
(1997) 05 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 2524 of 1996

Koshi Project Workers" Association and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Citation : (1997) 2 PLJR 355

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : B.P. Pandey, Kishore Kumar Thakur and V. Ram, for the Appellant;
V.N. Sinha, R.K. Sinha, A.K. Jha and S.C. Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—In this writ petition the Petitioners seek quashing of Annexures 1, 2 and 3. Annexure-1 dated 16.7.94 is a communication from the Water Resources Department to the Heads of different Field Establishments directing cancellation of promotion, if any, granted to so called higher posts in the work charged establishment after regularisation of the employees of such establishment. Annexure-2 is a sample copy of show cause notice issued by the Executive Engineer, Works Division, Birpur, in the matter of proposed cancellation of promotion to five persons including some of the Petitioners on whose behalf the writ petition was originally filed. Annexure-3 contains copy of the D.O. letter of the Engineer-in-Chief, Water Resources Department, dated 22.12.95 for cancelling the promotion of the Petitioner who figured as Respondents in C.W.J.C. No. 10216 of 1995. which had been filed challenging their promotion as Supervisor Grade I.

2. It may be stated here that the Petitioners have as many as four amendment petitions challenging certain follow-up action taken pursuant to the aforesaid general decision of the State Government, some of which relate to the Petitioners, some to Ors..

3. It may also be stated here that the writ petition was filed initially on behalf of 14 Petitioners including Koshi Project Workers' Association and Gandak Project Workers' Association, being Petitioner Nos. 1 and 2. and Punyadeo Thakur, Petitioner No. 3. The names of Petitioner Nos. 4 to 14 were, however, deleted, suo motu, for reasons known to the Petitioners vide order dated 28.11.96.

4. Although the writ petition runs into over 300 pages and, as stated above, as many as four amendment petitions have been filed seeking different kinds of relief, and large number of documents have been brought on record. the point for consideration is short and simple. As indicated above, the Petitioners were granted promotion as Supervisor Grade I after their regularisation in the respective work charged establishment treating them to be regular employees of the State Government Later. when the said promotions were challenged in C.W.J.C. No. 10216 of 1995 on the ground that they were juniors and the promotion amounted to supersession of the claim of the writ-Petitioners of that case, the matter, was examined and it transpired that their promotion as Supervisor Grade 1 was illegal. The State Government took the view that in terms of the resolution dated 27.3.87 the employees of the work charged establishments are entitled only to two time bound promotions on completion of 10 years and 25 years of service, respectively, and they are not entitled to regular promotion against substantive posts as they do not belong to the regular establishment of the department and are not regular employees of the State Government.

5. The Government order regularising the services of the employees of the Koshi Project and Gandak Project as contained in memo No. 1661 dated 20.8.81 and memo No. 445 dated 22.4.82, respectively, are on the records of the case as Annexures 8 and 9 to the writ petition. It appears from perusal of the said two documents that the State Government had taken a policy decision, vide resolution No. 5712 dated 25.5.78 of the Irrigation (Water Resources) Department, that such employees of the work charged establishment, who had completed five years or more service upto 1.4.77 and were continuing on the rolls be regularised. The aforesaid decision was given effect to with respect to employees working in work charged establishment of the Koshi Project and Gandak Project by the aforesaid Government order dated 20.8.81 and 22.4.82 respectively.

