

(2011) 04 PAT CK 0161

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10472 of 2003

Rabindra Nath Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Citation : (2011) 59 BLJR 1136 : (2011) 2 PLJR 914

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard learned Counsel for the Petitioners and the counsel appearing for the State.

2. Petitioners had earlier moved before this Court in C.W.J.C. No. 10546 of 2002 for almost similar relief, as prayed in the present Writ Application. Prayer of the Petitioners in earlier Writ Application was for a direction to the Respondents to absorb their services under Minor Irrigation Department, Tube Well Project, with effect from the due date or from the date, persons, similar to them or juniors to them have been absorbed. Their prayer was also to give all legal, consequential and financial benefits on account of their absorption. On the earlier occasion, prayer of the Petitioner was for quashing of Order, dated 18.07.2002, whereby Petitioners were not found fit for absorption, as their appointment letters had been found to be forged and fabricated. The Writ Application was allowed. The impugned order, dated 18.07.2002 was quashed and the Secretary, Minor Irrigation Department, Government of Bihar was directed to provide an opportunity to the Petitioners and allow them to adduce evidence, oral and documentary, in support of their contention and after considering the same, pass an appropriate order in accordance with law, assigning reasons for coming to such conclusions. Petitioners were also directed to appear, file their show-cause along with supporting documents to show genuineness of their appointment letters.

3. In the light of direction of this Court, the Respondent No. 2 considered the claim of the Petitioner and by impugned order dated 05.05.2003, contained in Memo No. 2277, issued under the signature of the Secretary, Minor Irrigation Department, Government of Bihar (Respondent No. 4) Petitioner's claim for absorption was again rejected on the similar ground, that their letters of appointment are forged and fabricated documents, as such they do not have entitlement for being absorbed on the post.

4. Prayer of the Petitioners is for quashing of impugned order, contained in Annexure-8 and for a direction to the Respondent No. 4 for their absorption in service with effect from the date services of the juniors to the Petitioners, have been absorbed, with all consequential benefits, in terms of Order, passed in C.W.J.C. No. 10546 of 2002.

5. Petitioner's are claiming that they were initially appointed on Master Roll Basis under the Water Development Corporation, with effect from 1977. They were confirmed under Work Charge Establishment with effect from 1979 and 1980 as Khalasi, Helper, Fuse man and subsequently their services were regularized on the posts, they were working.

6. State Government vide Resolution No. 1216, dated 31.03.1973 directed to constitute Bihar Water Development Corporation in place of Bihar State Tube Well Organization. Bihar Water Development Corporation came into existence with effect from 01.04.1974 and services of all employees (temporary / permanent or in Work Charge Establishment working in Muffasil Offices) were transferred and deputed to Water Development Corporation, but no service condition Rules of these employees could be framed, till the date. Government again decided to wind up Bihar Water Development Corporation. Resolution to wind up and liquidate the Water Development Corporation was taken vide Resolution No. 4648 and 4649, dated 13.08.1986. On account of this resolution, employees working under the Water Development Corporation would be deemed to be employees of Minor Irrigation Department, Tube Well Project, with effect from the date of the Resolution. It was also resolved that services of all employees, working under the Water Development Corporation will be absorbed under Minor Irrigation Department. There were two classes of employees working in the Water Development Corporation (1) Employees, who were working with Bihar State Tube Well Organization, prior to the constitution of Water Development Corporation and whose services were transferred to Water Development Corporation; and (2) Employees appointed after the creation of Water Development Corporation. Altogether 10617 employees (including Officers) were working under Water Development Corporation at the time of its dissolution. Subsequent to its dissolution on 13.08.1986, services of the Officers / Employees working under the Water Development Corporation were absorbed under the Minor Irrigation Department in different phases. Almost 95 percent Officers / Employees were absorbed. However, there were some employees, whose services were yet to be absorbed. A resolution was taken by the Water Resources

