4. Suddenly on 1.2.99, by order contained in Annexure 6 the Director, Employment & Training directed the District Magistrate/Deputy Development Commissioner to relieve the clerks working under him under the Unemployment Token Allowance Scheme for being

adjusted on the post of Clerk-Cum-Typist in different offices under the Directorate of Prosecution, pursuant to which they were relieved on 26.11.99 by Annexure 8.

3. The grievance of the petitioners is that being confirmed employees of the Siwan Collectorate, having district cadre, they could not be transferred beyond the district/cadre much less at the instance of the Director, Employment & Training. Secondly, though in the order of appointment, Annexure 2, it was stated that appointed was being made under the Unemployment Token Allowance Schedule nothing of the kind was mentioned in the advertisement. In any view vacancies exist in the Collectorate against which they can be adjusted.

4. The case of the respondents is that the petitioners were appointed on purely temporary basis under a temporary scheme called State of Un-employment Token Allowance Scheme 1981". The scheme was sanctioned from year to year till 1995-96. The scheme thereafter lapsed resulting in non-payment of salary etc. to the employees appointed under the scheme. Meanwhile in CWJC No. 2650/96 Gyan Chand Bhardwaj v. State of Bihar, this Court directed the State to provide one clerk-cum-typist and peon each for the APPs in each district-sub-division. Pursuant to demand made by the Directorate of Prosecution, the Director, Employment & Training made available the services of 77 clerks including the petitioners for being absorbed against the post of clerk-cum-typist under the Directorate of Prosecution. Their absorption being on the equivalent posts and in the same scale the petitioners cannot make any grievance. A writ petition making similar grievance filed by Awadhesh Jha and Ors. CWJC No. 4947/99, has been dismissed by this Court.

5. To find similarly of the case of the present petitioners with that of the petitioners of CWJC No. 4947/99 records of that case was sent for. The following facts emerge. (It is regrettable that relevant documents have not been brought on records of this case either by the petitioners or by the respondents).

6. In 1981, the State Government took a policy decision to provide financial help @ Rs. 50/- per month as a token allowance to the unemployed Matriculates/ITI Diploma-holders and other Degree-holders, who had discontinued studies five years ago and were not employed any where under the scheme known as "Unemployment Token Allowance Scheme"(hereinafter referred to as "the Scheme"). On 14.8.81 by letter No. 3598 Joint Secretary, Labour and Employment Department, informed the Accountant-General, Bihar about the creation of the Gazetted and non-Gazetted posts required for implementation of the said scheme. As many as 1899 posts-Gazetted and non-Gazetted - had been created. The non-Gazetted posts included 663 posts of clerk and 611 posts of peon, etc. On 12.9.81 the modality of implementation of the scheme was communicated by the Commissioners & Secretary, Labour and Employment Department to all the Deputy Development Commissioners. It is relevant to mention here that as per laid down norms the scheme was to be executed under the control of the Deputy Development Commissioner (DDC) at the district level

and under the ultimate control of the Director, Employment & Training. On 22.10.81 the mode of appointment against Class III/IV posts was laid down by the Government. Copies of the aforementioned decisions/orders are available in the records of CWJC No. 4947/99 as Annexures 2 and 3 to the writ petition.

7. From the records of the said case, it further appears that the posts created under the scheme were allocated to different districts including Siwan to which the present case relates and Samastipur to which CWJC No. 4947/99 related. It may not be out of place to mention here that though in the order of appointment dated 2.4.83 in the present case, reference was merely made to the Unemployment Token Allowance Scheme, in the order by which similar appointments were made in the district of Samastipur, it was specifically mentioned that they were being made in the light of letter No. 3598 dated 14.8.81 of the Labour and Employment Department, referred to above. I have referred to this fact to indicate that the appointments were made against the posts created under the aforesaid Scheme, and not in the ordinary course against the regular posts. The case of the petitioners, it may be recalled, is that having been appointed against the posts in the district cadre they cannot be transferred beyond the district.

8. From perusal of the aforementioned decisions/orders dated 14.8.81, 12.9.91 and 22.10.81, it would appear that the posts were initially sanctioned for a period of three years which was extended from time to time and this continued till 1995-96. As the scheme was discontinued thereafter, further extension was not granted resulting in non-payment of salary to the employees concerned. Representations were made not only by the employees but also by the district officials. The district officials, in fact, made request for permission to adjust those employees against the vacancies in the district level posts.

