
(2014) 08 PAT CK 0032

In the Patna High Court

Case No : Letters Patent Appeal No. 643 of 2012

Pramod Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2014) LabIC 4070

Hon'ble Judges : Rekha M. Doshit, C.J.; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Yogendra Mishra, Binod Kumar and Sanjeev Kumar, Advocate for the Appellant; Anand Kumar Ojha, Kumar Manish and Alok Kumar, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.—These Appeals under Clause 10 of the Letters Patent have been preferred by the writ petitioners in C.W.J.C. Nos. 953 of 2012 and 2097 of 2012 against the common judgment and order dated 27th March, 2012 passed by the learned single Judge insofar as C.W.J.C. Nos. 953 of 2012 and 2097 of 2012 have been dismissed. The appellants are the Junior Engineers (Electric) employed by the respondent-Bihar State Electricity Board (now Bihar State Power Holding Company) (hereinafter referred to as "the Board"). Pursuant to the Job Contract Notice No. 1 of 2006 published in January 2006, the appointment was made for a period of six months on consolidated pay of Rs. 8,000/-. After expiry of the said period of six months, the appellants were again engaged for further six months. After expiry of the second term of six months, the appellants claim that they have been continued as Junior Engineers without interruption till the employment notice was issued in November 2011.

2. Feeling aggrieved by the Employment Notice No. 7 of 2011, the appellants approached this Court under Article 226 of the Constitution in above writ petitions to challenge the Employment Notice No. 7 of 2011 and to claim a right to regularization in service of the Board.

3. The petitions were contested by the Board. According to the Board, the appellants were selected only for temporary appointments. The temporary appointments made on contract did not create a right to employment unto any of the appellants. The appellants had, at the time of contractual appointment in 2007, given undertaking to the Board that the appellants shall not claim a right to employment in the Board by virtue of the temporary appointment made on contract for a period of six months.

4. The learned single Judge relying upon the judgments of the Hon"ble Supreme Court and this court held that the appellants had no right to employment in the Board. In view of the said finding, the learned single Judge has dismissed the writ petitions. Therefore, these Appeals.

5. Learned advocate Mr. Yogendra Mishra has appeared for the appellants. Mr. Yogendra Mishra has submitted that although the initial appointment of the appellants was on contract for a period of six months, after extension of the said period of six months by further six months, no further order of appointment was made. The appellants have thus acquired a semi-permanent status in the service of the Board. The Board is, therefore, under an obligation to regularize the service of the appellants as permanent employees. Mr. Yogendra Mishra has submitted that although the appellants have been continuing in service of the Board for the period of ten years and they have acquired status of semi-permanent employees, the Board, instead of making the appellants permanent servants of the Board, has made an attempt to bring in the Engineers by the direct recruitment. The Board is, therefore, not justified in issuing Employment Notice No. 7 of 2011.

6. Learned advocate Mr. Anand Kumar Ojha has appeared for the Board. Mr. Anand Kumar Ojha has submitted that as far as challenge to the Employment Notice No. 7 of 2011 is concerned, the cause of action does not survive. He has submitted that the selection process pursuant to the said employment notice has been undergone and the appointments have been made. The challenge to the said employment notice, therefore, does not survive. He has next submitted that mere employment temporarily made on consolidated pay would not confer any right upon the appellants for such temporary employment does not create a right to permanent employment.

7. We are unable to agree with the learned advocate Mr. Yogendra Mishra. Mere passage of time would not confer a right to employment upon a person in public employment appointed on contract for a short period. Employment in the public organization has to be made in accordance with relevant rules. In absence of any rules, the general principle of equal opportunity to all shall apply. If the persons appointed temporarily are later on regularized by mere passage of time, that would defeat the basic principle of public employment and for that matter Articles 14 and 16 of the Constitution of India.

8. The judgments referred to by the learned single Judge clearly postulate that

mere continuance in service would not crystallize into a right to permanent employment. In absence of right accrued to the appellants, their claim for permanent employment has rightly been rejected by the learned single Judge.

9. We see no merit in these Appeals.

10. Appeals are dismissed in limine. Interlocutory Application stands disposed of.