

(2008) 04 PAT CK 0045

In the Patna High Court

Case No : Letters Patent Appeal No. 722 of 1999

Bihar State Co-operative Marketing Union and Others

APPELLANT

Vs

Basant Prasad Singh

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Citation : (2008) 04 PAT CK 0045

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Rekha Kumari, JJ.—Heard learned Counsel for the appellants as well as the respondents in all these 15 Letters Patent Appeals which have been heard together because common issues of law are involved and employer in respect of all the writ petitioners happens to be BISCOMAUN. It may be clarified here that in the first 14 Letters Patent Appeals, BISCOMAUN is the appellant and has challenged the order passed in favour of writ petitioners who claimed regularization on various class IV posts or benefits of alleged regularization on such posts and such prayers have been allowed by the learned Single Judge. The remaining Letters Patent Appeal is by an employee whose similar prayer stands rejected by the learned Single Judge.

2. At the outset it may be relevant to point out that Upendra Prasad Singh—the respondent employee in LPA No. 1017 of 1999 is said to have died on 18.11.2001 and the appellant BISCOMAUN has not taken step for substituting his heirs. In that view of the matter, the said LPA is declared to have abated on account of death of necessary respondent, the writ petitioner.

3. On going through the judgments and orders under appeal preferred by the BISCOMAUN, it is found that the writ petitions have been allowed by short orders placing reliance upon a judgment of this Court in the case of Abadh Singh Vs. Bihar State Co-operative Marketing Union Limited and Others or in the case of Jai Prakash Sharma and Others Vs. Bihar State Co-operative Marketing Union Limited and Others, .

4. In the case of Abadh Singh (supra), the writ petitioner had claimed regularization and its benefits on the basis of long service of 18 years as a Night Guard. The appointment suffered from alleged irregularities but the Writ Court allowed the writ petition by holding that in view of long spell of service, the ground of irregular appointment cannot survive. Hence, direction was issued to regularize the services with all monetary and promotional benefits.

5. In the case of Jai Prakash Sharma (supra), the writ petitioner claimed regularization on the ground that he had continued as a Night Guard on temporary basis for more than 10 years without any complain or adverse remarks. The Writ Court noticed that some Night Guards appointed in similar fashion at a later stage had been regularized and on that ground it was held that the writ petitioner was being discriminated leading to violation of Article 14 of the Constitution of India. On this ground the Writ Court allowed the writ petition and directed the respondents to regularize the services of the petitioner with effect from beginning of the new month after the date of the judgment. The Writ Court, however, clarified that as a result of such regularization the petitioner will not be entitled to claim any benefits by way of arrears of pay and other allowances.

6. On behalf of the BISCOMAUN it has been submitted that BISCOMAUN was facing financial hardship on account of decline in its business, particularly since 1995 and, therefore, no writ should have been issued to compel it to regularize the services of employees engaged on daily wages and to make them regular employees. The judgment and order dated 13.9.1999 passed in CWJC No. 9013 of 1998 which is subject matter of LPA No. 1315 of 1999 was also relied upon by learned Counsel for the BISCOMAUN to submit that a similar claim of regularization by the writ petitioner- Bankey Prasad and others was disallowed on the ground that daily wage employees do not acquire any legal right of regular employment except a right of consideration for regular employment as per policy decision but when the business activity of BISCOMAUN has reduced and there is no need of further engagement, the Court felt unable to issue any direction for engagement/ regularization of services of the petitioners. Learned Counsel for the BISCOMAUN next placed reliance upon a judgment dated 9.2.1998 passed in CWJC No. 5652 of 1996 (Uttam Kumar and Ors. v. BISCOMAUN) and four other analogous cases which is available as Annexure-A to the counter affidavit of BISCOMAUN in the writ petition bearing CWJC No. 8968 of 1997 out of which LPA No. 456 of 2001 arises. In that judgment the learned Single Judge was considering similar prayer for regularization of services of petitioners who claimed that they had been working since long on daily wages in BISCOMAUN. The writ petitions were dismissed after considering judgment of the Supreme Court in the case of Sitaram Thakur Vs. The State of Bihar and Others and several other judgments of the Supreme Court as well as of this Court. In that judgment particular emphasis was led on the judgment of the Apex Court in the case of P. Ravindran and Others Vs. Union Territory of Pondicherry and Others, to highlight that the Apex Court had deprecated the practice of regularization except in extraordinary cases by directing the

