
(2005) 02 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 6445 of 1999

Prem Prakash Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 167

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioners and the Learned Counsel for the State. The petitioners herein were appointed on Grade IV posts in the Department of Road Construction at Arrah by different letters of appointment dated 30.12.94 and 9.12.94 in the individual cases. These appointments were initially ad hoc for three months. The first counter affidavit would state that the services of the petitioners were extended for a further period of three months by an order dated 15.3.1995.

2. The services of the petitioners were then terminated by an order dated 17.8.95 bearing No. 1019. The list of persons terminated which finds mention in the impugned order at Annexure 4 contains the names of 30 persons including the petitioners. The grievance of the petitioner is that having terminated services of the petitioners and other by the impugned order the persons at serial 4 and 11 to 30 have subsequently been taken back in service. The petitioners who are similarly situated have been ignored from consideration for extraneous reasons.

3. The initial counter affidavit filed on behalf of the respondents clearly contends that the reason for termination of the services of the persons, including the petitioners, at Annexure 4 was the illegal nature of their appointment and the government policy for abolition of the posts in question and the decision not to make further appointments on the said posts. Para 9 of the counter affidavit would however aver that if in future the demands of the work in the Road Construction Department so require the engagement of the petitioners can be

considered in Grade IV posts. The second counter affidavit by the respondent No. 2 would confirm the allegations of the respondent notwithstanding their stand in the further counter affidavit of having re-appointed persons from the impugned order at Annexure 4, whose services were terminated alongwith the petitioners. this Court on the previous occasion with reference to Annexure B/1 of the counter affidavit had required the respondents to place on record the alleged written communication from the Executive Engineer concerned pursuant to which such persons whose services had been terminated alongwith the petitioners came to be re-appointed. No such affidavit has been filed and a prayer was made on behalf of the respondents for further adjournment.

4. The ordersheet would reveal that the respondents have been extremely tardy in assisting the expeditious disposal of this writ application notwithstanding observation for imposition of costs and the direction for personal attendance of respondent No. 2 which was never complied with. Undoubtedly the services of the petitioners were terminated in August 1995 and similarly situated persons re-appointed in November 1995, while the present writ application came to be filed in July 1999. Perhaps the delay could have been one of the consideration to non-suit the petitioners.

5. this Court, in the facts and circumstances, and on the pleadings of the parties arrives at the conclusion that the action of the respondents appears to be apparently whimsical and arbitrary on the very face of it. this Court would not like to detain the proceedings any further. The Court is left with an uncanny suspicion with regard to the conduct of the respondents more particularly para 9 of their first counter affidavit which appears to have been incorporated merely as a measure of safety valve.

6. The writ application is therefore disposed with a direction to the respondent No. 2 to himself examine the case of these petitioners vis-a-vis similarly situated persons mentioned in Annexure 4 who have subsequently been reinstated while the petitioners have been discriminated. If the appointments were illegal the reasonings would apply equally to all. The respondents cannot be permitted to resort to arbitrariness by pick and chose. Let respondent No. 2 carry out such consideration and take a fresh decision with regard to the petitioners in view of the stands in the counter affidavit at para 9 noticed above. Let such consideration be done by the respondent No. 2 within a period of four months from the date of receipt/production of a copy of this order. Should the respondent No. 2 propose to pass an order adverse to the petitioners he shall be required to pass a reasoned and speaking order.

7. Before parting with the case, in the facts and circumstances herein, this Court would observe that if the respondent No. 2 comes to the conclusion that the persons situated alike the petitioner in Annexure 4 had been wrongly taken back in the service, justice would demand consequential action by him against those that ordered their re-employment in which circumstances obviously no benefit would flow to the petitioners. The writ application is accordingly disposed off with

the observations and directions indicated above.