
(2007) 04 PAT CK 0114
In the Patna High Court
Case No : C.W.J.C. No. 9129 of 2006

Mozaffar Imam Khan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Citation : (2007) 04 PAT CK 0114

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Heard learned counsel for the parties.

2. Petitioners of both the writ applications were working under Gandak Command Area Development Agency, Muzaffarpur. Eleven petitioners in C.W.J.C. No. 9129 of 2006 were working as Treasure Guard, whereas two petitioners in C.W.J.C. No. 8555 of 2006 were working as Soil. Sampler. They have challenged the communication dated 5.4.2006 (Annexure-12/1) issued by the Under Secretary, Water Resources Department, Government of Bihar by virtue of which authorities under Gandak Command Area Development Agency were directed to remove the petitioners from service. Petitioners have also challenged the consequential order dated 9.5.2006 (Annexure-15) by virtue of which the petitioners have been terminated.

3. Case of the petitioners are that due to initiative of Late Fakruddin Ali Ahmad, the then Agriculture Minister, Government of India, Command Area Development Agencies came to be created in various States. Even in the State of Bihar three Command Area Development Agencies in accordance with the resolution dated 1.10.1973 came to be established. Gandak Command Area Development Agency (hereinafter to be referred to as the Agency) was first to be established. An Ordinance was subsequently issued in the year 1975, which was known as Bihar Agricultural and Rural Area Development Agency Ordinance. The Ordinance culminated finally into an Act which was Act 3 of 1979.

4. As per Section 4 of the Act a Board is set up for administration and control of

each Command Area and it is headed by a Chairman. The Chairman and the Managing Director of the Board are to be appointed by the State Government. There are various other nominees to the Executive Committee and majority of these nominees are holders of civil posts in the Government. In terms of the Act the Agencies u/s 39 have been granted powers to make Rule and Regulation with prior approval of the State Government but in the knowledge of the petitioners no such Rule or Regulation was ever made or brought into effect. In fact the service conditions of the State Government was made applicable as majority of the employees belonged to Agriculture Department and the Agency was under supervision and control of the Department of Agriculture, Government of Bihar.

5. The petitioners state that vide resolution No. 14 dated 8.12.1978 the members of the Board took a decision to create and fill-up posts including those of Treasure Guards and Soil Samplers. This decision has been brought on record as Annexure-2 to the writ application. Treasure Guard being described as "KOSH RAKSHAK". Pursuant to the resolution of the Board an advertisement was issued in a local daily namely "Aryavrata" on 12.7.1979. This advertisement was to fill-up various posts which were sanctioned posts as per the decision of the Agency. According to the petitioners, applications were called for through Employment Exchange to fill-up 11 sanctioned posts of Treasure Guard. Petitioners with other persons filed their applications. After scrutiny of applications petitioners were called for interview on 7th March 1980. Petitioners appeared before the Board for interview. The Board thereafter issued a merit list based on the performance of the candidates and it is the case of petitioners that letters of appointment thereafter came to be issued on different dates. After the petitioners joined, they were posted at various places. Petitioners continued to work thereafter and they were allowed to cross the efficiency bar on 11.7.1986. Their contention is that only such employees are allowed to cross the efficiency bar who have been appointed in regular establishment against sanctioned posts. Subsequently vide an order dated 3.12.1990 which is contained in Annexure-6, the Agency issued an order declaring the petitioners to be regular employee. The order says that the issue of regularisation and promotion of Treasure Guards was pending with the Agency for a long time and the Agency after due consideration has decided to regularise the services of the petitioners as well as confer benefits of promotions to them. The Agency subsequently also issued a seniority list on 15.12.1990 and the same is on record as Annexure-7. Petitioners were granted first time bound promotion vide office order No. 1339 dated 10.9.1993. Petitioners state that despite all the above actions as narrated above their continuance on the post under the Agency was not a smooth one. They have had to battle with the authorities for various demands.

6. At times issues were sought to be raised by some vested interests that the posts of Treasure Guards and Soil Samplers were not sanctioned posts because there was no prior approval of the same by the State Government. The State Government, however, never interfered with the appointments of petitioners and other persons because they always treated the Agency to be an autonomous

agency created under a Statute. Petitioners, however, state that annual budgets for the year 2004-05 and 2005-06 were prepared by the Agency and forwarded to the State Government in which posts of Treasure Guards and Soil Samplers specifically find mention. The annual budgets have been brought on record in proof of the assertions and are contained in Annexure-9 and 9/1. According to petitioners a letter of the State Government dated 20.2.2004 (Annexure-10) is clincher on the issue because by virtue of this letter State Government confirmed that it was the Agency which had the due authority to create posts and make appointments and the Government to that extent had no role in the matter.

