

(1995) 07 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 346 of 1994

Binod Kumar Singh

APPELLANT

Vs

Bihar State Co-operative Marketing Union Limited and Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 2 PLJR 337

Hon'ble Judges : S.J. Mukhopadhya, J

Bench : Single Bench

Advocate : Md. Abu Haidar, for the Appellant; J.P. Singh and Janardan Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhya, J.—The Petitioner has prayed for direction on the Respondents to pay him the regular scale of pay of the post of Night Guard with effect from 1st of January, 1984 i.e. from the date Petitioner has been regularly appointed/regularised against the post of Night Guard. Further prayer has been made by the Petitioner for consideration of his case for time bound promotion from the due date, as has been granted to the persons, who are similarly situated to that of the Petitioner, including, those who are junior to the Petitioner.

2. The brief fact of the case lies in a narrow compass, as stated below:

The Petitioner was appointed as a daily wage Night Guard at the rate of Rs. 3/- per day vide Memo No. 243-31/ Munger dated 7.6.1975, as contained in Annexure-1. Such appointment was made on daily wage basis under the Respondent-Bihar State Co-operative Marketing Union Limited (hereinafter referred to as the Biscomaun). Subsequently vide decision of the Executive Committee dated 8th of December, 1983 and resolution of the Board of Directors bearing Resolution No. 12 dated 23rd of November, 1983 and Resolution No. 3 dated 24th of December, 1983 it was decided to consider the cases of daily wage

Night Guards for their regular appointment against clear vacant post of Night Guard. On the basis of such decision of the Executive Committee and the Board of Directors of the Biscomaun, the Respondent Managing Director came out with one order dated 28th of January, 1984, as contained in Annexure-2. By the said order dated 28th of January, 1984, a number of daily wages Night Guards were regularly appointed against the regular vacant post of Night Guard with effect from 1st of January, 1984 in the then scale of Rs. 375-480/-. The name of the Petitioner is appearing at serial No. 13 to the enclosure which is attached with the order dated 28th of January, 1984 (Annexure-2). From the aforesaid order dated 28th of January, 1984 (Annexure-2) it will be evident that the Petitioner was also appointed on regular basis against a clear vacant post of Night Guard with effect from 1st of January, 1984 under the Respondent-Biscomaun.

3. According to the Petitioner, the Respondents thereafter accepted fresh joining letter from all the persons, who were given appointment vide order dated 28th of January, 1984 (Annexure-2). The Petitioner also submitted a fresh joining report, but the same was not accepted by the Respondents. Though the Petitioner is continuing and functioning as Night Guard, but the Respondents are treating the Petitioner as daily wage Night Guard and is paying him the wages that of a daily wage employee and not the regular scale of pay. The Petitioner has enclosed different orders to show that he is still functioning.

4. A gradation list of regular Night Guards has been published by the Respondents on 14th of July, 1989, as contained in Annexure-3. Though the names of all the persons, who were regularly appointed vide order dated 28th of January, 1984 (Annexure-2) have been shown therein, including that of the juniors to the Petitioner, name of the Petitioner has not been included therein. According to the Petitioner, non-inclusion of the name of the Petitioner in the gradation list of regular Night Guards, as contained in Annexure-3 shows that the Respondents are not treating the Petitioner as regular Night Guard.

5. The Petitioner has asserted that he moved before the authorities and filed different representations for providing him the regular scale of pay in view of the fact that he has been regularly appointed by order dated 28th of January, 1984 (Annexure-2) to the post of Night Guard. One of such representation is dated 23rd of June, 1993, as contained in Annexure-8. In spite of the same the Respondents have not come out with any order releasing the regular scale of pay and paying the arrears in favour of the Petitioner.

6. During the pendency of the writ petition a number of persons, including those, who were regularly appointed with the Petitioner vide order dated 28th of January, 1984 (Annexure-2) to the post of Night Guard, which further includes the persons, junior to the Petitioner, have been granted time bound promotion in the higher scale of Rs. 825-1200/- by an order dated 16th of December, 1994. The same has been enclosed by the Petitioner as Annexure-9 to the writ petition by filing supplementary affidavit. It is to be taken into note that the pay of the post of Night Guard has been revised to that of Rs. 800-1150/- and next higher

