

(2004) 05 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 12285 of 2000

Bharat Bhushan Prasad and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Citation : (2004) 3 PLJR 297

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : H.P. Singh, for the Appellant; JC to SC 6 for State, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties and considered the counter affidavit filed on behalf of the Respondents.

2. This writ application is directed against the orders, as contained in annexures 6 and 6/1 dated 31.7.1998, respectively, whereby and whereunder the Petitioners have been terminated from Class IV posts.

3. According to the case of the Petitioners, they were working on daily wages under the Respondents and subsequently by virtue of orders, as contained in annexures 3 and 4, they were appointed on Class IV posts against a scale on temporary basis on 26.10.1991 and 26.9.1991, respectively.

4. The Petitioners pursuant to the appointment letters joined the posts immediately thereafter and while they were working on Class IV posts show-cause notice was given to them, as contained in annexures 5 and 5/1 as to why they should not be terminated. The Petitioners replied to the show-cause and by the impugned orders they have been terminated.

5. It is submitted by learned Counsel for the Petitioners that the Petitioners were appointed by the Regional Director, Animal Husbandry, as they were working on

daily-wages on Class IV posts and at the relevant time, the Regional Director, Animal Husbandry, was the competent person to appoint the persons on Class IV posts. It is further submitted that the Petitioners have been terminated without any rhyme or reason after serving under the Respondents for about eight years.

6. A counter affidavit has been filed on behalf of the State. The main ground disclosed for termination appears to be that the Petitioners were appointed after the cut off date, i.e. 28.10.1991 and they were appointed in most irregular way without following any procedure. However, it is not the case of the Respondents that at the relevant time, the Regional Director had no jurisdiction to appoint the Petitioners on Class IV posts.

7. From the materials on record, it appears that the Petitioners were appointed on 26.10.1991 and 26.9.1991, respectively, whereas the cut off date, according to the Respondents as disclosed in the counter affidavit is 28.10.1991, but the Petitioners joined the posts after few days of their appointment.

8. Since the Petitioners were appointed prior to the cut off date i.e. 28.10.1991, their appointment cannot be said to be illegal merely because they joined the posts after 28.10.1991.

9. The crucial date is the date of appointment and not the date of joining of the Petitioners.

10. Considering the facts and circumstances of the case, the appointment of the Petitioners cannot be said to be after the cut off date i.e. 28.10.1991.

11. Besides all these questions, in my opinion, the Petitioners could not have been terminated as they have worked on Class IV posts for about eight years.

12. For the reasons aforementioned, the orders impugned, as contained in annexures 6 and 6/1, are not sustainable in law.

13. In the result, this application is allowed, orders impugned, as contained in annexures 6 and 6/1, are set aside and the Petitioners are directed to be reinstated on their substantive posts. However, the Petitioners would not be entitled for the salary of the period they have not worked.