
(2012) 05 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 6809 of 2012

Deo Nandan Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226

Citation : (2012) 4 LLJ 564

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : S.R. Saran, for the Appellant; Prabhat Ranjan, A.C. to GP 12, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Navin Sinha

1. Heard learned counsel for the petitioners and the State.

The petitioners are aggrieved by the order dated June 22, 2011. It rejects their claim for regularisation holding that daily wagers cannot be regularized in terms of the order in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

Learned counsel for the petitioners submits that as of date the petitioners are still working on daily wage. They were appointed on daily wage against Class IV posts as far back as 1976-1981. On May 18, 1983 instructions were issued by the Chief Engineer, Irrigation, authorising the Executive Engineers to consider regularisation of daily wagers in accordance with the PWD Code. On March 26, 1998 a list of approximately 322 daily wagers was prepared for regularisation which included the name of the petitioners. Regularisations came to be done arbitrarily in a pick and choose manner. The petitioners approached the Court in C.W.J.C. No. 10660/1996. The application was admitted for hearing. The petitioners thus continued to work and the respondents gave them minimum

time scale of pay for Class IV posts. The application was disposed on September 28, 2010 inter alia observing that "many a changes both in fact as well as in law has come about". The State Government had formulated a policy dated March 16, 2006 in view of the judgment in *Secretary, State of Karnataka v. Uma Devi* (supra). It was further observed that "there is a modality in place now to regularise the services.

The petitioners are Class IV employees with limited resources to protect their services. The fact that they have continued uninterruptedly for such long years is evidence of the fact that they were working against vacant sanctioned posts and the benefit of the observations for regularisation in *State of Karnataka and Others Vs. M.L. Kesari and Others*, . They also fulfill the requirement for ten years of service laid down in *Uma Devi* (supra). Even while the writ petition remained pending the respondents regularised others from the list in the years 2005-2006. Even after the judgment in *Patna High Court Secretary, State of Karnataka v. Uma Devi* (supra) regularisations have been done in a pick and choose manner.

Counsel for the State supported the impugned order urging that the order dated May 18, 1983 itself states that regularisation was to be done subject to availability of vacancies. The impugned order rightly holds that as daily wages the petitioners were not entitled to the benefit of *Secretary, State of Karnataka v. Uma Devi* (supra). The petitioners were admittedly appointed on daily wage. Daily wagers are not appointed in government service and do not hold any post. The very nomenclature "daily wage" pre supposes that the appointment was made in the exigency of the work which naturally has to be for a limited duration. There can be no permanent appointment on daily wage. If the petitioners contend that they were appointed against vacant sanctioned posts, it was for them to produce all evidence to the writ application either presently or in the earlier writ application that they had been appointed against vacant sanctioned posts, the judgment in *State of Karnataka v. M.L. Kesari* (supra) having been delivered on August 3, 2010 before the disposal of their writ application on September 28, 2010. There is no material on record for the Court to hold that their appointments in 1976-1981 was against vacant sanctioned post to make the benefit of *State of Karnataka v. M.L. Kesari* (supra) available to them. Merely because they may have continued on daily wage over long years cannot lead to any presumption that the appointment was against a vacant sanctioned post. The petitioners have not brought on record the nature of their daily wage appointment, if it was for a limited duration and it came to be extended at intervals.

2. The status of a daily wage not holding a post in government ineligible to be considered for regularisation was noticed far back in *State of U.P. and Others Vs. Ajay Kumar*, , as follows:

5....Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as

the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then...

The manner in which appointments are made on daily wage for limited duration, gradually extended at intervals to create a foothold for regularisation was noticed in *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, as follows:

23.... The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years...

3. If the appointment was on daily wage, whatever may have been the government instruction in the year 1983 or 1998, and whatever the respondents may have done with regard to others by regularizing them in the years 2005-2006 is no more relevant after the decision in *Secretary, State of Karnataka v. Uma Devi (supra)* which holds at para 53 and 54 as follows:

53.....We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

4. The petitioners have continued in service by virtue of pendency of the earlier writ application preferred by them. They thus fall in the category of persons specifically excluded from the benefits conferred by para 53 of the judgment as persons who do not meet the requirements for regularisation and that even ten years of service shall not suffice for them observing as follows:

53....There may be cases where irregular appointments (not illegal appointments) as explained in *S. V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this

judgment.....

