
(2015) 08 JH CK 0055

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1550 of 2011

Lal Bahadur Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Citation : (2016) 1 AJR 95

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J—Heard learned counsel for the parties.

2. By the impugned order dated 10th December, 2010, Annexure-14 bearing Memo No. 44, the Principal Secretary, Urban Development and Housing Department, Government of Bihar has rejected the representation of the petitioner for regularization in service of the respondent, department. The petitioner admittedly was appointed in Work Charge Establishment on temporary basis in 1969 and his services were placed in 1972 to the Housing Board after constitution of Bihar State Housing Board. Petitioner accepted offer of being taken in regular establishment from Work Charge Establishment in the Housing Board pursuant to Annexure-3 letter dated 13th June, 1975 of Secretary, Bihar State Housing Board. Thereafter, he served the Housing Board and got promotion to the post of Junior Engineer (Electrical) till his retirement in the year 2002.

3. Petitioner came before this Court earlier in W.P.(S) No. 5657 of 2005 seeking direction upon the respondents to regularize his services in Housing Department, Bihar, alleging that the issue has remained pending since 1989. He also made a prayer for payment of retiral dues consequent upon his regularization in the State Government. The said writ petition was disposed of after taking note of the stand of the petitioner and the Respondent-Jharkhand State Housing Board by

directing the concerned Respondent, State of Jharkhand and State of Bihar to take an appropriate decision on petitioner's claim for regularization of his services as also for grant of similar reliefs as extended to 21 co-employees, within a particular period. The State of Bihar or Bihar State Housing Board had not filed counter affidavit in the matter which was decided vide judgment dated 20th August, 2009, Annexure-12. Petitioner's claim for regularization has thereafter been rejected by the impugned order.

4. The case of the petitioner hinges upon the example of 21 such Work Charge Employees of Building Construction and Housing Department, Government of Bihar, whose services were also placed under Bihar State Housing Board and upon five years of their satisfactory services pursuant to Government Order No. 592 dated 20th March, 1988, they were taken in regular establishment of Building Construction and Housing Department, Government of Bihar vide office order dated 18th November, 1989, Annexure-4. The said order at the same time indicates that though 21 persons would continue to serve with the Bihar State Housing Board.

5. Much labour has been made by learned senior counsel for the petitioner to emphasize that for no justified reason, the case of the petitioner was left out from the batch of 21 persons whose services were regularized by Building Construction and Housing Department in November, 1989 and one or the other person in the list was also junior to him. It is also canvassed that Housing Board itself being conscious of such mistake had sent the files relating to the petitioner to the department for consideration of his case for regularization.

6. Petitioner preferred several representations and Electrical Executive Engineer, Awas Board, Ranchi had also forwarded a letter to Deputy Secretary, Housing Board, Bihar on 31st December, 2001, with a request to send the service book of the petitioner since he was to superannuate from service on 31st July, 2002. The service book of the petitioner was returned but he was surprised to see that no decision of his regularization has been taken by Building Construction and Housing Department, Government of Bihar. It is submitted that cases of other similarly placed person have been regularized such as one Niranjana Kumar Sinha pursuant to direction passed by Patna High Court in CWJC No. 14866 of 2006 vide office order dated 22nd July, 2009, Annexure-13 of Urban Development and Housing Department, Government of Bihar.

7. Reliance has also been placed upon the judgments passed by Patna High Court in the case of Surendra Dwivedi and Others Vs. The State of Bihar and Others, (2013) 2 PLJR 928, whereunder the respondents authorities have been directed to do the exercise keeping in view the Government order dated 18th November, 1989 (Annexure-4 in the instant writ petition), while taking a decision in the case of said Surendra Dwivedi. The judgment rendered by Single Judge of Patna High Court in the case of Indrajit Kumar Singh Vs. The State of Bihar and Others, (2009) 1 PLJR 30 have also been relied upon by the petitioner to buttress the submission. According to the learned Senior Counsel, the case of the petitioner is

neither belated nor without merit and should have been considered for regularization like other similarly situated employees.

