

(1994) 04 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10227 of 1989

Pradeep Kumar

APPELLANT

Vs

The Bihar State Co-operative Marketing Union Ltd. and
Others

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0043

Judgement

Radha Mohan Prasad, J.—In the present writ application the Petitioner has prayed for quashing of the order dated 18.8.89, as contained in annexure "1", whereby his service has been terminated with immediate effect and further for a direction to the Respondent Bihar State Cooperative Marketing Union Ltd. (hereinafter referred to as "Biscomaun") to re-instate the Petitioner with back wages.

2. In short, the case of the Petitioner is that on 9.10.79 he was appointed as Night guard on daily wages and joined in that capacity on the same day. In the year 1982 a consolidated pay of Rs. 330/- per month was fixed which was later revised to Rs. 400/- per month. From January, 1983 a deduction of Rs. 20/- per month was started to be made towards LLC. Contribution. From December, 86 a sum of Rs. 28.75 R was deducted from the pay of the Petitioner towards provident fund and Rs. 4.75 P. towards family pension. In January, 1987 the L.I.C. contribution was enhanced to Rs. 40/- from Rs. 20/- per month. In the meantime, as the Petitioner continued in service of the Biscomaun for fairly long spell, made representations for considering his case for regularisation of his service. The last representation was made on 16.1.86, a true copy whereof has been annexed as annexure "6" to the writ petition. On 18.3.89 the service of the Petitioner was terminated by the impugned order, contained in annexure "1" against which he filed representation and reminder, but when his grievance was not redressed, he filed the present writ application on 18.12.89 which was admitted on 3.7.90 when the learned Counsel appearing for Biscomaun accepted notice for all the Respondents and a prayar was made to grant two months time

for filing of counter affidavit. Accordingly, the court granted two months time for the aforesaid purpose and further ordered for placing the case for final hearing, before an appropriate Bench after the filing of the counter affidavit. However, no counter affidavit was filed.

3. By order dated 28.8.92 the matter was listed under the heading "to be mentioned" for fixing the date of hearing when Hon"ble the Chief Justice directed for placing the matter for hearing on 7th September, 92. The matter was however, heard in part on 10th February, 94, but till date no counter affidavit has been filed on behalf of the Respondents. As such, the facts are not in dispute that the Petitioner has been in the employment of the Respondent Biscomaun for about ten years whereafter, his service is sought to be terminated by the impugned order.

4. Mr. Shrawan Kumar, learned Counsel appearing for the Petitioner submitted that the impugned order terminating the service of the Petitioner after about 10 years on the ground that his service is no more required is wholly arbitrary and discriminatory, inasmuch as- other persons appointed along with Petitioner by the same order namely, Sukhdeo Prasad, Krishna Ballabh, Parmanand Singh and Pradeep Kumar have been retained and services of some have also been regularised on 20.1.94. The services of the persons appointed with Petitioner have been regularised and allowed to continue. In this regard he referred to the statements made in paragraphs, 13 and 15. As no counter affidavit has been filed, the said facts stand unrebutted. On the other hand, Mr. Sahi, Counsel appearing for the Biscomaun, in the peculiar facts and circumstances of the case was fair enough to submit that there is no doubt that the denial of right of regularization and consequential benefit after taking work for about 10 years cannot be said to be proper, but however, he pointed out that in the present case the Petitioner was throughout working on a consolidated pay and was never given status of a regular employee in Biscomaun. Thus, he contended that the Petitioner is not entitled for any relief from this Court.

5. There is no doubt that in view of the nature of the employment of the Petitioner in the Biscomaun, he may not have any legitimate right to claim to continue in service, but at the same time, it is well settled that if the persons appointed later in similar circumstances, have been allowed to continue or their services have been regularised, then the action of the authority in terminating the employment of even the employees receiving consolidated pay cannot be termed to be justified. In the instant case, it is not in dispute that the services of one Sukhdeo Prasad, who was appointed along with the Petitioner and of few others were regularised on 28.1.84 and rest two were continued in service while the Petitioner was removed from service, vide the impugned order. Further, the fact stated in paragraph 15 of the writ petition that one Nawal Kishore Sharma, night guard, posted at Regional Office; Biscomaun, Bihar Sharif appointed much later than the Petitioner on 4.2.80 was made regular on 1.6.84. It is also not the case of the Respondents that the vacancy does not exist in Biscoman.

6. Thus, on consideration of the aforementioned facts I do not find any justification to deprive the Petitioner of the claim for regularisation in service after he has put in 10 years in service. It is well set. tied that if such an employee is continued for a fairly long spell then the authorities are obliged to consider his case for regularisation, of course, provided he is eligible and qualified according to Rules and his service-record is satisfactory and further, his appointment does not run counter to the reservation policy of the State. In the present case the Respondents have not come up with the case that the Petitioner is not eligible and qualified according to Rules, nor it has been brought on the record by them to show that his service record is not satisfactory and/or his appointment runs counter to the reservation policy of the State.

7. In that view of the matter, in my opinion, the Respondent authorities were bound to consider the case of the Petitioner for regularisation before terminating his service by the impugned order. Accordingly, in the peculiar facts and circumstances of this case and considering his long spell of service, I direct the Respondents to take back the Petitioner in the employment of the Biscomaun in the capacity he was working before the impugned order was passed within a period of one month from the date of receipt/production of copy of this judgment/order and further the Respondents are directed to consider the case of the Petitioner for regularisation subject only to the aforementioned conditions which have also been laid down by the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc.,

8. The writ application is accordingly disposed of.