
(2005) 03 PAT CK 0139
In the Patna High Court
Case No : CWJC No. 2748 of 2000

Jaleshwar Rai

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Citation : (2005) 3 PLJR 73

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Jagdanand and Partha Sarthy, for the Appellant;

Judgement

Narayan Roy, J.—Heard counsel for the parties. By this application, the petitioner has prayed for issuance of direction upon the respondents to pay salary, allowances and other consequential benefits equivalent to the same paid to police constables with effect from October 1986 till date.

2. Precisely, it is submitted by learned counsel for the petitioner that though the petitioner was recruited as home guard volunteer, works of regular police constable were taken from him from 15th October, 1986 till date and till date he is functioning as such. It is further submitted that since October 1986 the petitioner has been regularly commanded to perform the duties of police constable and was directed to report to either Sergeant Major or Deputy Superintendent of Police, Motihari for his deputation. It is also submitted that services of the petitioner were also utilised by the District Magistrate, Superintendent of Police and other police officers continuously for law and order duties and he is being treated throughout at par with the police constable both in his duties and status. Learned counsel, in this view of the matter, submitted that the petitioner is entitled to get parity with the regular police constable both in scale and status, as he is performing the work of police constable right from October 1986 till date.

3. Though a counter affidavit has been filed on behalf of the respondents, the

fact that work is being taken from the petitioner as that of a police constable right from October 1986 till date is not being controverted. However, JC to GP 7 submitted that the petitioner, who is a member of Home Guard Volunteer, cannot be treated at par with police constable.

4. From the pleadings of the parties, it is admitted fact that the petitioner is being utilised by the Collector and police administration for rendering his duty as a police constable for maintaining law and order, but he is being treated indifferently, both in scale and status.

5. The concept of equal pay for equal work, in my opinion, would aptly apply in this case also. The question, however, is not in controversy in view of the decision of the Apex Court rendered in the case of State of West Bengal and Others Vs. Pantha Chatterjee and Others, . In case of State of West Bengal and others (supra) the Apex Court while dealing with the case of Part-time Border Wing Home Guards, recruited for patrolling the border and checking infiltration, held that the personnel of Part-time Border Wing Home Guards are entitled to get parity in employment, privileges and monetary benefits at par with permanent Border Wing Home Guards, and observed as follows:--

"From the above averment, it is clear that BWHG have been continuously deployed since 1978-79. It is also to be found that such a long and continued deployment, which was initially envisaged only for a period of three months, was contrary to the Scheme taking away the voluntary nature of the Scheme. It appears that it was after their continued deployment for over 10 years that in 1989 the petitioners approached the High Court for same emoluments and conditions of service as applicable to the permanent staff of BWHG. The Scheme envisaged that on being released, after a period of three months, the volunteer home guards could go back and resume their vocations and may earn their livelihood and may be called as and when needed again for a short period whereafter again they could pursue their vocations. The step which seems to have been taken to disengage them and withdrawal of the power to recruit because of the number of cases filed in court, is only to be ignored as extraneous. It is said to have been done in the year 1992. By that time they had already put in nearabout 14 years of service. After working for such a long period, patrolling the borders in all weathers without any facilities, as provided to other permanent staff of BWHG and performing same duties, it is too much to say that their deployment was of a casual and voluntary nature and the Central Government will not be concerned with them and that it would be the responsibility of the State Government alone. The problem of infiltration continues. It is not over. To say that they are being disengaged since they volunteered to be BWHG and they are free to resume their previous vocations, is simply arbitrary, unreasonable and legally unacceptable. Once they were made to work for ten to fifteen years or so without break, there hardly remained any chance or scope for them to resume their old vocations. The attitude of the Central Government the least to say, is surprisingly strange. It would not be

expected of them to cling to the technicalities of forms rather than to see the substance and realities of existing facts and prevailing situation which is of their own making. It is simply unfair on their part to keep on quibbling with the questions that there existed no relationship of master and servant, or that BWHG were simply volunteers under a Scheme having acquired no rights, it is immaterial, whatever be the circumstances. Once the decision was taken to disengage them, the Central Government under the guise of the Scheme wanted to wash off its hands of these people who have been guarding the borders of the country for years together under all conditions and circumstances, at its instance. Now to tell them that it is only the State Government which concerns them and the Central Government has nothing to do with it at all, is totally unfair and unreasonable.

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"Surprisingly, the point of it being a voluntary organization is beaten time and again by the State as well as by the Centre, despite their own admission that voluntary character of the Scheme was lost due to continuous deployment of the petitioners for long number of years and their non-relieving after three months to enable them to go back to their vocational engagement. In that connection it may again be pertinent to reproduce para 4 of the counter-affidavit filed in this Court by the Central Government on 4.5.1998:

"The contents of para 4 of the counter-affidavit need no reply since matters of record. The present situation which led to BWHG volunteers claiming service benefits is due to the fact that voluntary concept which is the backbone of the Home Guards Organization was not followed in letter and spirit by the State Government. Due to continuous deployment neither was the turnover of personnel carried nor was apparently mandatory training imparted....."

By whose fault this Scheme lost the character of voluntary nature is not relevant for the purposes of the petitioners. It was the Scheme of the Central Government; it should have monitored its implementation to see that it was being executed as framed. Then again, BWHG were deployed and continued by BSF authorities, who were authorised in that behalf by the Central Government. BWHG could not be left in a lurch after being engaged continuously for more than 10 to 15 years for patrolling the borders under the conditions worthy of those who were doing the same job under the label of permanent staff. During all this period they were paid less and facilities and amenities were also almost nil. After suffering such a discrimination for a period of about a decade or more, when they approached the Court, then alone a decision was taken to disengage them for the reason that cases were being filed in the Court for being provided with similar conditions of service which were being enjoyed by their counterparts under the label of permanent staff. The Central Government could not hanker on technicalities of voluntary nature of their engagement despite their own admission of facts to the nature of their engagement despite their own admission of facts to the contrary. The stand of the State and the Central Government, both

are not bona fide. It is not good for an ideal employer to avoid liability and deny to give, what is legally due to one. Defeating such genuine and legal claims on technicalities would only result in great injustice."

6. In the instant case, it appears that the petitioner is being utilised by the District Administration on regular basis at par with the police constables, as he is being engaged to maintain law and order along with police constables and the petitioner is performing the duty as such since October 1986.

7. Regard being had to the facts and circumstances of the case, in my opinion, the ratio laid down by the Apex Court in the case of State of West Bengal and others (supra) applies in the case at hand.

8. The respondent authorities, in this view of the matter, are directed to consider the claim of the petitioner in regard to maintaining parity at par with the police constables, both in privileges and monetary benefits.

9. This exercise, however, should be completed by the respondent authorities within a period of three months from the date of receipt/production of a copy of this order and in case they would be satisfied that the petitioner is entitled for parity at par with the police constables, necessary direction shall be issued for payment of the monetary benefits with effect from October 1986 till date in accordance with law. With the direction/observation aforesaid, this application is disposed of.