
(2007) 02 PAT CK 0176
In the Patna High Court
Case No : M.J.C. No. 2431 of 2005

Lal Chand Mishra and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 342

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and Shivendra Kishore, for the Appellant; P.K. Shahi, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—The petitioners came to this Court in C.W.J.C. No. 7800 of 1999 with a claim for regularization/absorption on the post of Dresser in the Home (Jail) Department of State Government. The writ petition was instituted on 13.8.1999. Their services were terminated thereafter on 30.10.2004. The petitioners challenged the same by an amendment. This Court by judgment and order dated 11.1.2005, in the facts and circumstances of the case, held that it was not a case of an illegal appointment through the backdoor. They were appointed on temporarily created posts, which was extended from time to time. The petitioners thus worked for nearly 14-15 years before their termination. In the year 1997, 40 posts of Dresser had been sanctioned. Recommendations have been made on 18.8.2004 for their absorption. The petitioners acquired expertise on the job over years. In the aforesaid background, the order of termination was set aside. They were directed to be paid their arrears of wages. The matter was remanded to take a fresh decision on the issue of their regularization/ absorption in view of the availability of sanctioned posts and the Government decision dated 14.8.1997 to fill up the same first by absorption and then only make fresh recruitment.

2. The order of writ court attained finality. The Opposite Parties did not question

the same in a superior Court. The Opposite Parties implemented the judgment. The petitioners were reinstated on daily wages and paid their arrears. The process for, regularization was initiated by letter dated 25.2.2006 by the then incumbent on the post of opposite party no. 2. Their claim for regularization/absorption was, however, rejected by the new incumbent of the post on two grounds. First, that they did not possess certificates of training as "Dresser" from a Government recognized institution. Second, that a Constitution Bench of the Supreme Court by a judgment and order dated 10.4.2006 in Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. reported in 2006(2) PLJR (SC)363 had disallowed regularization of irregular appointments made without sanctioned post, of daily wage employees.

3. This Court has heard learned Senior counsel Sri Ganesh Prasad Singh on behalf of the petitioners and the learned Advocate General on behalf of the opposite parties.

4. The opposite parties have implemented and accepted the judgment without demur by reinstatement and payment of arrears. In view of the findings in the judgment, the rejection of the plea for regularization for reasons of lack of training certificates from a Government recognized institution is clearly contumacious and the opposite parties are liable to be proceeded with appropriately to that extent. However, the second ground urged inhibits this Court from proceeding against the Opposite Party in contempt jurisdiction at this stage. This Court is conscious of its limitation in exercise of contempt jurisdiction. The Supreme Court in the case of State of Bihar & Ors. vs. Rajendra Singh & Another, reported in 2004(4) PLJR (SC)163 in the relevant extract at paragraph 8 held:

"8..... In some cases the Court may grant opportunity to the contemnor to purge the contempt.....".

5. It is settled law that this Court will have the jurisdiction in contempt proceedings to pass incidental and ancillary orders without reconsidering, explaining or traveling upon the original order when matters are inextricably linked. Reference may be made in this context to the judgment of the Apex Court in Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, and R.M. Ramaul Vs. State of Himachal Pradesh and Others, . Directions to close the breach can be given as held in Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others, .

6. This Court is not persuaded to accept the submission on behalf of the Opposite Parties that the implementation of the present judgment is barred by paragraph 45 of the judgment in Uma Devi case, which is quoted below for ready reference:

"45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

7. This Court is satisfied that in the facts and circumstances of the present case without any need for elucidation or explanation of the original order that the matter falls squarely under paragraph 44 of the Uma Devi case, wherein their Lordships have held:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagrajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

8. Sanctioned posts are available. The petitioners have worked for more than 10 years. There have been no Court orders preserving their status by virtue of which they have continued in service.

9. The order dated 23.10.2006 rejecting the case of the petitioners for regularization/absorption is clearly contemptuous in-so-far as the first ground is concerned. It, however, refrains from proceeding further at this stage. Compliance of a Court order would mean an effective compliance. An order merely in lip service to a Court order cannot come in aid as an answer in Contempt relegating the hapless citizen. The Opposite Party No. 2 is required to consider the case for regularization/absorption of the petitioners in terms of paragraph 44 of the judgment in Uma Devi case (supra) as presently discussed as a one-time measure in that background. Let it be so done within a period of six months from the date of receipt or communication of this order. The contempt application is allowed to the extent indicated as aforesaid, at this stage.