
(2007) 08 JH CK 0075
In the Jharkhand High Court

Murlidhar Sahu and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 4 JCR 504

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The instant writ application is filed by the petitioners for the issuance of the appropriate writ/orders/ direction in the nature of mandamus commanding upon the concerned respondents for regularisation of the services of the petitioners, who have been working continuously against the vacant posts for more than 12 years on daily wages and also for a direction to the respondents to pay salary to the petitioners on the principle of "equal pay for equal work" besides other emoluments in the event of regularisation.

2. The case of the petitioner No. 1 is that he being a literate person had applied for appointment as Store Chowkidar under the Road Construction Department of the P.W.D, Since the post was needed, the department had accepted his offer and made to join as Store Chowkidar on muster roll basis with effect from 2.1.1985 under a letter of appointment issued by the respondent No. 5 dated 2.1.1985. The petitioner No. 1 had joined his appointment in the aforesaid capacity under the Road Construction Department, PWD. Later he was transferred to Barhi and by another letter dated 3.4.1986, issued by the respondent No. 5, was asked to work as Peon though the work assigned to him was that of Store Chowkidar and even since the date of his joining, petitioner No. 1 had been continuously working under the Road Construction Department, PWD as the Store Chowkidar.

The petitioner No. 2 was also appointed in the same manner as the petitioner No. 1, as Store Chowkidar at Simaria under the Road Construction Department and

he was taken on muster roll basis after his appointment pursuant to the appointment letter dated 2.1.1985, issued by the respondent No. 5. The petitioner No. 2 was also employed and continue to render his services as Store Chowkidar with effect from the date of his appointment and continuously for more than 12 years.

3. The petitioner No. 3 had applied to the same department for the post of Jeep Driver. On being informed about the vacancies, after an interview, he was appointed as Jeep Driver in the Ramgarh under the Road Construction Division, P.W.D. and pursuant to the appointment letter, issued to him, he joined the department on 12.12.1986 and was kept in the muster roll, ever since then.

It is further claimed by the petitioner No. 3 that on appreciation of his work and services, his immediate superiors in service had recommended for regularization of his services to the concerned authorities on 18.5.1992.

4. The petitioner Nos. 1 and 2 had also submitted their application for regularisation of their respective services on the basis of recommendations made by their immediate superiors in office to the concerned authorities of the department. The petitioners have further claimed that in the year 1983, a Committee headed by the respondent No. 2 was constituted to resolve the issue relating to regularisation of the services of the employees in the department and a resolution was taken in the light of the orders assed by the Supreme Court in Civil Appeal No. 1509 of 1987 declaring that every person should be paid on the principle of "equal pay for equal work." The corresponding order was communicated to the several departments under the respondent No. 2 for immediate action.

5. The further case of the petitioners is that a report dated 13.4.1996 was submitted by the respondent No. 5, stating, therein, that in the Hazaribagh Road Construction Division, PWD, altogether ten vacant posts of Class III employees and nine vacant posts of Class IV employees was existing where the several temporary employees were employed in the department out of whom five were employed prior to the cut off date i.e. 1.8.1985 and a recommendation was made for regularisation of the services of the temporary employees against the vacant sanctioned posts. The petitioner No. 3 had expressed his grievance that by virtue of the Government Notification fixing the cut off date as 4.10.1985 and considering the date that he had joined the service after the aforesaid cut off date, he was not paid his salary since November, 1986, although the department had continuously taken the services, during the said period. Claiming that the respondents have been illegally acted in most arbitrary manner in continuing to retain the petitioners on daily wage basis without regularising their services and avoiding to pay them salary on the principle of "equal pay for equal work," petitioners have filed the instant writ application for the aforesaid reliefs.

6. During the pendency of the writ application, the petitioners had filed an interlocutory application seeking permission to amend the original writ

application for adding further reliefs, on the basis of certain subsequent developments, which had surfaced in the counter affidavits filed by the respondents. It was explained in the interlocutory application that the services of the petitioner No. 3, Ravindra Nath Mishra, who was employed as the Jeep Driver since 12.12.1997, has been terminated on and from 26.12.1997, it was claimed by the petitioners that the order of termination was passed even after more than three and half years, Government Resolution dated 18.6.1993 and that the order of termination was passed with malice and since the petitioner No. 3 had rendered continuous service for more than eleven years, he was entitled for regularisation of his service. In the prayer portion of the writ petition for the issuance of a writ of certiorari for quashing the order contained in Annexure-A vide Memo No. 1336 dated 26.12.1997 with a direction to the respondents to regularise the services of the petitioner No. 3.

7. A supplementary affidavit has been filed on 23.8.2006 informing that by virtue of an Office order, issued by the respondent No, 4, the services of the petitioner No. 2 was regularised and he has been appointed in permanent establishment on the pay-scale of Rs. 2550-3200/- and he has been posted in the Road Division, Chatra on the vacant post of chowkidar. The petitioner No. 1, who has filed the affidavit, has claimed that he and petitioner No. 2 were appointed on 1.2.1985 on daily wage basis, while the services of the petitioner No. 2 has been regularised by the department, his services have not been regularised till date, despite the fact that his superiors has repeatedly recommended to the competent authority for regularisation of his services.