8. The Respondent-State of Bihar has filed their affidavit and defended the impugned order referring to the reasons contained therein as well. They have also relied upon certain judgments rendered by Patna High Court in CWJC No. 15365 of 2004 (Krishnakant Sinha Vs. State of Bihar and others) and also those referred to in the reasoned order being CWJC No. 8493 of 1995 in the case of Raja Ram Paswan vs. State of Bihar & others. They have also relied upon a judgment passed in L.P.A. No. 1287 of 1996.

9. Counsel for respondents also categorically states that petitioner's services were regularized by the Bihar State Housing Board in 1975 and he has got the benefits of post retirement after he retired in 2002 such as Leave Encashment amount, Group Insurance Amount and E.P.F. etc.

10. Counsel for petitioner has however submitted that judgments relied in the reasoned order have also been distinguished by learned Single Judge of Patna High Court in the case of Surendra Dwivedi (Supra) saying that much time has elapsed since those judgments were delivered. It is submitted that the impugned order therefore is bad in law and is liable for interference by this Court.

11. I have given sufficient hearing to the parties in the light of the long chequered history of the petitioner's case as pleaded and noticed hereinabove. The subtle distinction which this Court finds in the case of the petitioner to that of those 21 persons named in the office order dated 18th November, 1989 is that petitioner consciously accepted the offer of his regularization made by Bihar State Housing Board for the post of Electrician as per Annexure-3 letter dated 13th June, 1975 issued by Secretary of Housing Board. Petitioner was then under deputation as a work charge employee from Building Construction and Housing Department, Government of Bihar under the newly created Bihar State Housing Board. On the other hand, the order at Annexure-4 in respect of 21 such persons reflects that till 1989 those persons had remained in Work Charge Establishment while their services were placed under Bihar State Housing Board. They apparently had not been regularized under Bihar State Housing Board any time before that date.

12. Keeping into regard five years of satisfactory service as required under departmental circular framed for the purposes of regularization of work charge employees, the government of Bihar had taken a decision through government order No. 592 dated 20th March, 1988 to regularize the services of those work charge employees under the department and at the same time allowed them to continue in the Bihar State Housing Board. This subtle distinction in the legal status of the petitioner vis-?-vis. the 21 other persons is enough to demolish the case of the petitioner for regularization under the respondent department of Building Construction and Housing Department, Government of Bihar. Petitioner being conscious of such a legal position also appears to have not raised such a

grievance any time before any court of law till he approached this Court after his retirement on 31st July, 2002 in 2005 in the previous round of litigation. The case of Niranjana Kumar Sinha(Supra) relied upon by the petitioner at Annexure-13 also indicates that till the issuance of office order dated 22nd July, 2009, the said employee continued to work as work charge employee on the post of Work Sarkar in Housing Board and was not regularized under Housing Board despite being on deputation from the department for so long. Therefore, the case of said Niranjana Kumar Sinha is distinguishable from the case of the present petitioner. The judgment rendered in the case of Surendra Dwivedi (Supra) on perusal, does not clarify as to whether the service of said petitioner was earlier regularized in the Housing Board and thereafter again he staked a claim for regularization under Bihar State Housing Board. However, these subtle distinctions in the case of the petitioner as have been noticed hereinabove persuade this Court to come to the conclusion that once having been absorbed in the service of Housing Board in 1975 itself and having remained as such till his retirement on 31st July, 2002, his claim for regularization is not only legal untenable but otherwise also raised much after his regularization in Housing Board in 1975. The petitioner was also a member of EPF scheme of the Housing Board and has drawn the benefits thereof after his retirement.

13. Considering all aspects of the matter, I do not find that at this length of time such a claim for regularization under Government of Bihar should be allowed. The impugned order therefore does not appear to suffer from any infirmity or factual errors.

14. Accordingly, the writ petition being devoid of merit, is dismissed.