
(2013) 07 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 7542 of 1996

Nawal Kishore and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 135

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : S.B.K. Mangalam, for the Appellant; Shambhu Nath, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The petitioners, by this writ application, challenged Annexure-14, the order of termination passed after notice to them in the year 2006. Counter affidavit and rejoinder are on records.

2. Heard Mr. S.B.K. Mangalam, learned counsel for the petitioners and Mr. Shambhu Nath, A.C. to A.A.G-3, for the State.

3. The petitioners on different dates at different places were initially appointed for a period of six months on Class-IV post in Animal Husbandry Department by Regional Deputy Director, Animal Husbandry Department, Muzaffarpur. It is not in dispute that all of them continued to work upon extension being granted.

4. From Annexure-9 series it would appear that barring one or two rest of the petitioners were allegedly regularized in service in 1992-1993. There are two cases of 1991 as well. Pursuant to regularization, their confirmation orders were issued by the Regional Deputy Director, Animal Husbandry Department, Muzaffarpur. The impugned Annexure-14 series were then issued in 1996 on the ground that the power to appoint Class-IV employees as conferred on Regional Deputy Director was withdrawn by the State Government on 28th October, 1991 and as such the regularization orders issued by the Regional Deputy Director, Muzaffarpur were bad. Accordingly the petitioners by Annexure-14 series were

terminated.

5. Mr. S.B.K. Mangalam appearing for the petitioners submits that from the counter affidavit itself it is clear that when initially the petitioners were appointed in the year 1981-1989, the Regional Deputy Director, Animal Husbandry Department, Muzaffarpur was competent to make appointment. This is apparent from Annexure-A to the counter affidavit wherein this power to appoint is being withdrawn with effect from 28th October, 1991. Thus, the petitioners were appointed by the valid authority, whose appointments were extended from time to time. Then mere regularization by him did not amount to fresh appointment. In my view this may not be correct for the simple reason that the appointment letters issued to the petitioners specifically directed that they were appointed for a period of six months. Thus, when it is renewed, renewal is nothing but a fresh appointment. Thus, on expiry of last period of six months, after 20th October, 1991, the Regional Deputy Director had no authority to further renew and in other words to regularize. Taking another view of the matter would begin the very object of the notification dated 28th October, 1991. Mr. Mangalam then submitted that in the writ petition in various paragraphs it is stated that the petitioners worked for over 240 days continuously prior to 1990. He submits that their appointments were of the year 1981-89. It is not disputed that there were no break. In the counter affidavit there is no denial of these facts. Thus, Mr. Mangalam submits that in view of Government Circular no. 489, dated 10.5.2005 they were entitled to be considered for regularization/absorption. In fact, most of them had worked for almost eight years.

6. Learned counsel for the State submits that if the initial appointment is itself illegal, it does not give any right to an employee to be regularized as well. As the proposition of law is correct but if in the present case the State itself issued circular condoning the illegality in initial appointment and processing to regularize such appointees, the State cannot be stopped from doing so. Thus, in my view in view of the Circular of the year 2005, as referred to above, the petitioners are liable to be considered for regularization.

7. This writ petition has been pending in this Court since 1996 and the petitioners having been terminated are on road. Under such circumstances, in view of Government's own decision aforesaid I direct the Principal Secretary, Animal Husbandry Department, Govt. of Bihar, Patna, to take appropriate action in accordance with law for consideration of petitioners' case in terms of Circular of the Government aforesaid.

8. In view of long delay in the matter it is expected that the Principal Secretary, Animal Husbandry Department, Govt. of Bihar, Patna would look into the matter and would see that the reliefs to which the petitioners are found entitled, are not denied further. The process must be completed within a period of four months from the date of production of a copy of this order before him. With the aforesaid observations and directions, the writ petition is disposed of.