grade to that of Night Guard is Rs. 825-1200/-

7. Counsel for the Petitioner submitted that the action on the part of the Respondents is violative of Articles 14 and 16 of the Constitution of India. The Petitioner having been regularly appointed vide order dated 28th of January, 1984 (Annexure-2) with effect from 1.1.1984, as the Respondent are taking work from the Petitioner that of Night Guard, even till date, the Respondents are duty (sic) to pay the Petitioner with the regular (sic) of pay of the post of Night Guard. Thereby the Counsel for the Petitioner submitted that the claim of the Petitioner for arrears of salary in the regular scale of Night Guard is justified. It was also contended by the Counsel for the Petitioner that the Juniors to that of the Petitioner having been given time bound promotion by order dated 16th of December, 1994 (Annexure-9), the Petitioner is also entitled for consideration of his case for time bound promotion to the higher grade of Rs. 825-1200/-, with effect from the date, the Petitioner's juniors have been so granted. It is to be taken into note that the juniors have been given the financial benefit of promotion to higher grade of Rs. 825-1200/- with effect from 1.12.1984.

8. A counter affidavit has been filed by the Respondent-Biscomaun. In the counter affidavit the main stand of the Respondents are that the initial order of appointment on daily wage basis which was made in favour of the Petitioner by order dated 7th of June, 1975 (Annexure-1), itself was without jurisdiction, the same having been made by an authority who was not competent to appoint the Petitioner on daily wage basis. It has been further stated that the Petitioner was not found fit for appointment on temporary basis and thereby his joining was not accepted and for the said reason the name of the Petitioner was not included in the gradation list of Night Guards, as contained in Annexure-3.

9. Having heard the Counsel for the parties, I hold that the reason given by the Respondents is completely arbitrary and the same also shows non-application of mind on the part of the Respondents. The Petitioner was appointed on daily wage basis as back as on 6th of June, 1975 vide Annexure-1. The Respondents are still taking work from the Petitioner. It is after about 20 years of such appointment of the Petitioner, the Respondents cannot challenged the same that too by way of filing counter affidavit. So far as the regular appointment of the Petitioner to the post of Night Guard is concerned, it is evident from the order dated 28th of January, 1984 (Annexure-2) that the Petitioner was found fit for such appointment and have been provided with such regular appointment to the post of Night Guard with effect from 1st of January, 1984 along with Ors. . Such being the position, the affidavit, which has been sworn by the Respondents that the Petitioner was not found fit for such appointment is completely misconceived and is based on no evidence. In any case, the Petitioner having been appointed on regular basis on the basis of a decision of the Board of Directors, by the appointing authority i.e. Managing Director, vide order dated 28th of January, 1984 (Annexure-2), it is not open to the Respondents to raise the question relating to the initial appointment of the Petitioner made on daily wage basis as

back as on 7th of June, 1975. The Petitioner having been appointed on regular basis to the post of Night Guard with effect from 1st of January, 1984 (vide Annexure-2), and as the Petitioner is performing the duty of Night Guard, he is entitled for regular scale of pay of the post of Night Guard and the arrears thereto.

10. In a similar case of one Abadh Singh, Anr. Night Guard of the Respondent-Biscomaun, who was also regularly appointed by order dated 28th of January, 1984 (Annexure-2), a Bench of this Hon"ble Court vide order and judgment dated 15th of May, 1995 passed in C.W.J.C. No. 5364/94 Abadh Singh Vs. Bihar State Co-operative Marketing Union Limited and Others has given specific direction to pay the arrears of salary in the regular scale of pay with effect from 1st of January, 1984. A direction has also been given for consideration of the case of said Abadh Singh for promotion to higher grade.

11. For the reasons stated above, I pass the following orders:

(i) The Respondents are directed to provide the Petitioner with regular scale of pay of the post of Night Guard with effect from 1.1.1984, after proper fixation of pay of the Petitioner giving him due increment and fixing the pay in the revised scale of pay. Thereby to pay the Petitioner with the arrears of salary in the regular scale of pay;

(ii) The Respondents are further directed to consider the case of the Petitioner for promotion to the higher grade of Night Guard, i.e. in the grade of Rs. 825-1200/- with effect from the date the Ors. have been so promoted vide order dated 16th of December, 1994 (Annexure-9), and to provide the Petitioner the consequential benefit of the same, including the arrears of salary;

(iii) I further direct the Respondents to provide the Petitioner with such regular scale of pay for the current period.

All the aforesaid directions are to be complied by the Respondents and the arrears are to be paid by them to the Petitioner within a period of three months from the date of receipt/production of a copy of this judgment.

12. The writ petition is allowed with the aforementioned observations and directions. But on the facts and circumstances of the case, there will be no order as to costs.