9. It so happened that in the meantime in a Public Interest Litigation, CWJC Nos. 2560, 4164 & 4210 of 1996, seeking direction to provide basic facilities to the APPs, on 10.5.96 this Court issued a number of directions, one such directions was to provide one clerk-cum-typist and one peon for the APPs in every judgeship, i.e., district and sub-division. From the office order contained in Memo No. 10488 dated 12.10.98 of the Home (Police) Department, enclosed as Annexure 10 to the writ petition in CWJC No. 4947/99, it appears that on 12.6.96 the Cadre Committee of the Finance Department sanctioned 130 posts each of clerk-cum-typist and peon for the APPs pursuant to the aforementioned direction of the High Court dated 10.5.96 but on the condition that no fresh appointment is made against those posts. It further appears that in the meantime, the Government had taken decision to adjust the employees appointed under the Unemployment Token Allowance Scheme elsewhere vide letter No. 922 of the Director, Employment & Training dated 23.8.97 (Annexure 7 to the writ petition in CWJC No. 4947/99). This apparently was done to mitigate their problems arising out of non-payment of salary on account of cessation of the scheme. By his aforesaid letter dated 23.8.97 the Director, Employment and

Training asked the District Magistrates to furnish the particulars of the employees concerned so that steps could be taken for their adjustment. Aforementioned office order dated 12.10.98 shows that pursuant to the above-said direction of the Labour and Employment Department, a list of 277 clerks-cum-typists and 5 peons was furnished by Labour and Employment Department to the Home (Police) Department. (It may not be out of place to mention here that similar list with respect to 5 clerks and 83 peons was furnished by the Revenue and Land Reforms Department also, with which we are not concerned in this case.

10. Out of aforesaid lists, services of 77 clerks-cum-typists and 83 peons were taken over by the Home (Police) Department and made over to the Directorate of Prosecution for being posted in the Sub-Divisional-District Prosecution Offices vide Office Order No. 10488 dated 12.10.98 (supra). At this stage, the Director, Employment & Training vide his impugned letter dated 1.2.99 directed the concerned District Magistrate/Deputy Commissioners/Deputy Development Commissioners, including those of the districts of Siwan and Samastipur, to relieve the employees working under the Unemployment Token Allowance Scheme. This letter was marked Annexure 10/1 in CWJC No. 4947/99 and is Annexure 6 in the present case. On 13.3.99, 77 clerks-cum-typists, whose services were placed at the disposal of the Directorate of Prosecution as stated above, were allocated to different districts. Copy of the said order dated 13.3.99 was Annexure 11 to the writ petition-in CWJC No. 4947/99. The names of the petitioners herein figured at serial Nos. 60 to 63. The list also included the petitioners of CWJC No. 4947/99. The petitioners herein were eventually relieved from their posts pursuant to the aforementioned orders on 26.11.99 by Annexure 8.

11. From the facts stated above, it is clear that the grievance of the writ petitioners is totally unfounded. There is, no doubt, that they were appointed under a temporary scheme, the discontinuance of which could, in fact, result in cessation of their employment, a point stressed, by the counsel for the State. Much was said about their confirmation. However, in the facts and circumstances of this case, the confirmation of their services by Annexure 3 was in a different sense. Having been appointed under a scheme, their services were merely confirmed under that scheme. Initially, it may be noted, they were appointed on temporary basis. All that the confirmation meant was that the services became permanent but as the appointment itself was under a temporary scheme, it could not be extended after discontinuance of the scheme. In these facts, counsel for the State rightly submitted that after scheme lapsed the services of the petitioners could be terminated but as they had served for long periods the Government decided to absorb/adjust them elsewhere. Such a decision being for their own benefit, they should not make any grievance. I find substance in the contention of the State counsel

12. There is no substance in the case of the petitioners that they were appointed against the posts in the district cadre and therefore, they cannot be transferred

outside the district. As already stated above they were not appointed against the regular posts, rather they were appointed against posts created in connection with the Unemployment Token Allowance Scheme. The argument or grievance as to their "transfer/adjustment beyond cadre" is, thus, totally misconceived. The confirmation being for a limited purpose and not in the sense the term is understood, did not confer upon the petitioners permanence of the posts and they could not claim anything as a matter of right. It is another matter that had their services been terminated, as suggested by the State counsel, on equitable grounds the Court might have granted them suitable relief, but the State Government itself decided to adjust them against the equivalent posts to mitigate their hardship and do away with the uncertainty of their service. The impugned action of the Government does not amount to any violation of their rights rather it was for their own benefit.

13. The question which remains to be considered is whether, having regard to the fact that the vacancies exist in the posts at district level the Court should direct the respondents to adjust the petitioners against those vacancies. On this point also, I am in agreement with the State counsel that the adjustment of the petitioners being under a policy decision, the Court ought not to interfere. It has to be kept in mind that while this Court had directed the Government to provide clerks-cum-typists to the APPs in each judgeship/sub-division; at the same time, on account of discontinuance of the scheme the employees were not being paid their salary and their service was in jeopardy. The adjustment of the petitioners and other similarly situated persons thus served a dual purpose. While it resulted in adjustment of the petitioners and others-making them permanent-it also resulted in compliance of the Court's order. It may be recalled that the posts of clerk-cum-steno and peon for the APPs were sanctioned by the Cadre Committee but with a rider that no fresh appointment should be made against those posts, that is to say, it should not result in additional financial burden. In such situation the Court would be reluctant to interfere in the matter.

14. In the above premises, I do not find any merit in this writ petition which is accordingly dismissed.