

(2007) 09 PAT CK 0095
In the Patna High Court

Gandak Command Area, Development Agency and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Citation : (2008) 116 FLR 587 : (2008) 2 LLJ 284 : (2007) 4 PLJR 577

Hon'ble Judges : Narayan Roy, J;Madhavendra Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narayan Roy and Madhavendra Saran, JJ.—Heard counsel for the parties.

Both these appeals since arise out of a common order, they have been heard together and are being disposed of by this order.

2. Two sets of writ applications were filed by the contesting respondents challenging the order of their termination by the appellants authorities. All the writ petitioners of C.W.J.C. No. 9129/2006 were working as Treasury guards whereas two writ petitioners in C.W.J.C. No. 8555/2006 were working as Soil Samplers.

3. According to the case of the writ petitioners, they were working under Gandak Command Area Development Agency (hereinafter referred to as the Agency) on the post of Treasury Guards and Soil Samplers since last twenty five years and when their services were found to be satisfactory, they were regularised and benefits of promotions were also given to them but all of a sudden, they were terminated without any rhyme or reason.

4. Learned Counsel for the appellants submitted that the writ petitioners respondents since were working against non sanctioned posts and the Agency had no resources to pay them their salary, necessary instruction was sought for from the concerned department of the State Government and as per their advice, they were terminated from services. It is further submitted that unless the posts

are sanctioned by the State Government, the writ petitioners cannot be accommodated nor they can be paid their salaries.

5. Learned Counsel for the writ petitioners, on the contrary, submitted that the writ" petitioners were appointed by the Agency in exigency of work and since it was an autonomous body, it had to engage the persons to manage its affairs and thus, no question arises for sanctioning of the posts by the State Government. The writ petitioners were engaged by the Agency at its own and their salaries were paid throughout and all of a sudden a pretext was made to terminate them on account of financial exigency and non-availability of sanctioned posts. Learned Counsel further submitted that even in view of the report of the Member, Board of Revenue, no separate category has been suggested for the writ petitioners nor there was any whisper about the availability of posts and according to own admission of the Agency, they had their own resources to maintain the infrastructure and to pay salaries to its employees. In this connection, our attention was drawn by learned Counsel for the writ petitioners respondents towards the orders passed by this Court in C.W.J.C. No. 8889/2005 and L.P.A. No. 75/2006.

6. It appears that some of the writ petitioners namely Radha Pandey and Others had earlier also come to this Court in C.W.J.C. No. 8889/2005 for payment of their arrears of salary since 2004. The writ application was disposed of with a direction to the authorities to clear their salary bills and to take appropriate steps to ensure sanction of the posts against which they were serving. The order passed in the writ jurisdiction, however, was challenged in L.P.A. No. 75/2006. The L.P.A., however, was dismissed with certain modification to the extent that the direction of the learned single Judge of this Court in regard to sanction of the posts was quashed.

7. A Bench of this Court, while disposing of the L.P.A., observed that it is for the employer to consider as to how many persons they need and who are the best persons to be employed; meaning thereby that there was no question of any sanction to be obtained from the State Government with regard to the posts held by the writ petitioners.

8. It is undisputed fact that the Agency was getting 50% grant from the Central Government and 50% from the State Government and the fund so received by the Agency, was being utilized by it for proper upkeep of the Establishment. This being the situation, the Agency now cannot take a pretext of resource crunch or non availability of sanctioned posts. (The Agency being an autonomous body, was managing its affairs out of the funds given by the Central Government and the State Government.

9. The learned single Judge of this Court, on appreciation of facts and pleadings of the parties and keeping in view the status of the Agency, held that the order of termination of the writ petitioners respondents was wholly arbitrary without jurisdiction and, therefore, directed for their reinstatement in services.

10. The findings recorded by the learned single Judge of this Court, in the background of the case, as referred to above, cannot be said to be otherwise bad in law or on facts.

11. For the reasons aforementioned, we do not find any merit in these appeals.

12. These appeals, accordingly, are dismissed.

Madhavendra Saran, J.

13. I agree.