6. A dispute has been raised as to whether the aforesaid Government decision as contained in resolution No. 5712 dated 25.5.78 and the consequential Government order in Annexures 8 and 9 are to be construed as making the concerned employees permanent Government servants. In my opinion, having regard to the clear and unambiguous language of the said decision/orders, there is little scope for any controversy that the intention of the Government was merely to give a status of permanence to the employees who had already put in at least 5 years of service upto 1.4.74 and were continuing on the rolls but in the respective work charged establishment itself. By the said decision/orders the

employees were not brought in the regular cadre of the department. Their separate identity as distinguished from regular Government employees was maintained, which is evident, inter alia, from the fact that even after such regularisation they were to get their salary from the same sub-head meant for the respective work charged establishment. In my opinion, the term regularisation of service in the context has to be understood as different, from making the employees regular and permanent Government servants. P.W.D. Code contemplates engagement on daily wages basis or casual basis or seasonal basis in the work charged establishments. Services of only some of them are required round the year such as those connected with maintenance work. Such persons continued on the rolls almost uninterruptedly from month to month and year to year. With that aspect of the matter in mind it was decided that those who had already rendered 5 years continuous service upto the cut-off date and were still continuing should be regularised and given a permanent status in the work charged establishment so as to do away with, what may be called, precarious nature of their engagement/appointment, and also give them some respectability in employment.

7. Once it is held that by reason of aforesaid Government decision dated 25.5.78 and orders dated 20.8.81/22.4.82 employees of the work charged establishment even after regularisation did not become the permanent Government Servants. and they were not intended to be brought in the regular cadre of the department and. thus, did not become regular Government servants, it would logically follow that they cannot claim the parity of status or the same service and conditions as are applicable to the regular Government employees of the Works Department.

8. This aspect of the matter has recently been examined by the Supreme Court in State of Rajasthan v. Kunji Raman (AIR 1997 Supreme Court 693). The Supreme Court notices the previous case of Jaswant Singh and Others Vs. Union of India (UOI) and Others, and reiterated

A work-charged establishment as pointed out by this Court in Jaswant Singh and Others Vs. Union of India (UOI) and Others, , broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment So far as employees engaged on work-charged establishments are concerned not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are

two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes of employees.

9. It is the specific stand of the department that the State Government has so far decided to extend the benefit of time-bound promotions to the employees of the work charged establishment vide resolution of the Finance Department No. 1503 dated 27.3.87. In other words, those employees who have completed the period of eligibility i.e. 10 years of service are eligible for first time bound promotion, those who have completed 25 years of service are eligible for second time bound promotion, like their counter-parts in the regular establishments of the Department. Prior to the aforesaid decision dated 27.3.87 the employees in the work charged establishment were not entitled to even that. In the absence of any Government decision giving them the further service benefit in the matter of substantive promotion to substantive posts treating them equal to regular employees of Department i.e. opening the same avenue of promotion to the employees of the work charged establishment as are available to the Government servants of the regular cadre, they cannot claim any such benefit. I have no doubt in my mind in these circumstances, that promotion granted against the posts of Supervisor Grade I was illegal. Such promotion having been cancelled, the Petitioner cannot make a grievance as they had no legal right to be promoted against such post. In the premises, I do not find any error in the impugned order.

10. Before I conclude, I would like to make one aspect of the matter clear. Counsel for the Petitioners highlighted the fact that the promotion as Supervisor Grade I was not the result of any fraud or misrepresentation practised by the concerned persons. He referred to various documents, which are on record of this case, to show that in course of correspondence between different authorities the promotions were described as valid and legal. To me, it appears that the officers in charge of the field establishment/work charged establishment were not aware of the distinction between the status of the work charged establishment and the regular establishment of the department and under some misapprehension had given the impugned promotions. The concerned persons pursuant to promotion orders also performed the duties of the higher post and were paid salary. In such a situation, in the absence of any evidence that the promotion was given to them as a result of any fraud or misrepresentation practised by them, I do not think it would be appropriate to permit the Respondents to recover the money which had been paid to them on account of such promotions. The persons accepted the promotion and performed the duties in good faith and they should not be compelled to refund the amount which has

already been received by them for the services rendered to the State. In these premises, I would modify the Government decision to this extent and direct that no recovery should be made from the concerned persons of the amounts which have already been paid to them on account of promotion to Supervisor Grade I or any other substantive post.

11. Subject to these observations and directions, this writ petition is dismissed.