
(2001) 02 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 7644 of 1999

Bishundeo Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0077

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer on behalf of the Petitioner is to direct the Respondents to regularise his service as Carpenter in Zila Parishad and in the alternative to pay actual minimum wage from 23.3.1998.

2. In short, the relevant facts are that the Petitioner claims to have initially joined Zila Parishad on muster roll basis on 4.3.1982 on the wage of Rs. 14/- per day. Petitioner was removed from service in the year 1985 against which he went to Labour Court. It appears that the Labour Court gave award in his favour for his reinstatement, and accordingly he was (sic) on 23.3.1998 finally in pursuance to the award and has; been con-(sic) in the employment of Zila Parishad till date. It is alleged that service of Respondent Nos. 3 & 4 were regularised from 21.12.1982 and (sic) .1.1994 respectively, whereas the claim of the Petitioner for regularisation was not considered. On the contrary he was removed in the year 1985. His further (sic) is that minimum wage of Car-(sic) was Rs. 48.10 per day on 5.3.1998 and from 25.5.1998 it has been creased to Rs. 59/- per day, but due to malafide action of Respondent No. 2 the services of the Petitioner has neither been (sic) nor he has been paid minimum wages.

3. A counter affidavit has been filed behalf of Respondent No. 2 in which it stated that there is only one sanctioned (sic) of Carpenter in Zila Parishad on (sic) one Sri Krishna Prasad Sharma (sic) appointed in the year 1972 and is (sic) on the said post till now, Accord-(sic) the case of the Respondents, no sanctioned vacant post of Carpenter is available with the Respondent-Zila Parishad on which services of the Petitioner can be regularised. It is further stated that the matter

regarding creation of post is a policy matter and has to be taken at the level of the State Government which by its resolution dated 16.3.1991 has imposed ban on creation/appointment/promotion to any post without prior approval of the Government. As regards wages, it is stated that the State Government has revised the minimum wage @ Rs. 90/- per day from 29.8.1998 and pursuant to the aforesaid order, the Respondent-Zila Parishad has already issued an order dated 22.1.2001 for payment of Rs. 90/- per day as minimum wage to the Petitioner with effect from 29.8.1998.

4. Reply affidavit has been filed on behalf of the Petitioner to which he has annexed copy of the budget estimate of the Respondent-Zila Parishad for the year 1963-64. Learned Counsel appearing for the Petitioner has submitted that perusal of the budget would show that there has been two posts of Carpenter in Zila Parishad. As such, according to the learned Counsel for the Petitioner, the Respondents are not correct in their stand that no sanctioned post of Carpenter is vacant in Zila Parishad as in the counter affidavit itself it is admitted that Sri Krishna Prasad Sharma is only holding the post.

5. Learned Counsel appearing for Zila Parishad has submitted that it is true that there were two posts in the year 1963-64, but later on account of bifurcation/creation of new Zila Parishad of Nalanda the staff were also divided and accordingly only one sanctioned post remained with Respondent-Zila Parishad and the other post was transferred to the newly created Nalanda Zila Parishad.

6. Heard learned Counsel for the Petitioner and the learned Counsel for the Respondent and perused the record of the case.

7. In view of the stand of the Respondents that only one sanctioned post is there on which Sri Krishna Prasad Sharma is already working, and that there is no other sanctioned vacant post available on which the claim of the Petitioner can be considered for regularisation, this Court, finds it difficult to direct the Respondents to consider the case of the Petitioner for regular appointment. If the sanctioned post is not available there cannot be any question of regularisation of a person working on muster roll. However, this Court finds substance in the submission of the learned Counsel for the Petitioner that in view of the law settled in the case of Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, the Petitioner at least cannot be denied of the minimum pay in the pay scales of regularly employed workman. I Learned Counsel for Zila Parishad has not been able to defend the action of Zila Parishad in not paying the minimum pay to the Petitioner in the pay scale of regularly employed workman, though taking work from him. The Apex Court in the case of Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India and Ors. (supra) has held that denial of minimum pay in pay scales of regularly employed workmen amounts to exploitation of labour and classification of casual labourers for purpose of payment of different rates of wages is violative of Articles 14 & 16 of the Constitution and Article 7 of International Government (sic--Convention?) on

Economic, Social and Cultural Rights, 1966.

8. Under such circumstances, in my opinion, the Respondent-Zila Parishad cannot deny the payment of minimum pay in pay scales of regularly employed workmen to the Petitioner.

9. Accordingly, writ petition is allowed to the above extent and the Respondents are directed to pay minimum pay in pay scales of regularly employed workman working as Carpenter. Necessary order for payment must be issued within two weeks.

10. It is needless to add that in view of the admission made in the counter affidavit that the Petitioner was entitled for wage @ Rs. 90/- per day from 29.8.1998 and for which order has also been issued the Respondent-Zila Parishad must make payment of the said amount towards arrears within two weeks of the receipt/production of a copy of this order.