
(2003) 08 PAT CK 0116
In the Patna High Court
Case No : C.W.J.C. No. 2143 of 2002

Deo Prasad Yadav and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Citation : (2003) 4 PLJR 261

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Sadanand Jha and Kirpa Nand Singh, for the Appellant; P.K. Shahi, Rajesh Kumar for Respondent No. 7 and AAG-II for State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the Respondents to pay to the Petitioners the same scale of pay and all other allowances as are being paid to the employees of the Bihar State Co-operative Milk Producers" Federation Ltd.

2. It is the stand of the Petitioners that an advertisement was published in the daily newspaper "Aaj" inviting applications for appointment to various posts including the post of technicians by the Bihar State Cooperative Milk Producers" Federation Ltd. (for short COMFED). According to the advertisement the scale of pay of the technician was Rs. 580-Rs. 860 and the minimum qualification prescribed was an I.T.I. Certificate in mechanical, electrical or refrigeration trade. Preference was to be given to those candidates who had three years experience in any reputed organisation. Further stand of the Petitioner is that in response to the said advertisement some of them applied for the said post of technician and were called for the interview. According to the Petitioners interview letter dated 1.6.1990 (Annexure-2) was issued to Petitioner No. 12 Md. Kafil Hassan for the post of technician and accordingly he had appeared in the interview. Petitioner has further averred that Petitioner No. 18 was appointed to the post of Refrigeration Technician by order dated 1.6.1991 (Annexure-3) which was casual

in nature and was made by the Contractor on contract basis. It is the stand of the Petitioners that Petitioner No. 18 Om Prasad Singh was appointed by the Managing Director of Vaishal Patliputra Dugdh Utpadak Sahkari Sangh Ltd. (for short the Sangh) by order dated 23.8.1995 (Annexure-4) to the post of Assistant Technician. It is the grievance of the Petitioners that no post of Assistant Technician is existing or ever existed in the past but they joined on the post of Assistant Technician in the scale of Rs. 975- Rs. 1540. It is their claim that work taken from them is akin to the post of technician and as such they were entitled to be given the scale of pay of Rs. 1200- Rs. 1800 and after the 5th Pay Revision in the scale of Rs. 4000- Rs. 6000 but the said pay scale is not being given to them. Petitioners' stand is that in the technician grade only two categories of technicians exist i.e. junior technician and technician.

3. Petitioners have further averred that the essential qualification for the post of technician is matriculation with I.T.I. certificate and they possessed the same. Their further assertion is that not only they possess the requisite qualification of the post of technician but are also discharging the duties as such and although the employees of the same grade and rank of other units of COMFED are being given salary in the pay scale of Rs. 4000/- Rs. 6000, same has been denied to these Petitioners.

4. Counter affidavit has been filed on I-behalf of Respondent No. 7 in which it has been stated that the Petitioners were earlier working as contractor's labour and discharging the duties of skilled and semi skilled labour of the contractor in the Sangh. It has been further stated that the posts of Assistant Technician were sanctioned and for selecting persons to the post of Assistant Technician a committee was constituted. The committee decided to offer the post of Assistant Technician to such skilled and semi skilled workers like the Petitioners after due test. The committee tested the inter se merit of the candidates including the Petitioners and they were recommended for appointment on different dates. In pursuance of the said recommendations Petitioners were appointed to the posts of Assistant Technician in the Sangh. Respondent No. 7 has further averred that the Petitioners are performing the duties of Assistant Technicians under the control and supervision of the technician which is quite a separate class and cadre having different responsibilities, control etc. Thus the plea of the Respondent No. 7 is that Petitioners cannot equate themselves with that of technician and further their claim that in sum and substance they were appointed as technicians is unsustainable in the eye of law.

5. Dr. Sadanand Jha, Senior Advocate appearing on behalf of the Petitioners submits that the Petitioners were appointed in pursuance of the advertisement dated 3rd of December, 1969 as published in the daily newspaper "Aaj" which contemplated appointment to the post of technician and for all purposes the appointment of the Petitioners although made to the post of assistant technician it shall be deemed that they were appointed to the post of Technician and hence shall be entitled to the salary and emoluments of the post of technician. Mr. P.K.

Shahi, however, appearing on behalf of the answering Respondent submits that the very assumption of the Petitioners that they were appointed to the post of technician is unfounded on fact. He points out that the Petitioners were appointed to the post of Assistant Technicians and as such they cannot lay a claim that they, in fact, were appointed as technicians.

6. Having appreciated the rival contention do not find any substance in the submission of Dr. Jha. Advertisement was issued on 3rd of December, 1989. Petitioners were working as contractor's labour and discharging the duties of skilled and semi skilled labours and after they have put in some years of service with the contractor, the Sangh decided to appoint them and accordingly the post of Assistant Technician was sanctioned. Petitioners were subjected to interview and were offered appointment in the years 1993, 1995 and 1996. The letters of appointment issued to them clearly show that they were appointed to the post of Assistant Technicians in the scale of Rs. 975- Rs. 1540. As such Petitioners' appointment cannot be said to be on the post of technician in pursuance of the advertisement.

7. Dr. Jha then submits that there is no post of Assistant Technician and in fact there are post of technicians and junior technicians and as such the Petitioners are entitled to be given the salary of the technician do not find any substance in the submission of the learned Counsel. Letters of appointment issued to the Petitioners clearly show that they were appointed to the post of Assistant Technician. In fact the answering Respondent has stated in the counter affidavit that such posts were sanctioned. In the face of the same when the Petitioners have accepted their appointment to the post of assistant technician, later on they cannot be permitted to challenge the same and contend that in fact their appointment shall be deemed to be on the post of technician.

8. Dr. Jha lastly submits that the work "done by the Petitioners is the same as that of technician and as such the scale of pay of technician being provided to such category of employees of the COMFED be made available to the Petitioners on the principle of equal pay for equal work. The very comparison of the Petitioners with the employees of the COMFED is absolutely misconceived. Petitioners are the employees of the Sangh and it may be a unit of the COMFED but both are distinct entity and as such employees of the Sangh cannot claim parity with the employees of the COMFED on the principle of equality. Further the answering Respondent has clearly stated that degree of responsibility and nature of duties of the technicians and assistant technicians are different and both constitute separate class.

9. In view of aforesaid, the claim of the Petitioners for same scale of pay as that of the technicians on the principle of equal pay for equal work is untenable in law.

10. In the result, do not find any merit in the application and it is dismissed accordingly. No costs.