
(2003) 08 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 8323 of 2001

Killbhushan Tripathi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Citation : (2003) 4 PLJR 319

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, M.P. Shukla, in C.W.J.C. Nos. 8354, 8369 and 11746 of 2003, Sharda Nand Mishra, Dhananjay Kr. Gupta, in C.W.J.C. No. 771 of 2003, Mithilesh Kumar Rai and Ajay Kumar Thakur, in C.W.J.C. No. 8323 of 2003, for the Appellant; Punita Kumari Singh, for State, J.P. Shukla and Ramesh Kumar Sinha for Bank, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In all these writ applications common questions of law and facts arise and as such they are being disposed of together.

2. Facts lie in a very narrow compass. Petitioners in all the cases were engaged on daily wages to work as Peons between the period 1980 to 1982 excepting Kulbhushan Tripathy Petitioner in GWJC No. 8323 of 2001, who was appointed on 22.8.1987. It seems that some of the peons engaged on daily wages were paid salary at the minimum of the basic pay to such category of employees applying the principle of equal pay for equal work. The Respondent-Bihar State Land Development Bank (hereinafter referred to as the Bank) while it was under supersession and was under the control of an Administrator, issued order dated 9.11.2000 terminating the engagement of all the daily wage employees including the Petitioners and those who were getting the minimum of pay. It is this order of the administrator dated 9.11.2000 which has been challenged in these writ applications.

3. Impugned order indicates that the services of the daily wage employees have been terminated on the ground that financial condition of the Bank is not sound and for curtailing the expenses of the Bank it is necessary to terminate the engagement of the daily wage employees.

4. Counter affidavit has been filed on behalf of the Bank and its officers in which their stand is that the financial condition of the Bank is extremely bad and if immediate step for reduction in the number of the employees is not taken the Bank will die in near future under pressure of over staffing. The answering Respondents went to the extent of saying that the Bank is facing difficulty even in the payment of monthly salary of its regular/permanent employees. Assertion of the Petitioner is that although they have been disengaged, four of such daily wage employees have been allowed to continue by order dated 30.3.2001 (Annexure-7 of CWJC No. 8323 of 2001). It has also been pointed out that the sanctioned strength of the employees of the Bank is 3033 whereas in fact 2268 employees are working. The stand of the Respondent is that so far as the post of peons are concerned, total sanctioned post is 587 and such numbers of peons are working.

5. From the pleading of the parties what is evident is that Petitioners were engaged on daily wages between the period 1980 to 1982 excepting Petitioner Kulbhushan Tripathy who was engaged on daily wages on 22.8.1987. Later on their engagement has been terminated pleading financial constraints. The question is as to whether the Respondent-Bank had disengaged them for bona fide reason or for some oblique purpose.

6. Mr. Ganesh Prasad Singh, Senior Advocate appearing on behalf of the Petitioners submits that the Bank terminated the services of large number of employees which was challenged before this Court and their termination has been found to be illegal and for the parity of reason the orders of termination of Petitioners' services are fit to be interfered with by this Court in exercise of the writ jurisdiction. Reference in this connection has been made to a Division Bench judgment of this Court in the case Jalpa Soren Vs. State of Bihar and Others, do not find any substance in the submission of Mr. Singh. In the said case services of the regular employee were terminated on the ground that their appointment was not authorised appointment was not made in accordance with the provision of the rule and in some cases appointments were made of candidates who were either over-age or under age. The learned Judge considered all those pleas and came to the conclusion that the grounds taken to terminate their services were not legal and accordingly set aside the orders of termination. The Division Bench in the case of Anil Kumar Singh (supra) affirmed the finding of the learned single Judge and consequently held the order of termination to be bad in law and dismissed the appeal. Here in the present case the services of the Petitioner have not been terminated on any of those counts. In that view of the matter, this submission of the learned Counsel has no force and the authority relied on has no bearing on the facts of the present case.

7. Mr. Singh then submits that throwing the employees out of the employment after serving the employer for 20 years itself is arbitrary and inequitable. Mr. J.P. Shukla however appearing on behalf of the Respondent-Bank submits that the very existence of the Bank is threatened on account of the financial burden put on it on account of the wages of daily wages employees and in such circumstance the Bank was constrained to take a decision to terminate the employment of daily wage employees which cannot be said to be illegal. In support of his submission Mr. Shukla has placed reliance on a judgment of the Supreme Court in the case of Notified Area Council and Another Vs. Gahar Mohammad and Another, and my attention has been drawn to paragraph 4 of the judgment which reads as follows:

4. From the discussions in the judgment, it is manifest that the High Court "has not appreciated" the resolution of the NAC abolishing the engagement of daily wage workers and has also taken exception to the Executive Officer terminating the appointments of the Respondents who were appointed by resolution passed by the Council. From the materials available on record, it is clear that on both the counts the High Court fell into error. The position is fairly well settled that continuance or abolition of posts is within the power of the employer and any decision in that regard is not available to be interfered with by the Court unless it is held to be vitiated by mala fide or arbitrary. From the discussions in the judgment under appeal, we do not find that the High Court took into consideration any material on record to come to the conclusion that the resolution passed by the NAC, dispensing with the engagement of daily wage workers, was vitiated on any count. If the employees could not continue as daily wage workers then the question of their regularisation in the post did not arise. It is relevant to note here that the regular appointments purportedly made by the letter dated 22nd March, 1995 had been cancelled within a week by the letter dated 29th March, 1995. Therefore, when the matter was being considered by the High Court, the case of the Respondents could only be considered as daily wage workers and not as regular employees.

