
(1988) 04 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3616 of 1982

Birendra Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (1988) PLJR 886

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : S.B.N. Singh, Ramanand Kumar, Satish Chandra Jha and H.N. Ojha, for the Appellant; M.S. Madhup, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ application the petitioners initially prayed for quashing of the order dated 9.8.1982, passed by Respondent no. 2 and as contained in Annexure-2 to the writ application, whereby and whereunder the petitioners were directed to be removed from services. On 20.9.1982 the petitioners filed a supplementary affidavit praying therein that their services be directed to be regularised and/or confirmed inter-alia on the ground that they have been working in the said post for a long time. The facts of the case lie in a very narrow compass. The petitioners have been continuously working in the Irrigation department for a long time. In this connection, the petitioners have stated as follows:--

The petitioner no. 1 has been working in the said organisation since 1.2.1980 and continuously served till 12.8.1983. Similarly, the petitioner no. 2 was absorbed as Chowkidar on 22.5.1979 in Kathra tanr subdivision of Irrigation Department. The petitioner no. 3 was absorbed on 1.2.1980 as Chowkidar. The petitioner no. 4 was absorbed on 1.2.1981 as work Sarkar. The petitioner no. 5 was absorbed on 1.12.79 as Chowkidar. The petitioner no. 6 was absorbed on 1.12.1979 as Dozar. The petitioner no. 7 was absorbed on 1.9.1981 as

Chowkidar. The petitioner no. 8 was absorbed on 1.9.1981 as Chowkidar. The petitioner no. 9 was absorbed on 1.2.1281 as Chowkidar. The petitioner no. 10 was absorbed on 1.3.1931 as Chowkidar. The petitioner no. 11 was absorbed on 1.7.-1981 as Chowkidar. The petitioner no. 12 was absorbed on 1.8.1981 as Chowkidar. The petitioner no. 13 was absorbed on 21.2.1980 as Chowkidar. The petitioner no. 14 was absorbed on 1.10.1981 as Assistant. The petitioner no. 15 was absorbed as Chowkidar on 1.8.1980. The Petitioner no. 16 was absorbed as Chowkidar on 11.8.81. The petitioner no. 17 was absorbed on 1.9.1979 as Chowkidar. The petitioner no. 18 was absorbed on 1.9.1981 as Chowkidar. The petitioner no. 19 was absorbed on. 1.5.1980 as Chowkidar. The petitioner no 20 was absorbed on 1.11.1981 as driver. The petitioner no. 21 was absorbed as Chowkidar on 1.3.1980. The petitioner no. 22 was absorbed as Chowkidar on 1.8.1981. The petitioner no. 23 was absorbed on 1.2.1980.

1A. According to the petitioners all of them had put in more than 240 days of service in the Irrigation Department in their respective capacities as mentioned herein before. From the impugned order as contained in Annexure-22 to the writ application, it is evident that the services of the petitioners were dispensed with in view of the instructions given by the Minister of the Irrigation Department to the effect that all those persons, who hail from the locality outside the project area should be removed from services.

2. Mr. S.B.N. Singh, the learned counsel appearing on behalf of the petitioners submitted that the aforementioned order is discriminatory in nature being violative of Articles 14 and 16 of the Constitution of India as the impugned order of removal of service have been passed only on the basis that they did not belong to the area, wherein the different projects of the Irrigation Department are functioning.

3. In this case, a counter affidavit has been filed on behalf of the respondents no. 1-6. From a perusal of order as contained in Annexure-22 to the writ application, it is evident that the said order was passed only on the basis of the instructions issued by the Hon"ble Minister of the Irrigation Department to the aforementioned effect. Article 14 of the Constitution directs the State not to deny to any person equality before law and equal protection of law. Article 15 of the Constitution further provides that the State would not discriminate any citizen on the grounds of religion, castes, place of birth or any of them The only exception to the aforementioned provision is contained in Clause 4 of Article 15 of the Constitution which provides that the State may make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Schedules Tribes. Article 16 also provides that all persons would have equal opportunity in matters relating to employment appointment to any office under the State. Clause 2 of Article 16 further provides that no citizen shall become ineligible or discriminated against in respect of any employment or office under the State inter-alia on the ground of his residence.

4. Plainly enough the impugned order has been passed only because, the

petitioners are not residents of the areas where several projects of the Irrigation Department are being carried out.

5. In the counter affidavit filed on behalf of the State it has been admitted that one Bashar Jalashay Yojna Sanghars Samittee, Betia staged a Dharna before the Irrigation Circle Officer, Betia for fulfilment of four point demands including one for removal of all such daily labourers whose residences were outside the project area and in their place the local labourers be engaged, and hence on consideration of the aforementioned demand of the said Yojna Sanghars Samittee, a discussion was held on 7.8.1982 with the State Hon'ble Minister of Irrigation wherein Superintending Engineer, Irrigation Division, Betia was also present. It has further been asserted that in course of discussions it was decided to remove such labourers whose services were presently not required and number of such workers were twenty-nine.

6. In view of the aforementioned statements in the counter affidavit itself, there cannot be any doubt that the monarchy has given way to democracy. I have no doubt that the impugned order is violative of Articles 14 and 16 of the Constitution. A right of employment includes a right to continue in employment. The right to obtain employment can not be denied to any person only on the ground of his residence. Reference in this connection may be made to the case of Anil Kr. Vs. The Chief Secretary to the State Govt. of Bihar, Patna (1987 P.L.J.R. 846).

7. In this view of the matter, the impugned order as contained in Annexure-22 of the writ application must be held to be wholly illegal and is thus liable to be quashed.

8. Mr. Madhup, the learned Standing counsel no. 1 however, placed strong reliance upon a Division Bench decision of this Court in C.W.J.C. No. 4270 of 1981 disposed of on 10th January, 1984. The said decision, in my opinion, has no application in the facts and circumstances of the present case. In that case, the petitioners were appointed as seasonal chainmen and, therefore, they had no right to continue in service after the season was over. That was because of the fact that the same was based on the terms and conditions of their contract of service. However, even in that Judgment their lordships observed that whenever the opportunity of re-employment comes, the retrenched workmen (the petitioners) in the aforementioned case should be given preference.

9. So far as the prayer of the petitioner, to the effect that their services may be regularised is concerned, in my opinion, it is not possible to grant the same in this application. In the counter affidavit filed on behalf of the respondents it has been stated that the petitioners were appointed for a particular type of work and as such their services can be dispensed with as and when their services are not required. However, the respondents are hereby directed to consider the cases of the petitioners for absorption although it is not possible for this court to grant the said relief to the petitioners in this writ application as they have not stated as to

whether there exists any circular of the State of Bihar with regards to the regularisation of the services of the petitioners. However, the respondents are directed to consider the cases of the petitioners. If there is enough work of permanent nature so that the services of the petitioners and other employees who are eligible, therefor may be regularised.

10. I hope and trust that while doing so the authorities would bear in their mind the well known decisions of the Supreme Court in the case of Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, and in the case of Dhirendra Chamoli and Another Vs. State of U.P., and Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . With the aforementioned observations and directions this writ application is disposed of. In the facts and circumstances of the case, there shall, however, be no order as to costs.