
(2000) 12 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 12379 of 2000

Manoj Kant Thakur and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Citation : (2001) 1 PLJR 262

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Narendra Prasad and Pankaj Kant Thakur, for the Appellant; Gyan Prakash Ojha, for State, Kumar Brajendra Nath and Janak Prasad for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition the Petitioners are aggrieved by the recall of their services back to the parent employer, namely, Bihar Police Building Construction Corporation.

2. It is submitted on behalf of the Petitioners that by virtue of the decision, contained in Annexure 4, the Petitioners were temporarily absorbed in the Government service after being declared surplus in the Corporation and their cases are being considered for permanent absorption in the Government service as is evident from Annexure 8/B and 8/C. As such, according to the learned Counsel for the Petitioners, the order for recall of their services back to the Corporation is bad in law and malafide inasmuch as the attempt of the Corporation is to first recall them back and ultimately terminate them from the employment as there is no work available in the Corporation. In support of this, learned Counsel for the Petitioners has relied upon Annexure 20 filed today along with the supplementary affidavit.

3. On the other hand, Mr. Kumar Brajendra Nath, learned Counsel appearing for the Corporation has submitted that the submissions advanced on behalf of the

Petitioners are wholly unfounded and not tenable at all. It is submitted that the allegation of malafide is wrong and unfounded. Moreover, it has wrongly been submitted on behalf of the Petitioners that the services of the Petitioners were ever absorbed in the Government even temporarily. In fact, in principle the Government decided to consider the cases of surplus staff of different Corporations for absorbing them in Government service, but till date there is no decision/order for absorption of the Petitioners in the Government service. It has also been submitted by Mr. Nath, learned Counsel for the Corporation that the Petitioners are not surplus staff of the Corporation, which fact has seriously been disputed by the learned Counsel for the Petitioners, who, on instruction, has submitted that the Petitioners have not even been paid their salary since 1993. This itself shows that there is no work and they are surplus staff in the Corporation. Mr. Nath, on instruction, has submitted that the arrears of the staff working in the Corporation have been paid up to date and are being paid.

4. Without going into their aforementioned rival contentions, this Court finds it difficult to accept the submissions advanced on behalf of the Petitioners that the order for recall of their services back in the Corporation is bad in law. Learned Counsel for the Petitioners has failed to show any order, whereby the services of the Petitioners have ever been temporarily absorbed in the Government. All the above-mentioned annexures show that they are continuing on deputation and their cases along with the cases of others are being considered for permanent absorption.

5. In the case of C.N. Appu v. C.K. Nair, reported in 1978 (1) SLR 751, the Division Bench of Kerala High Court in regard to the status of a deputationist has held that the appointment on deputation and placing him on probation has no limit. Deputationist does not get the status of approved probationer or a full member of the service after expiry of period of probation. He remains a member of this parent department.

6. In my opinion, a deputationist cannot claim to continue on the post of deputation as a matter of right. It is always open to the parent employer to recall the services of its employees back who are on deputation and take work from them. Under such circumstances, in my opinion, the validity of the order for recall of the services of the Petitioners cannot be assailed.

7. Accordingly, this Court does not find any merit in the writ petition and the same is summarily dismissed.

8. However, this order shall not come in the way of the Government from considering the cases of the Petitioners for absorption in the light of the Government decision, as contained in Annexure 3.