

(2007) 09 PAT CK 0097
In the Patna High Court
Case No : CWJC No"s. 4177 of 1995

Durganand Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

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

Citation : (2007) 4 PLJR 259

Hon'ble Judges : S.N. Hussain, J;Narayan Roy, J;Abhijit Sinha, J

Bench : Full Bench

Advocate : S.P. Mukherji, Indu Shekhar Singh, Birendra Prasad Verma, Birendra Kumar Sinha, Tej Bahadur Singh, Shanti Pratap, Yogendra Kumar, Durgesh Kumar, Dr. M.K. Gautam, H.N. Harshit, Ram Naresh Roy, Nagendra Prasad, Din Bandhu Singh, Devendra Prasad, Ashok Kumar, Brajesh Kumar, Ujjwal Kumar Sinha and Smt. Vina Rani Prasad, for the Appellant; J.P. Karn, Anil Kumar Jha, P.K. Singh, Binodanand Mishra and Bidyakar Mandal for the State, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties. These matters were referred to Full Bench vide order dated 21.1.1998 by a Bench of this Court in C.W.J.C. No. 4177 of 1995.

2. The issues involved in these writ applications are:

(i) as to whether the employees working in Work Charged Establishment and promoted to Class III posts, their continuance in regular establishment would be violative of Articles of the provisions of Articles 14 and 16 of the Constitution;

(ii) whether the employees brought on regular side by promotion/regularisation can be reverted after long continuance of their services;

(iii) whether the employees already working in regular establishment on Class IV posts either on contractual or casual basis can be regularised/promoted on Class

III posts without following the procedure and mandate of law, and whether the same exercise would be violative of Articles 14 and 16 of the Constitution.

3. Grievances of the writ petitioners are either against the order of reversion to their substantive posts or against the cancellation of their regularisation/promotion on Class III posts.

4. Initially, the plea was taken by the petitioners before the learned single Judge of this Court that the order of reversion from regular establishment to Work Charged Establishment and cancellation of their regularisation in respective cases would be sustainable, as they continued on the posts as such for a longer period and they discharged their duties on the aforesaid posts satisfactorily.

5. The learned single Judge of this Court in view of a Bench decision in case of Ashok Kumar and Others vs. The State of Bihar and Others 1994 (2) B.L.J., 499 and Bench decision of this Court in case of Vijay Kumar vs. State of Bihar and Others 1993(1) P.L.J.R., 99 referred these matters to a Division Bench. The Division Bench consequently referred the same to the Full Bench.

6. Counsel appearing on behalf of the writ petitioners contended that cases of the writ petitioners were scrutinised and the authorities having found their performances satisfactory regularised them from Work Charged Establishment to regular establishment and also the cases of those, who were regularised from Class IV posts to Class III posts in regular establishment itself. It is further contended that the writ petitioners while were duly qualified and eligible for the posts and after long continuance on the regularised posts, in no manner, orders impugned could have been passed reverting them back or cancelling their regularisation.

7. It is also contended by respective counsel for the petitioners that even assuming that initial appointment/engagement of the writ petitioners was wrong and they did not obtain appointment/regularisation by means of any fraud or misrepresentation and their services were regularised, the question of validity of appointment/ regularisation cannot be gone into by the authorities, and, thus, the order of reversion and cancellation of their regularisation would be violative of the principles of equity and acquiescence.

8. In this connection, reference was made to case of Ashok Kumar and Others (supra). Learned counsel also placed reliance upon case of Abhay Kumar Pandey Vs. The State of Bihar and Others, , which was affirmed by the Supreme Court.

9. It is the further submission of learned counsel for the petitioners that services of the writ petitioners would be governed by the P.W.D. Code and the notifications issued by the State Government in exercise of power under Article 309 of the Constitution. Emphasis was made to the provisions of P.W.D. Code and it was contended that posts of Work Charged Establishment, which are permanent in nature, as for example required for twelve months in a year and for long and indefinite period, will be made permanent and included in the

permanent establishment and men employed on these posts having one year's approved services will be included amongst permanent Government employees and until contrary provisions are made by necessary notifications under the P.W.D. Code, it would be deemed as if the employees were regularised by virtue of power under the said provision.

10. Learned counsel for the petitioners, in these backgrounds, urged that regularisation/promotion of the writ petitioners either from Work Charged Establishment to regular establishment or in the regular establishment itself would not be violative of the provisions of Articles 14 and 16 of the Constitution.

11. Learned counsel for the respondents State, on the contrary, submitted that the employees working in Work Charged Establishment enjoyed the status of temporary/casual employees owing to the creation of the establishment, and, therefore, their regularisation in the regular establishment would be wholly without jurisdiction and, at the same time, regularisation/promotion of the employees working in the regular establishment itself would also be violative of Articles 14 and 16 of the Constitution. Class III regular posts in the regular establishment must be filled up by advertisement from amongst the eligible persons to subserve the purpose of Articles 14 and 16 of the Constitution. It is further contended that since the writ petitioners were regularised/promoted without following the mandates of law, had no sanction in the eye of law, and, accordingly, they were reverted to their substantive posts.