5. The judgment in *Secretary, State of Karnataka v. Uma Devi* (supra) at para 43 expressly holds that daily wagers do not hold any post and the question of their regularisation does not arise in the following terms:

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, regularisation, 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 tend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

6. The judgment in *Secretary, State of Karnataka v. Uma Devi* (supra) was

pronounced on April 10, 2006. C.W.J.C. No. 10660/1996 preferred by the petitioners earlier came to be disposed on September 28, 2010 directing consideration of their claims under Secretary, State of Karnataka v. Uma Devi (supra) when the petitioners clearly fell in the exceptions observed in the case of Secretary, State of Karnataka v. Uma Devi (supra) not entitled for regularisation. It appears that the attention of the Court was not appropriately invited to the passage extracted above when it directed consideration of their case for regularisation in light of Secretary, State of Karnataka v. Uma Devi (supra).

7. The observations in para 53 of Secretary, State of Karnataka v. Uma Devi (supra) for regularisation after ten years were confined in its application to those appointed on Government post but irregularly. It has already been noticed that the petitioners did not hold any post in the government and therefore fell outside its purview.

In Official Liquidator Vs. Dayanand and Others, disposed on November 4, 2008 prior to the order in C.W.J.C. No. 10660/1996 preferred by the petitioners, referring to Secretary, State of Karnataka v. Uma Devi (supra) it was observed at para 90 as follows:

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the Courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

8. Nonetheless orders were being passed to consider daily wagers for regularisation also in terms of para 53 simply on the ground that they had completed ten years in service. In State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others, disposed on March 16, 2010, reiterated in Satya Prakash and Others Vs. State of Bihar and Others, disposed on January 22, 2010 both before the earlier writ petition of the petitioners was disposed on September 28, 2010, it was clarified explaining Secretary, State of Karnataka v. Uma Devi (supra) that daily wagers were not entitled to the benefit of the observations in para 53 of Secretary, State of Karnataka v. Uma Devi (supra).

9. The policy decision of the State Government dated March 16, 2006 for regularisation of persons who may have entered the portals of the State

Government in a manner other than that provided for in Article 14 by open advertisement and selection cannot circumvent the constitutional mandate to put a camouflage of legitimacy with regard to an action which was basically illegal at its inception. In *Pinaki Chatterjee and Others Vs. Central Administrative Tribunal and Others*, , considering a claim for regularisation of such appointments under a circular issued by the Railways as far back as 1973 it was held that such circulars were contrary to the constitutional mandate under Article 14 of the Constitution (inter alia noticing *Secretary, State of Karnataka v. Uma Devi* (supra) also) holding as follows:

13. The said circular letter of the Railway Board which had been issued long back, however, did not take into consideration the limitation of power of a State to make appointments in total disregard of mandatory provisions of the recruitment rules and/or the constitutional provision. This aspect of the matter has been considered in *A. Umarani v. Coop. Societies* holding:

45. No regularisation is, thus, permissible in exercise of the statutory (sic executive) power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

10. If the respondents have initiated any process for regularisation contrary to the law, as discussed above, the petitioners cannot seek a mandamus that they must also be considered for regularisation as others may have been regularised in a manner contrary to the law. The Writ Court shall not issue any mandamus for perpetuation of illegality. The State is expected to act in accordance with law on the aspect of regularisation more so with regard to daily wagers so as to prevent unnecessary heart burn. It goes without saying that if a person like the petitioners or any others question the regularisation done by the authorities on a pick and choose method, the authorities cannot ignore the same and have to act in accordance with law by taking matters to its logical conclusion. The authorities of the State shall be held bound by the standards by which they profess to act. If apparent arbitrariness is demonstrated the State cannot keep silent. This observation shall necessarily exclude such cases where regularisation may have been done under the orders of a Court but which has not been questioned and has attained finality.

11. The Court is conscious of the fact that the petitioners are class IV employees. It is unfortunate that litigation of the present nature appears to be relating primarily to persons in Class III or Class IV service only. They may have been in need for employment. Somebody exploited that need. There were two players in the game. The petitioners cannot plead innocence now. Mere continuance for long years in service as daily wage cannot confer any legitimacy in their appointment to urge even legitimate expectation when their claim apparently has no legal foundation at all. It is difficult for the Court to find any infirmity in the impugned order when it holds that the petitioners are not entitled to the benefit of regularisation under *Secretary, State of Karnataka v. Uma Devi* (supra). In the facts and circumstances of the present case, even while the Court may have

sympathy with the petitioners that they have continued as daily wagers for inordinately long period of years, it shall not empower the Court to grant relief on basis of sympathy alone which does not find support in law. Now that the respondents cannot regularise daily wagers in the department it is expected that they shall act fairly and reasonably by appropriate advertisement. The petitioners stand in a class by themselves because of the long years that they have worked on daily wage. If they apply in response to an advertisement the respondents are adequately required to consider issues of age relaxation and weightage for the post experience by appropriate exercise of powers under Rule 54 of the Bihar Service Code. Fairness require the respondents to publish the advertisement without delay in the event that they propose to fill the post.

The writ application is dismissed.