

(2006) 05 PAT CK 0046

In the Patna High Court

Case No : C.W.J.C. Nos. 3274, 8044 and 8064 of 2001

Lalan Jha and Others

APPELLANT

Vs

Lalit Narayan Mithila University and Others
 Rajendra
Kamti and Another Vs Lalit Narayan Mishra University and
Others
 Tarapati Singh and Others Vs The State of
Bihar and Others

RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Citation : (2006) 05 PAT CK 0046

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—By invocation of Constitutional writ remedied under Article 226 of the Constitution of India, the petitioners in this group of 18 petitions who have been working as Class III and IV employees in the employment of the respondent University, namely, Lalit Narayan Mithila University have assailed the office order contained in memo No. 3879-3982/01 issued by the Registrar of the respondent University, on 28.2.2001, whereby, the services of the employees working on daily wage-basis in different departments and different colleges affiliated to the respondent Lalit Narayan Mithila University came to be discharged with effect from 1.3.2001, inter alia, contending that such an order dispensing with the services of the petitioners is illegal, unjust, unfair service practice and contrary to the resolution of the Syndicate dated 13.7.1985, Since there is a common question involved in these petitions they are being disposed of by this common order as they have been heard together.

2. The petitioners have been working on the basis of daily wages since long on Class III and IV posts in the University or different departments or different affiliated colleges. Some of them have been working since 1979 and some of them have been working since 1985, continuously, uninterruptedly and doing the same work as Class III and IV servants are required to perform. Most of the petitioners, thus, are working for more than 15 years and some of them, also, have completed more than 20 years. All of them came to be discharged, en bloc,

irrespective of the period of work they have put in, by one order of the Registrar of the University by passing an office order as stated herein above on 28.2.2001.

3. Subsequently, the University took a decision to regularise most of the employees except four out of the petitioners in these 18 petitions by virtue of a notification dated 6.6.2004 and since then they have been regularly working as regularised employees. Out of the 18 petitions, in the following petitions the petitioners are not regularised:

- (1) In C.W.J.C. No. 3328 of 2001 petitioner No. 13, namely, Satya Narayan Yadav,
- (2) in C.W.J.C. No. 3584 of 2001 petitioner No. 6, Bablu Kumar Mistri; and
- (3) in C.W.J.C. No. 10845 of 2001 petitioner Nos. 12 and 13, namely, Saiyad Ali Khan and Reyaz Ahmad respectively.

4. These four persons are not regularised. No counter affidavit has been filed by the University. These four persons are also similarly situated employees. Therefore, they are required to be directed to be considered for regularisation in terms of the notification applied to other petitioners.

5. The Registrar of the respondent Lalit Narayan Mithila University has filed a counter affidavit in C.W.J.C. No. 3274 of 2001, wherein, it has been inter-alia contended that the petitioners came to be appointed initially on daily wage basis by the Principals of the Colleges and their names were not recommended by the Employment Exchange or their appointments were not regular. It is, therefore, the case of the respondent University that the appointment of the petitioners by the Principals of different Colleges was not legal and valid. It is, also, the case of the University that some of the petitioners similarly situated had filed a writ petition being C.W.J.C. No. 4252 of 1995, for regularisation of their services, wherein, this Court had directed that the vacant posts should be filled up by the procedure consistent with the law. Pursuant to the aforesaid direction the respondent University undertaken the exercise required for filling up the vacant posts of Class III and IV on 27.2.1997 and 24.3.1997. The petitioners had also applied for the post and they were given an opportunity in the interview. Thus, the selection of the employees was made by the University which was sent for the approval as required u/s 35(2) of the Bihar Universities Act, 1976. However, no approval came to be received from the State Government as a result of which on being moved this Court in M.J.C. No. 2301 of 2000 and analogous cases took the view that the University should regularise the services of the petitioners of those cases and as such the respondent University by notification dated 6.6.2004 regularised 199 employees working on daily wage basis including the petitioners.

6. It is also, stated in the affidavit in reply by the University that in Letters Patent Appeal No. 835 of 1997, a Division Bench of this Court directed that the appellants of that, appeal were entitled to get their services regularised and the University had written a letter to the State Government to sanction the post. Pursuant to the order passed in that appeal the respondent University issued a

notification to regularise the services of the appellants in that appeal from the date of their initial appointment. This notification came to be published on 9.11.2004. The regularisation order was subject to the approval of the Government.

7. However, the State Government has yet not given their approval.

8. It is further noticed from the counter affidavit of the University that the State Government being aggrieved by the judgment recorded in the aforesaid Letters Patent Appeal No. 835 of 1997 moved the Hon''ble Apex Court by filing a SLP No. 25732 of 2004 and the same has been admitted for hearing and it has been numbered as Civil Appeal No. 987 of 2006 which is still pending.

