

(2011) 04 JH CK 0004
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6169 of 2002

Bir Singh Jonko

APPELLANT

Vs

Uranium Corporation of India Ltd. and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Bihar Home Guards Act, 1947 — Section 8
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2011) 04 JH CK 0004

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This writ petition under Article 226 of the Constitution has filed by the Petitioner seeking the following reliefs:

1. for issuance of an appropriate writ/order/direction commanding the Respondents to show cause as to why and under what authority the concerned Respondents, without passing any order, have stopped the Petitioner from performing his duty with effect from 11.11.1997;
 2. for issuance of a further writ in the nature of mandamus commanding the concerned Respondents to allow the Petitioner to resume his duty without any further delay; and
 3. for further writ directing the concerned Respondents to regularise the service of the Petitioner and to pay the Petitioner his monthly salary at the rate at which the other security guards are being paid and also to give him the benefits of continuity in service etc.
2. In substance, the Petitioner was appointed as a Home Guard u/s 8 of the Bihar Home Guards Act and his services were dispensed with on 11.11.1997. So, the Petitioner filed this writ petition seeking regularisation of his services and claiming salary equal as paid to those employees who had been permanently

discharging similar duties in the Establishment.

3. I have heard the counsel for the Petitioner and perused the records. It was contended on behalf of the Petitioner that the Petitioner was appointed u/s 8 of the Bihar Home Guards Act and there after his services were dispensed with though he served the department for more than ten years. Learned Counsel for the Petitioner laid stress on the point that the Respondents being a Govt. undertaking the services of the Petitioner should have been regularised as the Petitioner had been serving since long and he also claims that the Petitioner should be given equal pay as paid to those employees who were permanently appointed by the Department. Learned Counsel further contended that the daily wagers and casual labourers whose engagement is not based on contractual basis, have a legitimate right to be confirmed in the post whenever the vacancy occurs.

4. Learned Counsel for the State refuted the contention and contended that the Petitioner has no right to be regularised on the post as the Petitioner had been working as daily wager or casual labour. He further pointed out that Section 8 of the Bihar Home Guards Act clearly provides that services of such employees (Home Guards) shall be engaged for a period of one year, which period may be extended from time to time, up to three years. The Rule framed thereunder clearly provides that as per the Section as well as under rules, service of Home Guard can be dispensed with any time. He further submitted that the Petitioner has no legal right to seek mandamus for regularisation of his service.

5. It is a settled proposition of law that a daily wager or contractual labour or temporary employee cannot claim permanency over a post and cannot seek mandamus directing the State Government to make him permanent since the employees cannot show that they had an enforceable legal right to be permanently absorbed or that the State Govt has any legal corresponding duty to make him permanent. Thus, the mandamus seeking regularisation is not maintainable. It has been held in the case of *Secretary, State of Karnataka v. Uma Devi* reported in 2006(4) SCC 01 wherein at para 52, it has been held as under:

...This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

In the aforesaid case, in para 43 and 45, the Hon''ble Apex Court held as under:

43. 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. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional Scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. 45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employments with open eyes. It may be true that he is not in a position to bargain not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public

appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fall when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

6. It is also well settled proposition of law that daily wager, contractual labour or an other person who has been appointed as an ad hoc employee by the State cannot claim parity with the employees who had been appointed permanently according to the rules and the same view has also be reiterated by the Constitution Bench (Uma Devi (supra) at para 48 in the following terms:

...No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

7. The Petitioner has further claimed that he was paid a sum of Rs. 1,350/- for 30 days and Rs. 1395/- for 31 days, whereas other security guards discharging similar nature of work were paid monthly salary of Rs. 3500/-. It is also claimed in the writ petition that the Petitioner was enrolled in the Roll of the Bihar Home Guards on 10.9.1978 and thereafter he was discharging his duties under M/s Uranium Corporation of India Limited. He remained in service till 1997 and his services were dispensed with on 11.11.1997. He has claimed parity with the employees who had been regularly appointed by the Respondents. The Petitioner was appointed or enrolled in the year 1978 and he had been drawing salary since then what he has stated in the writ petition and he never claimed equal pay for equal work till 1997. For the first time, he preferred this writ petition in the year 2002 and he further claims that his services have been wrongly dispensed with.

8. Petitioner's services could have been dispensed with at any time as his appointment was for a fixed term. His services can only be termed either on ad hoc basis or on daily wage wages. His services can be dispensed with at any time. There is no illegality in dispensing with the services of the Petitioner as directed by the Respondents. The Petitioner for the first time came up with his grievance before this Court in the year 2002. The Petitioner, if he had been claiming parity of salary, could have claimed it before the year 1997. He slept over his right. He did not claim the parity of salary as claimed in this writ petition. There were laches on the part of the Petitioner which he could not explain in the writ petition. Merely making representation to the authorities are not sufficient to condone the laches on the part of the Petitioner. In this context, in the case of Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , the Hon'ble Apex Court has held as under:

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Rajalakshmi Setty v. State of Mysore (AIR 1967 SC 993). This was reiterated in Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down ONE representation the making of another representation on similar lines will not explain the delay. In State of Orissa Vs. Pyarimohan Samantaray and Others, making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone see State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, .

9. Apart from that, the Petitioner is claiming regular salary also from the date when his services were dispensed with. In the facts and circumstances of the case, I find that the services of the Petitioner has been rightly dispensed with and there is no question of granting any relief to the Petitioner, as claimed in this writ petition.

10. For the reasons aforesaid, this writ petition is devoid of any merit and is fit to

be dismissed.

11. This writ petition is accordingly dismissed.