8. Having appreciated the rival submission do not find any substance in the submission of Mr. Singh. True it is that the Petitioners were engaged on daily wages long time back and one may have sympathy with them but in the present case individual interest has to be weighed vis-avis institution's interest and tested on this anvil the individual interest has to give way to the public interest. Bank had pleaded paucity of fund, plea which has not been found to be unreasonable, setting aside the orders of termination of the daily wage employees shall put financial burden on the Bank, which it is not prepared to bear. In that situation the Bank itself shall collapse. In my opinion when the continuance of the daily wage employees threatens the very existence of the Bank itself the decision to disengage all daily wage employees is not fit to be interfered by this Court in exercise of writ jurisdiction.

9. Further it is well settled that creation or abolition of the post is primarily the

prerogative of the employer and interference by this Court is only called for, when such a decision is taken for oblique motive or in other words is arbitrary. The Bank in the counter affidavit has specifically taken the plea of paucity of fund and has gone to the extent of saying that in case immediate steps are not taken it shall be difficult for the Bank to make payment even to regular employees. In that view of the matter, the submission of Mr. Singh has no substance and the same is rejected.

10. Mr. Singh then points out that the sanctioned strength of the employees of the Bank is 3033 and in fact 2068 employees are only working and, therefore, the plea of financial crunch is absolutely untenable. Mr. Shukla, however, submits that the Petitioners are working on daily wage basis as Peons and total sanctioned Post of Peons are 587 and such numbers of Peons are working. He accordingly points out that allowing persons to work on daily wages on the posts which are already occupied by persons shall be prejudicial to the Bank and shall greatly affect its finances. I do not find any force in the submission of Mr. Singh. Petitioners were working on daily wages on the post of Peon and the total sanctioned strength of the Peon being occupied, payment to the employees working on the post of Peon shall definitely increase financial burden of the Bank.

11. Mr. Singh then points out that the Bank should have taken other step to overcome the financial constraint instead of choosing the short-cut to terminate the employment of daily wage employees. I do not find any substance in this submission. This is a policy matter which is primarily to be decided by the Bank. True it is that the Court is considered to be expert of experts but this principle has its own limitation. Here in the present case the Bank has chosen to terminate the services of daily wage employees on account of paucity of fund. What other steps the Bank should have taken is for it to decide but the decision to terminate the appointment of daily wage employees cannot be said to be arbitrary so as to call for interference by this Court in exercise of its writ jurisdiction.

12. Mr. Singh then submits that many of the juniors of the Petitioners have been regularised and for some reason or the other Petitioners were left out and later on even their appointment on daily wages has been terminated. In such a situation Mr. Singh highlights that the services of the Petitioners ought not to have been terminated. In this connection assertion of the Petitioner of CWJC No. 8354 of 2001 in paragraph 8 of the writ application has been highlighted. Regularisation of the so called junior was made in the year 1987 and in case the Petitioners were aggrieved by the same, they ought to have challenged the same. Further in my opinion regularisation of services of the juniors may entitle them to question their regularisation and seek their own regularisation but that itself shall have no bearing on the impugned order.

13. Mr. Singh then points out that some daily wage employees have been allowed to continue but the Petitioners have been left out and this is a clear case of hostile discrimination. In this connection Mr. Singh has drawn my attention to the order dated 30th March, 2001 (Annexure-7) of CWJC No. 8323 of 2001. I do not find

any substance in this submission of Mr. Singh. As stated earlier the Respondent-Bank by the impugned order dated 9.11.2000 had issued an order mentioning therein that in view of the order of restraint passed by the Supreme Court, the order dated 9.11.2000 shall not be applicable in case of persons covered by that. Thus the persons referred to in the order dated 30th of March, 2001 are not continuing by virtue of any decision taken by the Bank but in the light of the order of the Supreme Court and as such the complaint of discrimination is absolutely misconceived.

14. Mr. Singh lastly submits that the Respondent-Bank be directed to regularise the services of the Petitioners in the light of the observation made by the Supreme Court in the case of State of Haryana v. Piara Singh AIR 1992 SC 2139 and my particular attention has been drawn to a portion of paragraph 19 of the said judgment, which reads as follows:

...While we agree that persons belonging to these categories continuing over a number of years have a right to claim regularisation and the authorities are under obligation to consider their case for regularisation in a fair manner, keeping in view the principles enunciated by this Court, the blanket direction given cannot be sustained.

15. As stated earlier, Petitioners were working on the post of Peon. The total number of sanctioned strength of peon are 587 and those posts are already filled. In that view of the matter, direction sought for is not fit to be granted. However, in case in future Respondent-Bank takes steps for filling up the post, Petitioners offer their candidature, their cases shall also be considered in accordance with law and age bar to the extent the Petitioners have worked shall be condoned.

16. In the result, do not find any merit in these applications and they are dismissed accordingly. No costs.