9. Virtually, the aforesaid aspects of fact or factual profile highlighted herein above are no longer in controversy. Since, this Court in the aforesaid Letters Patent Appeal has directed the University and the Government to regularise the employees who worked continuously for long on the basis of daily wage and it has been questioned before the Hon''ble Apex Court having been admitted, learned Counsels appearing for the petitioners have raised only one following question for consideration and adjudication in this group of petitions reserving their rights on other aspects depending upon the outcome in the matter pending before the Hon''ble Apex Court in similarly situated cases and that too because of the fact that one person out of the employees who were regularised has already been retired and some of them are at the verge of retirement. Since some of them have worked for long spell of 20 years and more years, obviously, they would, be nearer to their retirement: tenure. It is in these context, by consensus all the counsels appearing for the petitioners in this group of 18 petitions have raised the following question for consideration:

Reserving their right for other incidental benefits upon the regularisation of the past service during earlier period as they were not regularised despite the fact that they were doing the same work as that of Class III and IV regular employees whether the period spent from the date of first entry in the service or working on daily wage basis could be considered as continuous service for a limited and only purpose of pension/ family pension or not.

10. On behalf of the petitioners it has been contended that according to the celebrated principles of service jurisprudence the employees who have put in work as that of Class III and IV employees in the earlier years are required to be considered for the pensionary benefits which includes family pension reserving their right on other aspects since the matter is waiting judicial adjudication before the Hon''ble Apex Court. Only for the limited purpose for deciding the aforesaid sole issue in this group of petitions the question is as to whether the past period, of service spent on daily wage basis from the initial date of entry till the regularisation should be tagged or added as continuous service for the limited purpose of earning pension including the family pension.

11. Let it be highlighted at this juncture the following salient characteristics

emerging from the profile and the record of the present, group of petitions:

(i) It is not the case of the University that the petitioners were not doing the same work as that of Class III and IV employees.

(ii) It is, also, not the case of the University that they were working on limited hours because they were on daily wage basis.

(iii) There is no any supporting or reinforcing material in the contention of the University that all the petitioners en bloc were not appointed in accordance with due process of law.

(iv) On the contrary, there has been a direction in the same group of matters, wherein, the petitioners working on daily wage basis have been directed to be regularised from the date of their entry and commencement of work till the date of the order as aforesaid but since the matter is waiting adjudication before the Hon"ble Apex Court, the counsels for the- petitioners, on consensus, have not raised that aspect in this group of petitions.

(v) Ordinarily, the daily wage basis work is taken where there is no perennial or regular flow of work. This is not a case here. Some of the petitioners have continuously been working for more than 20 years, doing the same type of work, same nature of duty. Therefore, taking same type of work, same nature of work as that of Class III and IV post under the guise of daily wage basis and that too by the University would tantamount to unfair treatment and exploitation of the poor people.

(vi) Nothing is successfully pointed out or even spelt out from the entire record in this group of 18 petitions as to why the persons who have done same type of work as that of Class III and IV employees under the nomenclature of daily wages should be deprived of their right of tagging or adding past service with the period after regularisation for the purpose of earning the pensionary benefits.

(vii) The very fact that the employees who have worked for long spell of time were not required to be regularised would unequivocally go to lead to one of the inferences namely, that they were doing the same type and kind of work as that of a regular employees of Class III and IV.

(viii) No person can be allowed to exploit the labour, much less, the University. Take work from a person on daily wage basis for long and regularise at the fag end of the career and deprive him of the right of pension is a policy of unjust plea of the past and cannot be sustained.

12. It will, also, be material to note at this stage that the respondent University is governed by the provisions of Bihar State Universities Act, 1976. In Statute No. 1 at item No. 14 (i) a provision is made as to what is the qualifying service of pension. Part II pertains to statutes. Chapter I deals with the general conditions of service. Clause 14 in Section II which deals with pension is very material and vital which reads as hereunder:

(i) Qualifying service" means service rendered as a member of the staff of the university in a substantive capacity including period spent on probation. All services rendered in the University on a full time basis on a temporary or officiating capacity followed without interruption by substantive appointment in this same or any other post shall count as qualifying service except in respect of periods of service in "Work charged" establishment and periods of service paid from "Contingencies"

Provided that continuous temporary service of not less than 15 years (10 years in the case of those who retire on or after 31st March, 1980) shall also be counted as qualifying service even if not followed by substantive appointment.

(ii) The minimum age after which service counts for pension shall be 18 years.

(iii) Service rendered in any College affiliated to a University in the State of Bihar followed without interruption by University service will also count as qualifying service for the purpose of these Statutes subject to the condition that the employer's contribution to his/her Provident Fund along with interest thereon maintained in the affiliated college has been deposited in the University by the College concerned or the employee concerned or in the event of his/her death by his/her beneficiary concerned.

(iv) Period of foreign service will also count for pension/gratuity if the employer's share of the Provident Fund plus interest thereon, for the period of foreign service is paid to the University by employer or the employee or in case of death by the beneficiary concerned. In cases of foreign service occurring after the promulgation of these Statutes, such service will also count for pension/ gratuity if pension contribution therefore are paid to the University by the foreign employer or the employee concerned. The rates of pension contribution will apply, mutatis mutandis as laid down in Appendix II under Fundamental Rules, Govt. of India, as amended from time to time.