7. Petitioner No. 7 filed a writ application, namely, C.W.J.C. No. 8889 of 2005. This writ application was filed since salary was not being paid to them since June, 2004, the petitioners made a grievance that they have been working for the last 25 years under the Agency and for the last two years on one pretext or the other their salary has been stopped. Vide order dated 12.12.2005 passed in C.W.J.C. No. 8889 of 2005 direction was issued to the Agency to pay the salary of petitioners.

8. In the said order, however, the observation was made that since petitioners had worked for more than 25 years their salary ought to be paid even though they may not have served under the Agency against sanctioned post. A L.P.A. was filed by the Agency against the said order. The L.P.A. was heard and disposed of vide order dated 10.3.2006. In the L.P.A. the Agency pleaded before the Court that it was difficult for the Agency to pay to petitioners of the writ application because they do not have funds of their own and the State Government was not willing to release funds unless the posts in question were sanctioned. The Court, however, took note of the fact that some of these petitioners had been working for more than 25 years and payments had been made earlier, sanction of posts etc. are internal matters of the Agency. The Court, however, quashed that part of the observations of the Single Judge that the posts in question were not sanctioned.

9. Petitioners also draw attention of the Court to an office order dated 18.10.2006 which has been brought on record as Annexure-21. By virtue of this order at the instance of the Water Resources Department a Committee of three persons was set up to enquire against the charges levelled against Shri Radha Pandey and the order of dismissal passed against petitioners. Pursuant to this order contained in Annexure-21, the Committee submitted its report on various issues. This report of the Committee is Annexure-22 to the writ application. The Committee was asked to go into the matters including the issue whether the posts under which the petitioners were working were duly created and sanctioned post. The report of the Committee is quite revealing.. Shorn of other details it is the conclusion which has bearing on the present case. The Committee categorically records that the enquiry based on evidence and records establish that the posts in question which relates to the petitioners were duly sanctioned and created posts and their appointment was in terms of the Rules. It also

records that petitioners have been given various benefits of seniority, promotions etc. and the finding recorded against petitioners that their posts are not sanctioned posts seems to be a case of over sight on behalf of the authorities concerned. This report surely reveals the true state of affairs but the petitioners contend that this report has intentionally been hidden away by interested persons and it was sheer chance that the petitioners could lay their hands and have brought it on record as evidence in support of their case.

10. The issue, however, it seems did not come to rest. Petitioners contend that at the instance of some vested interest the Under Secretary Water Resources Department issued a letter dated 5.4.2006 addressed to the Agency. The letter states that one Shri Radha Pandey (petitioner of C.W.J.C. No. 8889 of 2005) had given a notice to sit on DHARNA before the house of the Irrigation Minister. The letter gives out the various dates on which DHARNA and procession before the Minister was held over a period of time. The letter states that such action of the employees, though in exercise of their democratic right, was not viewed kindly by the authorities. A direction was issued to take steps to remove the petitioners from their posts. This letter was also based on the observation of the learned Single Judge, which was made in C.W.J.C. No. 8889 of 2005. The letter, however, intentionally ignored the order of the L.P.A. Bench.

11. Petitioners state in the writ application that letter dated 5.4.2006 issued by the Water Resources Department was a blatant interference in the working of the Agency. Secretary of the Agency pursuant to the Government letter dated 5.4.2006 issued show-cause against the petitioners as to why their services be not brought to an end since posts of Treasure Guard/Soil Sampler were not sanctioned by the State Government. Petitioners filed their show-cause, listed out their details and established before the authorities that they were appointed under regular sanctioned posts and they have given their pay and promotions while working as, such over last 25 years. The problem has only arisen because petitioners had asserted their democratic right in furtherance of their demands and the same was not appreciated either by the Minister or the other officials of the Water Resources Department. Since the respondent authorities, on the dictates of the State Government, had already made up their mind, the authorities in their wisdom vide order dated 9.5.2006 i.e. Annexure-15 ordered removal of the petitioners order at one place states as under:

ljdkj ds Ik=kad 247 fnukad 5-4-06 esa Hkh Li?V fd;k x;k gS fd bl vfHkdj.k esa bu loh d`r inksa dh vko?;drk ugha gSA

Subsequently the authorities issued a corrigendum on 12.5.2006 wherein they state that instead of the above line noted in Hindi it should read as:

bl vfHkdj.k esa bu vLoh d`r inksa dh vko?;drk ugha gSA Ik+k tk;A

Petitioners state that the issuance of the corrigendum was to hide the Freudian slip which revealed the true facts.

