

(1991) 04 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 1312 of 1991

Dinesh Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Citation : (1991) 04 PAT CK 0026

Final Decision : Allowed

Judgement

1. The petitioners, 48 in number, appointed between April, 1982, and January, 1989, in Class IV on a daily wage of Rs. 9 par day, have now been confronted with the order of termination of their services contained in Annexures-7 and 8 passed on 30.1.1991 and 4.2.1991 respectively.

2. In March, 1987, in a meeting of the Assistant Engineer and the Junior Engineer held with the Managing Director of the Samiti, it was decided to appoint these workers on muster for execution and completion of work. In June, 1989, the Managing Director of the Samiti sent a proposal to the Administrator for creation of posts for regularising the services of some of the labourers working since 1982-84. It was also proposed that the muster roll workers, who were working since long, be regularised after interview. The proposal of the Managing Director was placed before the Administrator who was performing the duties and functions of the Board of Directors and was competent to create posts. He agreed with the proposal of the Managing Director. In May, 1989, the interview was held and on 30.6.1989, by an office order issued by the Managing Director, the services of 26 muster roll employees were regularised in the first instance as contained in Annexure-4. In respect of 18 other employees, similar decision was taken in November, 1989, and the employees were called to appear at the interview. Their services were similarly regularised which appears from Annexure-6. These Annexures-4 and 6 have been filed as a matter of sample. These petitioners have now worked for more than 11/2 years even after regularisation of their services. Thereafter, on 30.1.1991, the impugned order

contained in Annexure-7 was issued by the Joint Secretary to the Government in the Co-operative Department directing the Managing Directors to terminate their services on the ground that their appointments had been illegally made and, thereafter, the order contained in Annexure-8 followed terminating the services of 45 persons, including these 43 petitioners.

3. Challenging this order of termination, the learned Counsel appearing for the petitioners contended that the admitted position is that the petitioners were never asked to show cause before terminating their services on the alleged ground of their appointment being illegal. As against this, the learned Counsel appearing for the State contended that for various reasons stated in Annexure-7, it is obvious that they had been illegally appointed.

4. The admitted position is that these petitioners were appointed as daily rated employees between April 1982 and January 1989 and their services were regularised after interview. Even after regularisation of their services, they served for nearly 11/2 years when the order of termination was issued. It has not been disputed that these orders were passed without affording any opportunity to them to show cause as to how their appointments were being treated as illegal after long years.

5. In similar circumstances, this Court has laid down the law in the case of Om Prakash Narayan and Others and Gyan Kumar Pandey and Others Vs. The State of Bihar and Others, :

There cannot be any dispute on the question that once it is established that appointment were irregular or illegal, the petitioners would have no right to hold the posts. But then the real question arises for consideration is as to whether before deciding any such appointment as irregular/illegal, the employee would be entitled to know as to how his appointment was treated as irregular or illegal. In my opinion, it would amount to negation of the principals of natural justice. If a person who has been serving in the Job for long years and to his mind he has been validly appointed he cannot be suddenly thrown to gallows without being afforded a reasonable opportunity to show as to how his appointment in the service is irregular or illegal. If the employee is not allowed to know the cause before he is thrown out of services, no one in the service would be safe. Nothing would be more harsh, in just and unfair to an employee, who having served for years together, may be temporary, is all on a sudden faced with an order of termination stating that his appointment is illegal or irregular. True it is that he would not have a right to hold the post if his appointment is irregular or illegal, but, before arriving at such a decision, there must be an act of fair play and the employee concerned must be allowed to know and be confronted with the situation so that he can go out of the job being satisfied that he had been illegally or irregularly appointed. It cannot be left to the appointing authority to take a sudden unilateral decision without affording a reasonable opportunity to the employee concerned, who may, perhaps, legitimately persuade the appointing authority and establish that his action is mala fide, arbitrary and/or

illegal. It would be dangerous to grant legal sanction to such unilateral decision of the appointing authority, who shall be free to be a Judge of his own act, in determining that at one point of time the person concerned was validly appointed and yet at another point of time the appointing authority shall turn back and unilaterally decide that now the said appointment is illegal or irregular. His power may be unquestionable but abuse of power must be checked up and before arriving at such a conclusion, it would be necessary in the interest or justice, equity and fair play that the person concerned is afforded reasonable opportunity to know how his appointment was illegal or irregular and, may be, that even after such reasonable opportunity afforded to the person concerned to establish it otherwise, the appointing authority may arrive at the same conclusion. But, in any case, natural justice cannot be denied to him.

6. Now, similar proposition has been laid down by the Supreme Court in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, wherein their Lordships held : "It is well settled that no order to the detriment to the appellants can be passed without complying with the rules of natural justice."

7. In this view, we set aside the impugned orders contained in Annexurs-7 and 8 on this short ground and direct the joint Secretary to the Government, Co-operative Department, Bihar, to give an opportunity of hearing to the petitioners and, thereafter, record a finding as to whether the petitioners were validly appointed.

8. This application is, accordingly, allowed but there will be no order as to cost.