(v) All kinds of leave including extraordinary leave and joining time granted on transfer/appointment as admissible under the service Statutes, will count for pension without restriction.

(vi) Any interruption in service other than the period, indicated above shall not count for qualifying service.

(vii) Dismissal or removal from service will entail forfeiture of all past service for purpose of grant of pension/gratuity."

13. It can very well be visualised from the clean and clear definition of expression "qualifying service" which means service rendered as a member of staff of the University in a substantive capacity including the periods spent on probation. All services rendered in the University on a full time basis on a temporary or officiating capacity followed without interruption by substantive appointment in the same or any other post shall count as qualifying service except in respect of periods of service in "Work Charged" establishment and

periods of service paid from "Contingencies".

14. It is not the case of the University that the petitioners till they were regularised were not working on full time basis. It is, also, not the case of the University that they worked in "Work Charged" establishment and paid out of contingencies. There is, obviously, no case of period of service in the category of "Work Charged" as the same is not involved in this group of petitions.

15. It is, therefore, oven apparent from the statutory provisions of the Statute under the Universities Act that the petitioners shall be entitled to have the benefit of past service for the purpose of adding or tagging or joining with the period of service after regularisation for the purpose of payment of pension including family pension. Let: it be again highlighted that it is not the case of the University that the induction or their initiation of service was attributable to the misdeeds or malfeasance or misfeasance or mischief or fraud. The persons who are belonging to the poor status of the society who are attracted and called for work and from whom work is taken on full time basis but only on payment of daily wage basis for a long period, uninterruptedly, without any objection from any quarter after being regularised can be deprived of their right of joining the earlier period of service for the purpose of earning the pensionary benefits? To which the spontaneous answer would be in the negative.

16. There is a purpose and policy behind the concept of pension. Pension is not a charity or a chance. Pension is an amount to be paid to the employee upon completion of certain years of service of the period they have invested from capital of sweat and blood in the growth of the institution. Therefore, it cannot be said that an unscrupulous Master should be allowed to take undue advantage against the exploited labours.

17. In this connection, learned Counsel appearing for the petitioners have placed reliance on the proposition of law propounded by the Hon"ble Apex Court in the case of Yashwant Hari Katakhar Vs. Union of India (UOI) and Others, . The observations made in paragraph 3 are relied upon which read hereunder as:

Dr. Anand Prakash, learned Senior Advocate appearing for the Union of India, has contended that on 7-3-1980 when the appellant was prematurely retired he had put in 18 1/2 years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 1/2 years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent

after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18 1/2 years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs.

18. After having taken into consideration the entire past record and factual profile emerging from the record of the present case, as well as, full time work taken from the petitioners for a long spell of time and in some cases beyond 20 years and the same kind and nature of work as that of Class III and IV servants which ultimately came to be regularised, as also, they were very close and nearer to superannuation, the petitioners cannot be deprived or denied of their rights to join or add the past period in peculiar facts and special circumstances obtainable in the present case for earning pension including family pension and no scrupulous Master who is indulged in unfair labour practice and who has obtained same kind and type of work as that of Class III and IV be allowed to say that the same cannot be considered as qualifying period for the purpose of earning pension and more so in view of clear definition of expression "qualifying service" in Clause 14 in Section II of the Statutes Part. II under the Bihar State Universities Act, 1976 and more so when there is no any even remotest allegation of payment having been made to such persons or employees as "work charged" or out of contingencies. Therefore, the sole contention advanced by the petitioners deserves to be accepted.

19. Before parting, let it be again placed on record that incidental and consequential benefits on account of regularisation other than the pensionary benefits which are reserved by learned Counsels for the petitioners will depend upon the outcome of the pending matter before the Hon''ble Apex Court in SLP No. 25732 of 2004 and this group of petitions has been disposed of without prejudice to those rights of the petitioners subject to the decision in the aforesaid Special Leave Petition.

20. In the result, all the petitioners shall be entitled to the period of service before regularisation right from the date of entry of service even on daily wage basis which shall have to be reckoned and shall have to be added with the period of service after regularisation so as to consider the pensionary benefits including the family pension to the employees. The respondent University authorities shall accordingly consider and shall pay the pensionary benefits/family pensionary benefits to the respective employees in this group of petitions except four persons who have been mentioned herein above as and when it becomes due and payable.

21. In respect of four persons who are separately herein above identified, their cases are directed to be considered by the University for the same purpose and if

their cases, also, fall in the same parameters and yardsticks as stated herein above in this judgment they shall, also, be entitled to the same benefit.

22. Accordingly, all the petitions in this group of cases are allowed with costs. The respondents are directed to consider the case of aforesaid four petitioners within a period of four months from today. If their cases are found to be similarly situated or identical to the cases of 199 persons whose services have been regularised, they shall be paid the same benefit, of regularisation and pensionary benefits. Rule made absolute accordingly with costs.