
(1982) 08 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No's. 479, 482 and 642 of 1982

Dinesh Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1983) 31 BLJR 207

Hon'ble Judges : S. Sarwar Ali, C.J;Lalit Mohan Sharma, J

Bench : Division Bench

Judgement

Lalit Mohan Sharma, J.—The petitioners in these three cases were appointed in the Public Health Engineering Department of the State of Bihar on daily wages basis. They were later appointed as fourth grade staff and their services were suddenly terminated by similar orders as contained in Annexure "3" without complying with the provisions of Section 25F of the Industrial Disputes Act, which they challenge. The reason of termination is given in Annexure 2 the letter from the Government to the Executive Engineer in each case, stating that the latter had made a number of illegal appointments which must be cancelled. A reference to the letter Annexure "2" is made in Annexure "3". Since the letter Annexure 2 and the order in Annexure 3 in each case are identical the cases have been heard together and are being disposed of by this common judgment.

2. The petitioners challenged the impugned orders on the ground that they were entitled to show cause notice and to opportunity to prove their case that they were duly and validly appointed. Since the orders have been passed without any such opportunity, they are violative of the principles of natural justice. The petitioners have also taken another ground based on the provisions of Section 25F of the Industrial Disputes Act. They have asserted that they have been in continuous service for such length of time which entitles them to the benefit under the section and the impugned orders are illegal on account of non-compliance of the conditions laid down in the section.

3. On behalf of the respondents, counter-affidavits have been filed in the cases stating that the petitioners were irregularly appointed in the work charge establishment by the Executive Engineer and the matter was enquired into by the Commissioner-cum Secretary P.H.E. Department with opportunity to the Executive Engineer to explain his conduct. Since the authorities were convinced about the invalidity of the appointments, a decision was taken to terminate them. In answer to the plea founded on Section 25F of the Industrial Disputes Act, it is said that the Public Health Engineering Department does not come within the expression "Industry" within the meaning of the Act and the petitioners are not workmen as they were earlier on Muster Roll on daily basis.

4. It has also been said by reference to the period for which the petitioners have held the posts of work charge department that they have not been in continuous service for sufficient length of time to take the advantage of Section 25F of the aforesaid Act. Mr. Ram Chandra Jha the learned State counsel however, after examining the relevant facts conceded that if the two periods for which the petitioners have been in employment of the State that is, when they were employed as casual workers on daily wages and the subsequent period after their appointment which have been terminated are taken together they complete more than one year's continuous service within the meaning of the section. It is therefore, not necessary to state the different dates on which the petitioners were initially employed. Mr. Jha however, seriously contended that the employment of a casual labour is terminated every day in the evening and he gets a fresh appointment on the next morning and as such he cannot be said to be in continuous service for the purpose of the section.

5. Mr. Prabha Shankar Mishra on behalf of the petitioners relied on the decision in L. Robert D'Souza v. Executive Engineer, Southern Railway AIR 1982 S.C. 854. in support of his contention that a casual labour on daily wages is also a workman with continuous service so as to claim advantage of Section 23F of the Act. Mr. Jha attempted to distinguish the case on the ground that the Supreme Court was considering the claim of Railway employees who were governed by the rules of the Railway Establishment Manual relied on in the judgment which have no application to the present case.

6. The definition of the expression "workman" in Section 2(s) of the Act does not indicate a distinction to be made between casual workers and other workmen. Their employment to work for hire or reward as mentioned in the definition suggests a wider meaning rather than a narrow meaning to be given to the term. I also do not agree with Mr. Jha that the employment of a casual worker comes to an end every day after his duty hours. Even an employee in regular service stops work at the end of the day. It is also not suggested that a casual worker is given a fresh appointment letter every morning. I therefore hold that the benefit under the Act including Section 25F is available to casual workers also. So far as the case of Robert D'Souza is concerned it is true that the employment of the casual workmen there was held on the basis of the rules relating to temporary

service but the decision was also allowed to rest independently on the alternative basis by assuming the workmen were casual labourers. In paragraph 24 of the judgment it was observed as follows:

Assuming, we are not right in holding that the appellant had acquired the status of a temporary Railway servant and that he continued to belong to the category of casual labour, would the termination of service in the circumstances mentioned by the Railway Administration constitute retrenchment under the Act?

In paragraphs 25 and 26, the question was considered and answered in favour of the workman and while so doing it was observed that--

It is immaterial that he is a daily rated worker.

7. The attempt on behalf of the respondents to defeat the claim of some of the petitioners on the ground that they had not completed one year's service by talking into account the period of their regular service and ignoring the earlier period is also futile. For the purpose of calculating the period of service of a workman what is relevant is whether there was a relationship of employer and employee for the requisite length of time and the nature of the employment is irrelevant provided of course the other conditions (e.g. he should not have been mainly employed in a managerial capacity and was not in police service etc.) mentioned in Section 2(s) are satisfied. The entire periods of continuous service of the petitioners, therefore, have to be considered and, so calculated they must be held to have been retrenched in violation of Section 25F of the Act.

8. The only other question which remains to be considered is whether Public Health Engineering Department of the State of Bihar can be called an industry within the meaning of the Act. A Bench of seven Judges of the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . considered the scope of the expression industry from all relevant aspects and reviewed the entire case law. It was held that where systematic activity organized by cooperation between employer and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes is involved the enterprise would prima facie be held as an industry. Absence of profit is irrelevant and the venture is not excluded on the ground of its being a public service. The main test is the nature of the activity specially in connection with employer employee relation. Even earlier in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, . approved in the above case as having been correctly decided several departments of Nagpur Corporation including Water Works Department, City Engineers Department Public Works Department, Sewage Department and Health Department were held to be governed by the Act. I have therefore, no doubt that having regard to the nature of its functions with special emphasis of employer-employee relation, Public Health Engineering Department of the State of Bihar is an "industry" within the meaning of the Act.

9. It has not been denied on behalf of the respondents that the provisions of

Section 25F of the Act have not been followed before terminating the services of the petitioners. On the findings recorded earlier, the impugned orders have to be set aside. In that view, it is not necessary to decide whether the ground relating to the violation of the principles of natural justice is correct or not. However I would like to observe that if the authorities take fresh steps for termination of the services of the petitioners in accordance with law, they would be better advised to give them an opportunity to place their case about their appointments having been made validly.

10 . In the result the applications succeed and the impugned orders as contained in Annexure 3 to each of the writ petition are quashed. In the circumstances of the case, parties are directed to bear their own costs. The decision about the termination of the petitioners, services as mentioned in Annexure 2 is also set aside but so far as the said letter calling upon the Executive Engineer Shri Mahesh Bhushan Prasad to explain his conduct is concerned, the same is not quashed. If Shri Prasad had in fact, acted improperly in appointing the petitioners, he cannot escape the consequences on the basis of the findings in this judgment and the relief granted to the petitioners.

S. Sarwar Ali, C.J.

11. I agree.