12. The petitioners bring to my notice a letter dated 24.5.2006 which is Annexure-17 to the writ application. This is a letter addressed by the Under Secretary addressed to the Agency where the Government wanted to come clean on the issue. Vide this letter they wanted to establish that the Government had no role to play in the removal of the petitioners and the decision to remove the petitioners was that of the Agency. It states that it was for the Agency to decide whether to utilise the services of the petitioners or not but if the Agency decided to utilise their services it was not possible for the State Government to make payments to them, Counsel for petitioners, therefore, have challenged the above order of removal on several grounds. They state that the order of removal is not a bonafide one but is based on extraneous considerations and on the dictates of the State Government. They state that the letter of the Under Secretary dated 5.4.2006 (Annexure-12/1) read with letter dated 24.5.2006 i.e. Annexure-17 is a sure give away on this issue. They further assert that the Agency being a statutory body the directions issued by the State Government is an undue interference in their working and the order of removal passed against them is based on the dictates of the State Government rather than by any independent exercise of mind on the issue. They further contend that the order of removal passed against the petitioners by the Commissioner-cum-Chairman of the Agency is a total abdication of power. Petitioners also challenge the order of removal from service, on the ground of arbitrariness since petitioners had continuously rendered services under the respondents for more than 25 years uninterruptedly. Another contention of petitioners are that there was no requirement of the Agency to seek approval or sanction of the State Government for creation of the posts of Treasure Guard or Soil Sampler because the same was already created and sanctioned by the Agency which had due authority in this regard. The fact that petitioners had continuously worked for 25 years, the consent or approval of the State Government should be presumed or deemed, in the given case.

13. Counter affidavit has been filed on behalf of the Water Resources Department, Government of Bihar. The affidavit has been sworn by one Md. Sohail. Significantly the deponent is the same person who had issued the various letters directing the Agency to remove petitioners from service. The stand of the State Government is that appointment of petitioners were illegal and unauthorised since it does not have any approval or sanction of the State Government. It states that since these appointments are not legal, therefore, no funds can be made available from the consolidated fund of the State for payment of salary to these petitioners. The counter affidavit also states that since a Single Judge vide his order dated 12.12.2005 passed in C.W.J.C. No. 8889 of 2005 had held that these posts were non-sanctioned posts, therefore, the authorities were right in removing petitioners from the posts. The respondent State filed a supplementary counter affidavit also and they have brought several documents on record to show that there were no budgetary allocation for the posts in question and the State Government did not make provisions for such allocations

in the budget.

14. Counter affidavit has been filed on behalf of the Agency who are respondent Nos. 3, 4 and 7. Their stand is similar to the State Government that the posts of petitioners were not sanctioned and not approved by the Government, therefore, the appointment of petitioners was illegal. Further ""Since the State Government has not made budgetary-allocations, therefore, this also shows that the posts were not sanctioned.

15. Petitioners have filed rejoinders and they have brought on record additional documents some of them being Annexure-21 and 22 which has already been discussed above in this order. Not only this they have annexed Annexure-18 which is a annual progress report of the year 1978-79. They draw my attention to Clause 2.02(25) which states that by letter No. 349 CAD dated 30.9.1975, the Department of Irrigation, Government of Bihar authorised the Agency to draw and sanction schemes upto rupees five lacs at their level and significantly the Agency was also given power to create and sanction posts for appointment up to Rs. 1600/- per month. Admittedly, the salary of petitioners were far below Rs. 1600/- per month, they being Glass IV employees. The petitioners also bring on record a document annexed as Annexure-20 and is dated 1.10.1996 as proof that the posts of Soil Sampler and Treasure Guards were duly sanctioned posts and find mention amongst the list of employees working under the Agency. They challenge the assertions made in the counter affidavits filed on behalf of the State Government and they categorically assert that the affidavit in question was misleading and misconceived in light of the various evidences which they have brought on record in support of their contention.

16. Some facts are though not disputed that the respondent Agency has its autonomy having been created by a Statute and the above aspect is not only borne out by the Statute which is Act 3 of 1979 but also by supplementary documents including letter No. 349 CAD dated 30.9.1975. There is also evidence of the fact that the Board of the Agency had created various posts including the posts on which the petitioners were appointed. The factum of advertisement, appointment issuance of seniority list and grant of time bound promotions are proofs of the exercise which were carried out at the level of the Agency. Petitioners have worked for more than 25 years and there was no dispute with regard to either their appointment or working as such. Problem for the first time arose when the resources started drying up and the State Government was not willing to shoulder its responsibility of meeting the obligations or making the necessary finances available to the Agency. Since the Agency at no point of time has ever been given authority or sanction to generate its own resources the State Government was shouldering responsibilities. On assertion of democratic rights by the petitioners problem started against them.