8. In the light of the aforementioned subsequent developments, learned Counsel for the petitioners has submitted that since the services of the petitioner No. 2 have been regularised and that of petitioner No. 3 have been terminated, the prayer in the instant writ application has been confined only in respect of petitioner No. 1. Learned Counsel for the petitioner submits that considering the fact that the petitioner No. 1 has been working ever since 2.1.1985 against the vacant posts continuously without any break in service and since the State Government had also conceded by virtue of a Resolution adopted that the services of all daily wage employees, who were appointed prior to 1.8.1985 should be regularised, and since under similar circumstances, the services of petitioner No. 2 have been regularised by the department, the petitioner No. 1 is also entitled to the same privilege and the respondent's failure to regularise his services is violative of Article 14 of the Constitution of India and against the principles of "equal pay for equal work." Learned Counsel adds further that despite the fact that the superiors in the office of the petitioner No. 1 had recommended to the concerned Head of the department for the regularisation of the services of the petitioner No. 1, but no action has been taken on such recommendations and on several representations made by petitioner No. 1 till date. Besides the counter affidavit initially filed by the respondents, a supplementary counter affidavit has been filed on behalf of the respondents acknowledging the fact that the petitioner No. 1 and petitioner No. 2 were

appointed as chowkidar on 2.1.1985 under the Department, while petitioner No. 3 was appointed as Jeep Driver on 12.12.1986 and their appointments was made on daily wage basis. It has been further acknowledged that vide letter dated 29.3.2006, followed by letters dated 24.4.2006, 29.5.2006, 22.6.2006 and 29.7.2006, the Superintending Engineer, R.C.D., Road Circle, Hazaribagh had sent a letter of request to the Deputy Superintendent, Hazaribagh, recommending the regularisation of the services of petitioner No. 1, Muralidhar Sahu in the Class IV as a Class IV employee, against the vacant posts but no response was received from the Deputy Commissioner in the Office of the Superintending Engineer. A further letter, recommending the request for regularisation of the services of the petitioner No. 1 was recommended vide his letter dated 27.6.2006, addressed to the Chief Engineer (Communication), R.C.D., Ranchi but till date no action has been taken again. The supplementary affidavit also confirms that the services of petitioner No. 2 have since been regularised, on the basis of the recommendation of the Deputy Commissioner, Chatra and that the service of the petitioner No. 3, who was appointed much after the cut off date has since been terminated on 26.12.1997.

9. It thus appears that the factual position as stated by the petitioners has been admitted by the respondents. It is not denied that the petitioner No. 1 has been rendering continuous service on daily wage basis ever since the date of his appointment on 2.1.1985. It is also admitted that the post of Class III and Class IV employees has been running vacant, ever since the aforesaid date of appointment. It is also admitted that a Resolution was adopted at the level of the State Government for absorption of all the temporary employees, who were appointed prior to 1.8.1985. It is also admitted that the services of petitioner No. 2, who was appointed under identical circumstances as petitioner No. 1, have been regularised pursuant to the Resolution adopted by the Government. It is not denied that the several recommendations were made by the superior in office of the petitioner No. 1 including the Superintending Engineer to the competent authority, namely, the respondent No. 5 for regularisation of the services of the petitioner No. 1 against the vacant posts. The only question, therefore, that falls for consideration is whether in the facts and circumstances of the case, the petitioner No. 1 is entitled for regularisation or absorption of his services in Class IV Post.

10. The law relating to public employment and right of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees, has now been well settled. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Supreme Court has explained that:

unless the appointment is in terms" of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. A temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because

a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

Nevertheless, their Lordships in the same judgment have given some relaxation to the irregularly appointed persons, who have worked for 10 years or more and have observed as follows:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayananappa*, *R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 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 the Courts or of tribunals. The question of regularisation 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 regularise 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 the 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.

11. Applying the principle as laid down by the Supreme Court in the instant case, it would appear from the facts of the present case, that the petitioner had applied for his appointment in the Class IV posts in the Road Construction Department, PWD. The application was entertained by the appointing authority and the petitioner No. 1 was allowed to work on muster roll, as Store Chowkidar with effect from 2.1.1985 under a letter of appointment issued by the respondent No. 5. Considering the work of the petitioner No. 1 to be satisfactory, the immediate superiors in the Office of the petitioner No. 1 had recommended the case of the petitioner for his appointment in Class TV posts, which was admittedly lying vacant. The recommendation for adjustment/regularisation of the services of the petitioner No. 1, remained pending and he continued in service for more than twenty years and he is still working in the same post. It is not the case of the respondents that the petitioner was illegally appointed, and neither is it disputed that there was sanctioned posts available for the appointment of the petitioner on regular posts. Admittedly, the petitioner No. 1 was engaged as Store Chowkidar under the Road Construction Department, PWD and he was appointed on muster roll basis since the date of his appointment on 2.1.1985 and he has been working for the past over twenty years without any break and this shows that the post in which the petitioner is engaged, has been continuing for the last more than twenty years. It is also admitted that under

similar circumstances the services of the petitioner No. 2, who was also appointed on daily wage basis, have been regularised and such regularisation was made in view of the Government's circulars issued in the light of the orders, passed by the Supreme Court when Civil Appeal No. 1509 of 1997 on the basis of "equal pay for equal work". The petitioner No. 1 has, therefore, a legitimate claim for his regularisation in service in the same manner as regularisation was made in the case of the petitioner No. 2.

12. In the circumstances, the respondents are directed to consider the case of the petitioner No. 1 for regularisation of his services against the available vacant posts and pass orders, accordingly within one month from the date of this order. This writ application is disposed of accordingly.