

(1994) 04 PAT CK 0061
In the Patna High Court
Case No : C.W.J.C. No. 12754/93

Hirday Rai and Others

APPELLANT

Vs

Rajendra Agriculture University and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0061

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—All these writ applications involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. In this writ application the Petitioners have prayed for issuance of a writ of or in the nature of mandamus directing the Respondents to regularise their services and also for restraining them from making appointment on the basis of advertisement dated 12th October, 1991 and 7th October, 1991. According to the Petitioners they have been working on daily wages as casual labourers and as they have completed more than 240 days continuously in the service of the Respondents University, they have acquired legal right to get their services regularised.

3. Mr. Bimlesh Kumar, learned Counsel appearing on behalf of the Petitioners submitted that University has regularised the services of various persons. Our attention has also been drawn to an office order dated 18.10.1987 as contained in Annexure-2 to the writ petition. Learned Counsel submitted that they had been called for interview whereafter they have been appointed on various posts in terms of office order dated 8.4.1987 as contained in Annexure-3 to the writ petition. Our attention has also been drawn to the fact that the Officer-in-charge of Horticultural Research Station has also granted certificate to the effect that the Petitioner had been working which are contained in Annexures-4 & 5 series of the writ petition.

4. According to the learned Counsel in view of the fact that the Petitioners have been working for a long time they are entitled to be appointed on a permanent basis. The learned Counsel in support of his aforementioned contention has relied upon a decision of Supreme Court of India in State of Haryana and others Vs. Piara Singh and others etc. etc., , as also on an unreported decision of the Supreme Court in Baidyanath Mahto and Anr. v. Rajendra Agriculture University and Ors. in Civil Appeal No. 3957/90.

5. Mr. Y.V. Giri, learned Counsel for the University, on the other hand, drew our attention to several orders passed by this Court. Mr. Giri further submitted that Annexure-4 to the writ petition has no application in the instant case inasmuch as in that case the post was advertised and the person concerned stood first. It is not in dispute that there does not exist any provision for regularisation of an employee in Statute of Rajendra Agriculture University. In Paltu Rai v. Rajendra Agriculture University C.W.J.C. No. 1814/84 and 574/94 disposed of on 18.7.85 the Chief Justice and Hon'ble Mr. Justice N.P. Singh (as he then was) held as follows:

There is nothing on the record to show that any such decision has been taken by the University for there is any statute or regulation which enjoins the University to absorb its casual workers after any specified period of time. In my opinion, in the facts and circumstances of the present case it is not possible for this Court to issue any direction in view of the categorical statement made on behalf of the Respondent that the Petitioners had been engaged as daily workers and payments are made on daily basis.

6. Yet recently in Kuwar Jee v. The State of Bihar and Ors. C.W.J.C. No. 7033/92 a Division Bench of this Court by order dated 14.2.1994 held as follows:

In view of the fact that the Petitioner was appointed as casual labourer and further has been denied that any junior to the Petitioner has been retained in the service, in our opinion, no relief can be granted to the Petitioner as prayed for. It is now well settled by various decisions of this Court that regularisation cannot be a mode of appointment. The Petitioner as a casual labourer did not derive any legal right so as to entitle him to obtain a writ in the nature of mandamus directing the Respondent-University to regularise his services. The Respondent-University has further stated that no sanctioned post is available wherein any casual labourer can be absorbed.

The further grievance of the Petitioner is that he has not been paid his wages. This aspect of the matter also stands controverted in the counter affidavit and thus it is not possible for this Court to determine such disputed question of fact in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India.

7. It is not in dispute that the Petitioners have been working on casual basis and daily wages. It is also not in dispute that Statute framed by the University does not contain any provision for regularisation of their services. It is also clear that

they do not have any legal right to continue in service. The Supreme Court of India in a number of cases have clearly held that regularisation does not mean permanent absorption in service held that regularisation cannot be a mode of appointment as the same would be contrary to the provision of Article 309 of the Constitution of India. This aspect of the matter has been considered by this Court in a number of decisions. Reference in this connection may be made to a case in 1994 (1) PLJR 68 and Miss Prasanna Kumari Amma v. Bihar State Financial Corporation and Ors. reported in 1994 (1) PLJR 366 and Nand Kumar Pd. v. State of Bihar reported in 1994 (1) PLJR 386.

8. In the aforementioned cases several Division Benches have considered large number of Supreme Court cases including case of Piyara Singh (supra). The order of the Supreme Court of India upon which reliance has been placed by the learned Counsel for the Petitioner must be deemed to have been passed by the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution of India. The High Court in exercise of its jurisdiction cannot exercise the same power. This aspect of the matter has also recently been considered by the Supreme Court of India in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., .

9. Keeping in view the pronouncement of the Supreme Court as also this Court no relief can be granted to the Petitioners. However, there cannot be any doubt that ad hocism must come to an end. If the Petitioners had been working for a long time, it is appropriate that the posts should be filled up by the University at an early date. The State of Bihar, in our opinion, should also bestow its consideration so that the said posts are not kept vacant for a long time. We have no doubt in our mind that as and when said posts would be filled up, the cases of the Petitioners shall also be considered with all other eligible candidates.

10. The writ applications are dismissed with the aforementioned observations.

R.N. Prasad, J.

11. I agree.