
(2002) 10 PAT CK 0078
In the Patna High Court
Case No : C.W.J.C. No. 1388 of 2002

Kamal Kishore Sinha

APPELLANT

Vs

Bihar State Scheduled Castes Development Corporation and
Others

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 3 BLJR 2390 : (2003) 1 PLJR 499

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition is directed against the office order bearing No. 143, dated 15.9.2001 (Annexure-1) issued by the Administrator, Bihar State Scheduled Castes Development Corporation, By the impugned order the petitioner who was working as Executive Engineer in the Corporation was discharged from service with effect from the date of the order with a further direction that for the period of suspension he would not be entitled to anything beyond subsistence allowance. The petitioner was removed from service on the basis of a detailed enquiry on the charges that his engagement and promotion (s) in service were made illegally. There were four charges against the petitioner. The first charge was that he was engaged to work in the Engineering Cell of the Corporation as Engineer Assistant, on daily wages, by an order issued by the Executive Engineer Project (Construction Work) on 10.2.1981; the engagement was made illegally and in violation of the rules. The engagement was also bad and invalid because there was no post against which any appointment could be made, the petitioner had already crossed the maximum age limit for entering into service and the Executive Engineer was not competent to make the appointment.

2. Charge No. 2 was that the petitioner's appointment as Engineer Assistant, on

a temporary basis, in the work-charged establishment of the Corporation vide office order No. 35, dated 26.9.1984 was made illegally and in violation of the relevant rules.

3. The third charge was that his adjustment as Incharge Assistant Engineer with effect from 26.9.1984 by office order No. 299, dated 8.10.1986 was also illegal and in violation of the rules.

4. The fourth charge was that his absorption on the post of Assistant Engineer in the regular establishment of the Corporation with effect from 16.9.1984 vide office order No. 280, dated 17.12.1986 was equally bad, illegal and in violation of the rules.

5. In a detailed enquiry the charges were found fully established and on the basis of the enquiry report the Administrator passed a detailed and exhaustive order, dated 14.9.2001 directing for the petitioner's discharge from service. Following the order, dated 14.9.2001 the office order was issued on 15.9.2001 by which the petitioner was discharged from service.

6. Counsel appearing for the petitioner assailed the enquiry proceedings on a number of grounds and submitted that the findings of the enquiry were completely incorrect and wrong. But I find that the issues sought to be raised on behalf of the petitioner are of no practical relevance because in any event the relief of reinstatement in service can no longer be allowed to the petitioner.

7. It is to be noted that the petitioner was put under suspension on 3.10.2000 and the order of his discharge was passed on 15.9.2001. This writ petition was filed in this Court on 23.1.2002. But even before the proceeding was initiated against the petitioner, the Engineering Cell of the Corporation was wound up by office order No. 136, dated 25.7.2000. It is further to be noted that having regard to the fact that the Engineering Cell of the Corporation was no longer in existence, this Court in several other similar cases has held that no relief can be granted to the employees working in the Cell against the orders for their removal from service, for any reason. In *Arun Kumar Vs. The State of Bihar and Others*, , a Division Bench of this Court declined to give relief to the appellant for the reason that the Engineering Cell of the Corporation was no longer in existence observing as follows:

6. On behalf of the Corporation it was stated that the Engineering Cell has been abolished in the Corporation w.e.f. 25.7.2000 pursuant to the policy decision of the State Government dated 17.5.1995 to the effect that the work being done by the Engineering Cells in different departments/Corporations be assigned to the Building Construction Department and the Engineering Cells be abolished. Pursuant to the said decision the Welfare Department which is the Administrative Department vis-a-vis the respondent Corporation, stopped allotting any work to the Engineering Cells of the Corporation vide Memo No. 2/C 1-2039/90 Ka-4042 dated 3.8.1996. While finally abolishing Engineering Cells in the respondent Corporation it was noted that in the above background there was no justification

to keep the Engineering Cell which was only adding to the financial burden on the Corporation.

(7) Counsel for the appellant relied on a decision of this Court in *Nirmal Kumar and Ors. v. State of Bihar and Ors.* 2000 (1) BLJ 541 : 2001 (2) PUR 340. That was a case of the termination of field organizers working on daily wages in the respondent Corporation. The Court held that termination of employment after lapse of more than 10 years by a stroke of pen in the absence of any rule governing such termination was illegal. The decision, we are afraid, is of no help to the appellant who seeks appointment/regularization on the post of Junior Engineer. The Engineering Cells in the Corporation having been abolished there can be no justification to issue any direction to the Corporation to consider the appellant's case. It may be recalled that while the first writ petition stood dismissed by speaking order the second one too was dismissed as withdrawn with an observation that the Corporation may consider the appellant's case for fresh appointment if there are vacancies in the Corporation. The abolition of the Engineering Cell impliedly means that there is no vacancy in the Corporation against which the appellant's case can be considered.

8. Counsel appearing for the petitioner tried to submit that though the order for closing down the Engineering Cell was issued on 25.7.2000 in actual fact the employees working in the Cell still continued in the service of the Corporation.

9. It is not possible for this Court to proceed on the basis of any such statement by the petitioner, more so when it is definitely asserted on behalf of the Corporation that no employee of the abolished Engineering Cell, including the Engineers, were on the pay roll of the Corporation as their services were already terminated and since 12.4.2002 no one had signed the attendance register.

10. Counsel for the petitioner then contended that the impugned order of discharge from service may be quashed so that the petitioner may at least get his salary till 12.4.2002 and retrenchment compensation u/s 25F of the Industrial Disputes Act like other employees/Engineers of the dissolved Engineering Cell.

11. In my view no such direction can be issued. In the counter-affidavit filed by the Corporation it is stated that no one in the Engineering Cell had signed the attendance register since 12.4.2002. This does not necessarily imply that the engineers working in the Engineering Cell were paid their salary till 12.4.2002 and even after the dissolution of the Cell on 25.7.2000. Moreover, the claim of retrenchment compensation u/s 25F of the Industrial Disputes Act is plainly misconceived. The petitioner at the time of dissolution of the Engineering Cell was admittedly working as Executive Engineer. He was, therefore, not a workman and the provisions of the Industrial Disputes Act shall have no application in his case.

12. For the reasons discussed above, no relief can be granted to the petitioner. This writ petition is dismissed but with no order as to costs.