17. First proof of the same is a detailed letter dated 5.4.2006 written by the Under Secretary, Department of Water Resources, Government of Bihar and is Annexure-12/1. This Court does get a feeling that the persistence by petitioners

especially Radha Pandey to bring pressure upon the Government by resorting to democratic means of DHARNA etc. before the residence of the Minister had irked the authorities because this letter dated 5.4.2006 is the cause from which subsequent decisions to remove petitioners has come about. When the cat was out of the bag, only to keep the records straight, the Under Secretary issued another letter dated 24.5.2006, which is Annexure-17 to the writ application. By this letter the respondent State Government has tried to wash its hands off the issue by stating that they had no role to play in removal of petitioners and it was for the Agency to decide whether to retain the services of the petitioners. This stand of impartial detachment of the State Government had an underlying threat i.e. that the State Government shall not make any funds available for payment to the petitioners.

18. Insistence on behalf of the State Government that unless the posts in question were approved or sanctioned by them appointments under Agency was illegal is quite misplaced for the reason that the State Government as far back as in 1975 had instructed the Agency that they had due power and authority to create posts and make appointments to the posts carrying salary upto Rs. 1600/- per month. Based on this direction the posts in question too were created by the Agency and appointments came to be made in the year 1980. Now it is too late in the day for the State Government to say that since they had not given any approval to the posts, therefore, creation and appointments made to the posts by the Agency was an illegal exercise carried out. The Agency in its counter affidavit seems to have towed the line of the State Government. This Court finds the stand strange because there are several documents which are there on the record to show that the Board of the Agency had created the posts, advertised the same, made selection and appointed persons to work for them on a regular basis, which included the petitioners. This Court has taken note of some of those documents and the clinching document on the issue is Annexure-22, which is a report submitted by a three member committee set up by the Agency to enquire into the dismissal of the, petitioners from their posts. The Committee has held that the petitioners were duly appointed against created sanctioned posts and they had been working as such for a long period of time.

19. Learned counsel for the petitioners submits that the order of removal passed against the petitioners is not only arbitrary but also abdication of powers by the Agency. The power has been exercised under threat that the State Government will stop funding the Agency, if petitioners are continued on the posts. According to petitioners action of the respondent Agency is not sustainable because as early as in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , Hon''ble Supreme Court while dealing with one of the propositions held that the power vested in an authority has to be exercised by the authority only and nobody else can be permitted to interfere or exercise that power. Petitioners also rely on the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, with special emphasis on paragraph 13 which reiterates the earlier proposition. There seems to be substance in the argument of petitioners on this

issue.

20. Even otherwise this Court cannot ignore taking into notice that petitioners have worked continuously for 25 years on appointment made by the Agency on a post carrying less than Rs. 1600/- per month. The problem had begun in the year 2006 after petitioners resorted to DHARNA etc. for their claim and demand. The fact that petitioners' posts are duly sanctioned and they have worked and have been paid salary right upto 2004 is a circumstance which cannot be ignored. It is a fact that the State Government has been funding these Agencies and they have also been receiving funds in this regard from the Central Government for a long period of time. It is not open to them now at such a belated stage to say that the Agency should make their own arrangements and they will not take responsibility in this regard. This is not a tenable position to be accepted in law. The Hon'ble Supreme Court in the case of All India Imam Organization and others Vs. Union of India and others, has held that financial difficulties of an institution cannot be above fundamental right of a citizen.

21. Respondents as a last ditch effort have relied on the Constitution Bench decision of the Supreme Court rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . They submit that in view of the above decision petitioners have no right of regularisation.

22. This Court fails to understand as to how the above decision comes into play in the given facts and issues. Petitioners are not seeking regularisation under the Agency. They have approached the Court to remove the cloud which has been cast on their status as permanent employees of the Agency. Regularisation is not even a relief they have asked for. The decision of the Constitution Bench of Uma Devi (supra) is of no avail to the respondents and has no application too.

23. In view of the above factual and legal position this Court holds that petitioners have been regularly appointed on post created by the Agency and have worked as such for more than 25 years. They have a fundamental right to continue in service and be paid their salary regularly. The action of State Government directing the Agencies to remove the petitioners by their letter dated 5.4.2006 contained in Annexure-12/1 as well as the subsequent order dated 9.5.2006 contained in Annexure-15, therefore deserves to be quashed and are hereby quashed. The respondents are directed to reinstate the petitioners in service.

24. These writ applications accordingly stand allowed. There will not be order as to costs.