
(2008) 02 PAT CK 0142
In the Patna High Court
Case No : CWJC No. 12420 of 2000

Bhagwan Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2008) 2 PLJR 453

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the State. It is not in controversy that the petitioners were validly appointed on a Grade IV post (Ward Attendant/Sweeper) in between the years 1973-1977. Their entry into the precincts of the Patna Medical College Hospital was, therefore, not contrary to law.

2. In the year 1982-83 several generators were purchased by the Hospital. The generators were purchased without any sanction for appointment of Operators, much less creation of posts of such Operators. In the circumstances, the authorities invited applications from serving Class IV employees of the Hospital, who were conversant with electrical matters to apply informally for appointment as Generator Operator-cum-Electrician and Electronic Mechanic. Several employees including the petitioners applied. A Selection Committee was constituted. The petitioners were selected. They were then sent for training to the Electricity Department of the State Government. A formal letter of appointment came to be issued to them on 26.4.1984. It stated that they shall not have a claim for additional sums for reasons of their present duty as Generator Operator-cum-Electrician and Electronic Mechanic. In future if posts are created, the petitioners shall be appointed since they have been trained for the purpose.

3. On 25.7.1998, four posts of Generator Operators-cum-Electrician and one post of Electronic Mechanic were sanctioned in the pay scale of Rs. 950-1400/- revised as Rs. 3050-4590/- on 25.7.1998. The post of Generator Operator-cum-Electrician is a Class III post. The petitioners as Class IV employees were appointed in the pay scale of Rs. 775-1025/-, revised pay scale 2050-3200/-. Though they have been performing the duty of Generator Operator-cum-Electrician and Electronic Mechanic since 26.4.1984, they are being paid at the low scale of a Class IV employee.

4. Petitioners 4 & 5 during the pendency of the writ petition were sought to be reverted to their posts in Grade IV by an order dated 30th April, 2007 and two other persons from Grade IV were sought to be inducted. They challenged the same in I.A. No. 4182 of 2007 which was allowed on 20.9.2007.

5. Learned counsel for the petitioner submitted that the petitioners are entitled to be appointed on the sanctioned posts and be given the difference in the pay scale from the date that the posts came to be sanctioned. He further relied upon a judgment of this Court reported in Manindra Kumar Sinha Vs. Mineral Area Development Authority and Others, to submit that having been allowed to work on Grade III post from 1984, it would be unjust and inequitable to now revert them to Grade IV post.

6. Learned counsel for the State submitted that the Superintendent of the Hospital, who allegedly gave assurance to appoint the petitioners on Grade IV posts was not competent to give the assurance; that the appointment had to be made by open selection; that the petitioners did not possess the technical qualification required for Generator Operator-cum-Electrician and Electronic Mechanic. It is, however, not disputed that the petitioners have been working as Generator Operator-cum-Electrician from April, 1984 continuously and that there are sanctioned posts.

7. More than one counter affidavit has been filed. There is no explanation worth the name why regular appointments have not been made ever since 1998 when the posts were sanctioned and why ad hoc arrangement was continuing when the petitioners were asked to discharge the duties.

8. Quite obviously the authorities found it very convenient in their own financial interest not to make appointment against the sanctioned post which carried higher pay scale when they had the benefit of services of the petitioners for the said work at the lower pay scale. There was hardly any option for the petitioners but to accept it.

9. In the given facts of the case, where the petitioners have been working since 1984 as Generator Operator-cum-Electrician and Electronic Mechanic, this Court is satisfied that they have acquired the technical expertise over time and would now be experienced better to operate the generator and electrical system of the Hospital with which by now they are more conversant than any fresh appointee. The Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development

Corporation, observed:

"6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period, periods created by the respondent, in the circumstances, would be sufficient for confirmation....."

This has been reiterated in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, .

10. The fact that they came in by regular procedure of Class IV posts also persuade this Court to hold that they are entitled to be considered for adjustment and absorption on the sanctioned vacant posts of Generator Operator-cum-Electrician and Electronic Mechanic..

11. In so far as petitioners 4 & 5 are concerned, it has been stated that those brought in to their place as Generator Operator-cum-Electrician, when they were reverted to Class IV post, declined to take the responsibility for lack of knowledge of operation of the generator.

12. Quite obviously, the Hospital authorities could not have left those generators unoperational. To that extent, the order dated 30.4.2007 shall not come in the way of the petitioners 4 & 5 in so far as the ultimate directions given hereinafter are concerned.

13. The Respondents are directed to consider the case of the petitioners and absorb them on the vacant sanctioned post of Generator Operator-cum-Electrician and Electronic Mechanic and to grant them the pay scale of Class III posts. Let the same be done within a maximum period of three months from the date of receipt and/or production of a copy of this order.

14. Learned counsel for the petitioner next urged that the petitioners are entitled to the arrears of the difference in the pay scale between Grade IV and Grade III from 25.7.1998, the date when the post of Generator Operator-cum-Electrician and Electronic Mechanic was sanctioned.

15. The condition in the letter of appointment that they shall not be entitled for

any additional sums for reason of their duties as Generator Operator-cum-Electrician and Electronic Mechanic cannot bind the petitioners. It is an age old maxim that necessity needs no law, "necessitas non habet legem". A person may sometimes have to succumb to the pressure of other party to the bargain who is in stronger position.

16. This Court is not persuaded to grant them the relief from the aforesaid date. However, considering that they came to this Court to vindicate their rights in November, 2000, the Respondents are directed to take an appropriate decision on the claim of the petitioners for the balance arrears of a Class III post from December, 2000. Let such decision be also taken within the same period. If the Respondents propose to deny the same, they shall be required to pass a reasoned and speaking order. The writ application stands allowed.