government to frame schemes for regularizing class III and IV employees.

7. The Apex Court had clearly indicated "that the Court cannot adopt hybrid process of direction to regularize the services bypassing the process of selection envisaged under the Constitution."

8. Lastly, learned Counsel for the BISCOMAUN placed reliance upon a recent Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In this case the Constitution Bench considered in depth the issue of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment. Specific reasons including financial/ economic impact of directions for regularization have been discussed in the said judgment to come to a conclusion that the Supreme Court and High Courts should not issue directions for regularization unless the recruitment itself was made regularly and in terms of the constitutional scheme. From the said judgment it is more than apparent that the Apex Court has strongly deprecated consideration of equity only for those who approach the Court with a claim which may be founded upon illegal entry into service while ignoring equity for millions who are denied equal opportunity to compete for public employment. After discussing various earlier judgments by the Apex Court, in paragraph 43 of the Judgment the conclusion has been recorded in the following words -

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.

9. On the basis of aforesaid discussions and the law laid down by the Constitution Bench of the Apex Court, we are left with no option but to hold that the directions for regularization or for payment of monetary benefits on account of regularization ordered by the Managing Director in the files many years earlier, as issued by the Writ Court, cannot be affirmed. Accordingly, the orders passed by the Writ Court under challenge in the 13 LPAs filed by the BISCOMAUN except in LPA No. 1017 of 1999 are set aside and the appeals are allowed but without costs. As a result of the aforesaid discussion and findings, the only remaining LPA bearing No. 1315 of 1999 (Bankey Prasad and Anr. v. the State of Bihar and Ors.) is dismissed because we find ourselves in agreement with the views of the Writ Court that no direction can be issued for regularization of services of the writ petitioners.

10. From the supplementary affidavits filed on behalf of BISCOMAUN in all the LPAs preferred by it, it appears that concerned employees who are respondents in LPA No. 722, 724, 725, 1015, 1017, 1018, 1166 and 1173 of 1999 were regularized by BISCOMAUN leading to payment of some monetary benefits with a

stipulation that such order of regularization will be subject to result of the Letters Patent Appeals. Had such an arrangement been on account of interim orders of this Court, the payments made to the concerned employees may have required refund by the employees concerned on account of success of appeals but since the posts relate to class IV and the arrangement was made by BISCOMAUN on its own, hence in the interest of justice, this Court directs that such employees will not be required to refund any monetary benefits they may have received on account of their regularization during the pendency of the appeals.

11. It is further made clear that this Court has passed the aforesaid direction only to protect the monetary benefits and not any other right.

12. On behalf of employees it has been submitted that recently in the year 2006 the BISCOMAUN has terminated / retrenched the services of several employees including some of the respondents and such employees have challenged the termination of their service/ retrenchment orders by preferring writ petitions. As prayed on their behalf, it is made clear that any stray observation made in this order may not be used by the BISCOMAUN in those writ cases and they should be decided on their own merits.

13. The judgment of the Writ Court in the case of Bankey Prasad & another has been affirmed by us and LPA No. 1315 of 1999 has been dismissed but it is made clear that the respondents, as directed by the Writ Court, must pay arrears of wages to the petitioners within a period of two months if wages are due for any period during which the petitioners had worked. This direction shall apply to all the other writ petitioners also although the Letters Patent Appeals of BISCOMAUN have been allowed against them.