
(2008) 08 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 999 of 2001

Mukti Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2008) 56 BLJR 2777 : (2009) 1 PLJR 21

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Ahsanuddin Amanullah, Mithilesh Kr. Pathak and Javed Gaffar Khan, for the Appellant; Prabhat Kumar, J.C., for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the State.

2. The petitioner is aggrieved by the order dated 27.10.2000 at Annexure-13. The impugned order reverts him to his status of a Grade IV post in the work charge establishment reversing the orders of regularization of his service on the post of Sub-Divisional Clerk dated 23.10.1981.

3. The petitioner was appointed in the work charge establishment on 1.7.1975. Pursuant to a Government decision dated 19.2.1981 to absorb into the regular establishment those appointed in the work charge establishment till 21.8.1975, a four member committee was constituted to examine such cases. The committee made its recommendation on 11.9.1981. The name of the petitioner was at serial 8. By order dated 23.10.1981 the petitioner was regularized on the post of Sub-divisional Clerk, a Grade III post in the regular establishment. A show cause was issued to him on 18.5.1996 questioning his induction in the regular establishment on a Grade III post from a grade IV work charged post. He replied to the same on 4.6.1996. A fresh show cause followed on 12.8.2000 to which he replied again when the impugned order has been passed.

4. Learned Counsel for the petitioner submitted that there was no justification for reverting him to the work charge status after 19 years. That under statutory Rules framed under Article 309 of the Constitution of India originally incorporated in the form of an administrative circular in 1949, which has not been annulled till today, after completion of 12 years of a work charged employee in permanent establishment there was a presumption of regular requirement which mandatorily requires that such employee was to be made permanent and included in the permanent establishment. This Court noticing the same as far back as in the judgment reported in *Tulsi Prasad Singh Vs. The State of Bihar*, directed consideration of work charge employee for regularization. Subsequently another Bench of this Court in CWJC No. 4812 of 2005 (*Narendra Kumar Pathak v. The State of Bihar and Ors.*) by order dated 25.7.2006 had likewise set aside the order of reversion of a work charge employee, who had been inducted into the regular establishment. To the same effect is the judgment of this Court reported in *Suresh Kumar Rajak Vs. The State of Bihar and Others*,

5. Counsel for the State contended that the issue stood concluded by a Full Bench decision of this Court reported in *Durganand Jha and Others Vs. The State of Bihar and Others*, holding that there could be no absorption or induction of work charge employees appointed on a Class IV post in the exigency of work on class III post by the State authorities except in accordance with the "provisions of law, circulars and mandates of Articles 14 & 16 of the Constitution of India."

6. This Court in the case of *Tulsi Prasad Singh (supra)* noticed at paragraph 6 of the judgment the Government circular No. 1344 dated 4.2.1949 laying down that such posts in the work charge establishment which are of permanent nature, that is required for 12 months in the year and for long and indefinite period and having one year's approved service be included amongst permanent Government employees. It was noticed and held at paragraph 4 of the judgment that this circular had the status of a rule under the proviso to Article 309 of the Constitution of India. That the Rule had not been superseded by another rule but had been followed merely by circulars from time to time.

7. On the facts of this case, the petitioner continued in the work charge establishment from 1.7.1975 till his induction in the permanent establishment on 23.10.1981. It is, therefore, apparent that he fulfilled the conditions prescribed in the administrative instruction dated 4.2.1949.

8. It has also been noticed at paragraph 8 of the judgment that fresh circular No. 3058 dated 22nd February, 1984 had been issued by the State Government where decision had been taken to absorb the work charge employees in the regular establishment on conversion of the post in the regular establishment, if the work charge employee completed five years of satisfactory service and no criminal or departmental proceeding is pending against him. The petitioner apparently fulfills this condition also.

9. Long after his regularization, on 2.4.1983, a clarification was issued that such

regularization was to be done on the same post and not by promotion on a higher post. The impugned order refers to an even later order of 11.11.1999 and 27.11.1999 to the same effect. Apparently there was no such restriction on 23.10.1981 when regularization was done under the Government decision dated 19.2.1981.