12. From the pleadings of the parties and materials on record, it appears that the writ petitioners were either casual, daily waged employees or their employments were on contractual basis and they never enjoyed the status of permanency in the establishment. However, somehow or the other, they were regularised/promoted on Class III posts either from Work Charged Establishment to regular establishment or in the regular establishment itself without following the regular procedure or mandates of law.

13. Employees of Work Charged Establishment have separate entity and status than that of the regular establishment. Their regularisation/promotion in the regular establishment, therefore, would be wholly without jurisdiction and violative of Articles 14 and 16 of the Constitution.

14. There is great difference between Work Charged Establishment and permanent establishment of the State. The permanent establishment has status of permanency and will continue for ever, whereas the Work Charged Establishment is created for a temporary purpose to complete a particular work, for which the establishment has been made.

15. Accordingly, a person engaged to discharge the duty of Work Charged Establishment will cease to be an employee no sooner the work of that establishment would come to an end. Obviously, there fore, their rights and status are fundamentally different.

16. The entity and status of Work Charged Establishment was considered by the Apex Court firstly in *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, and again in case of *State of Rajasthan v. Kunji Raman* (AIR 1997 (2) SC, 693), it was observed:

"A work-charged establishment as pointed out by this Court in *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, , broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment..... So far as employees engaged on work-charged establishments are concerned not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes or employees."

17. The Apex Court, thus, held that a Work Charged Establishment broadly means an establishment of which the expenses including the wages and allowances of the staff are chargeable to works. The pay and allowances of employees, who are borne on Work Charge Establishment, are generally shown as a separate sub-head of the estimated costs of the works. The Work Charged employees are engaged on a temporary basis and their appointments are made for execution of specified work. Their services automatically, therefore, come to an end on completion of the work for the sole purpose of which they are employed. A Work Charged Establishment, thus, differs from a regular establishment, which is permanent in nature.

18. So far as employees engaged on Work Charged Establishment are concerned, not only their recruitment and service condition, but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. Regular Establishment and Work Charged Establishment are two separate types of establishments and the persons employed on those establishments, thus, form two separate distinct classes, and

therefore, two unequals cannot be treated equally.

19. So far the question pertaining to regularisation of the employees of regular establishment is concerned, it would be appropriate to mention that concept of regularisation should not be construed in any manner as the act of the authorities regularising the employees, whose appointments were casual, contractual or on daily wages having sanction of law in consonance with Articles 14 and 16 of the Constitution.

20. Articles 14 and 16 of the Constitution guarantee equality of opportunity in public employment. Any appointment made in violation of Articles 14 and 16 of the Constitution shall make such appointment ab initio void and merely because a temporary employee or a casual daily waged worker continued for some time, 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 due process of selection, as envisaged by relevant Rules.

21. In the circumstances, as referred to above, therefore, the extra-ordinary power under Article 226 of the Constitution are not intended to be used for a purpose to defeat the concept of social justice and equal opportunity for all.

22. In case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Apex Court observed:

"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 lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

23. The writ petitioners, as it appears from the materials on record, who were regularised from Work Charged Establishment to regular establishment have no indefeasible right to challenge the order of reversion in view of the ratio laid down by the Apex Court in case of State of Rajasthan vs. Kunji Raman (supra).

24. So far the writ petitioners, who were regularised/promoted on Class III posts

in the regular establishment are concerned, I do not find sufficient materials to hold that their entry in Class IV posts was in accordance with law and the mandates of Articles 14 and 16 of the Constitution. They were engaged on Class IV posts either as casual or daily rated workers for exigency of works and it has not been demonstrated in the writ applications that they were promoted/regularised on Class III posts by the State authorities in accordance with the provisions of law, circulars and mandates of Articles 14 and 16 of the Constitution. This has been prominent view of the Courts of law that appointments made without following the due process or the Rules for appointment did not confer any right on the appointees.

25. In case of *Secretary, State of Karnataka vs. Uma Devi* (supra) it has been held that adherence to the Rule of equality in public employment is a basic feature of the Constitution and since the Rule of law is in the core of the Constitution, a Court would certainly be disabled from passing an order upholding a violation of Articles 14 and 16 of the Constitution.

26. The challenge made by the writ petitioners in the backgrounds of the case, as referred to above, therefore, would not be well sustainable nor the decisions relied by them, as referred to above, will have any application in the facts and circumstances of these cases. The question of equity invoked in case of *Abhay Kumar Pandey* (supra) would not be applicable in the facts and circumstances of these cases, as their engagements at the entry point have not been found to be in accordance with law. Their engagements/appointments, thus, being void would not attract the principles of equity merely because they continued on the posts for some time.

27. For the reasons aforementioned and in view of the legal propositions, as referred to above, it is held that the writ petitioners do not have legal enforceable right to ask for a writ of certiorari quashing the orders impugned. In the result, I do not find any merit in these writ applications; as such, the same are, accordingly, dismissed.

No order as to costs.

S.N. Hussain, J.

28. I agree.

Abhijit Sinha, J.

29. I agree.