10. The Full Bench decision in the case of Durganand Jha v. The State of Bihar and Ors. (supra) relied upon by the learned Counsel for the Respondents with profound respect at paragraph 10 notices the submission of the Rules made for regularization under Article 309 of the Constitution but there is no discussion or reference to the same while holding that the employees somehow continued in the work charged establishment and were somehow regularized/promoted to Class III post without provisions of law, circulars and mandates. The departmental instructions dated 2.4.1983 and 22.2.1984 bearing memo No. 3058 as also the policy decision dated 19.2.1981 also does not find any reference. The petitioner was regularized after consideration of his case by a Selection Committee constituted for the purpose under a policy decision of the State Government. This fact is not denied or disputed in the counter affidavit. Learned Counsel for the Respondents sought to persuade this Court that even before the Full Bench issues of regularization and absorption having been done through the Selection committee fell for consideration, when there is no such discussions therein. On the contrary the Full Bench mandates that the absorption had been done contrary to law, circulars and mandates of Articles 14 & 16 of the Constitution of India. This Court has already noticed above, the Rules framed under Article 309 of the Constitution for the purpose and the circular dated 22.2.1984 in that regard as also the policy decision dated 19.2.1981.

11. Learned Counsel for the petitioner has relied upon another judgment of this Court reported in Suresh Kumar Rajak Vs. The State of Bihar and Others, In that case also, the petitioner having been appointed in the work charge establishment came to be inducted into regular establishment in November, 1981 under the policy decision dated 19.2.1981 on recommendation of the Selection Committee and subsequently reverted from his Class III post in the regular establishment after about 16-17 years of service. The Court by order dated 5.1.1998 noticed that the petitioner therein has been appointed on 13th January, 1975 in the work charged establishment, that it was not the case of the Respondents that the incumbent did not hold the qualification for appointment on a Class III post. It was additionally noticed that the Respondents had also a fixed quota of 25% to be filled in Class III post from amongst the eligible Class IV employees, that there was nothing to suggest that Class IV employee could not be appointed on Class III post upon selection on the recommendation of a selection committee. It was further noticed, as presently in Annexure-10, dated 4.8.2000, a decision was taken to revert and show cause issued thereafter on 12.8.2000, an act in violation of the principles of natural justice. Having considered the matter and noticing that a considerable period of 16 years had passed, the Court did not uphold the order of reversion which was consequently set aside. This matter

came to be assailed in L.P.A. No. 330 of 1998 by the State of Bihar, which was dismissed on 14.10.1998 and the SLP against the same was also dismissed on 15.2.1999.

12. This Court has noticed that the order of regularization dated 23.10.1981 is sought to be declared illegal on basis of clarifications issued subsequently on 2.4.1983 and November, 1999. The Full Bench decision in Durga Nand Jha (supra) delivered on 28.9.2007 does not take into consideration the earlier judgments on the issue as placed by the petitioner.

13. The impugned order dated 27.10.2000 purports to revert the petitioner to his status of work charge employee in IV Grade putting the clock back to 1.7.1975. It not only deprives him of his Grade III status.

14. The situation is the creation of the Respondents themselves. It is they who have ignored their own Rules framed under Article 309 of the Constitution of India, which finds no reference whatsoever in the present order or in the counter affidavit. Likewise the circular of 22nd February, 1984 as discussed above also finds no reference. For the fault of the Respondents to penalize the petitioner by 19 years later reverting him to the status of a work charge employee shall be gross injustice. The contention of the State that the petitioner does not loose as he can be accommodated/adjusted on a Grade IV post in a regular establishment also does not appeal to this Court.

15. The impugned order does not raise any objection of ineligibility of the petitioner for appointment on a Grade III post. In that view of the matter, this Court finds it difficult in the light of the discussion as aforesaid to sustain the order of reversion dated 27.10.2000, which is accordingly set aside with consequential benefits after deducting payments made in the interrugnum. The petitioner shall continue to discharge his duty on a Grade III post in pursuance of his absorption from the work charge establishment.

16. The writ application stands allowed.