(Minor Irrigation Department), Government of Bihar on 08.05.1996, wherein it was decided that 527 employees in different categories, whose services have still not been absorbed, their services should also be absorbed, as several Writ Applications and Contempt Applications have been filed and pending before the High Court. The resolution was that employees, who were working in the Bihar State Tube Well Organization, prior to creation of Water Development Corporation, their services be absorbed against the existing equivalent vacant posts. Employees, appointed subsequent to creation of the Water Development Corporation, for their absorption in the Minor Irrigation Department, the proper enquiry should be done and their services be also absorbed in order of seniority against the existing vacancies. On account of this resolution, a list of 474 employees was prepared, whose services were yet to be absorbed. In this list, name of two Petitioners, Ram Chandra Rai (Petitioner No. 4) is at serial No. 339 and Sita Ram Rai (Petitioner No. 10) is at serial No. 166. So far other 08 Petitioners are concerned, their names did not find place in the list of residual employees, with regard to whom resolution have been taken by the Department on 08.05.1996 for absorption. This resolution has been annexed with the Writ Application as Annexure-4/1. In the Counter Affidavit filed on behalf of Respondents, there is no denial so far the resolution contained in Annexure-4/1 is concerned. However, vide this resolution also, a proper enquiry before absorption was considered mandatory.

7. Petitioner's case is that they were initially appointed on Master Roll basis, subsequently brought in the work charge establishment and finally regularized on the posts, they were working. But subsequent to merger of Water Development Corporation, the State Government issue a Gazette Notification, dated 03.02.1988, by which a High Level Committee, consisting of four members, were constituted under the leadership of the Chairman of Public Enterprises. The High Level Committee was directed to examine claims of the employees of Water Development Corporation, for absorption. The Chief Engineer of the Circle issued direction to the Superintending Engineer and the Superintending Engineer in turn issued directions to the Executive Engineers to submit details regarding services of employees, working under them. The High Level Committee had to enquire and examine the Service Book, Charge Role Register as well as connected records, submitted by the Executive Engineer and Superintending Engineers and accordingly, recommendation for absorption of the services of the employees, working under Water Development Corporation was to be made by the High Level Committee. Absorption was to be made and gradation list of the employees to be prepared on the basis of such recommendation made by the High Level Committee.

8. Petitioner's case is that the Executive Engineer under whom they were working had taken from them their Appointment Letters, Service Books, Attendance Register, but he could not submit it before the High Level Committee and due to this no recommendation could be made in their favor, for their absorption. It is also their case that 83 persons were appointed through three

appointment letters (Annexure-A series). Out of 83 persons, 73 have already been absorbed as per the recommendation of the High Level Committee, only 10 Petitioners, though appointed in a similar circumstances, could not be recommended for absorption on account of the latches on the part of the Executive Engineer.

9. Statement in the Counter Affidavit is identical to the finding recorded in the impugned letter (Annexure-8), through which claims of Petitioners have been rejected. The reason as stated in the impugned order (Annexure-8) are - (i) none of the Petitioners could produce their original appointment letters (ii) there are interpolations and ante dating in Service Book of the Petitioners, as several places over writing, cutting and interpolations are apparent in their Service Book. In sum and substance, entries in their Service Books are forged by way of interpolation. Finding in that impugned letter, Annexure-8, is that Petitioners' appointments are illegal. No legal appointment letters were issued in their favor. They have got prepared forged and fabricated Service Books in connivance with the employees working in the local offices. On the basis of such documents their appointment can not be considered to be valid. Finding recorded in the impugned order is identical to the finding recorded in the earlier order, which was quashed by the High Court and Petitioner's claim for absorption have been rejected.

10. In course of hearing of the case, several opportunities were given to the counsels appearing for the State for production of appointment letters of those employees, who according to the Petitioners, were appointed along with them through same appointment letters (Annexure-1 series). The appointment letters of those employees were not produced. Only Service Book of one Krishna Kant Jha was produced to show that his date of appointment is different and the claim of the Petitioners that they were also appointed with him is incorrect.

11. Counsel for the Petitioners, in reply to this, has submitted that Service Book of Krishna Kant Jha, produced by the Respondents, is not of the same Krishna Kant Jha, who was appointed along with the Petitioners through same appointment letters.

12. Since the documents could not be produced before the Court, either by the Petitioner or by the Respondents, as such genuineness of their claim and counter claim could not be verified. However. This is an admitted fact that Petitioners have continuously worked since 1977 till 1995. Their Service Books were opened. They were allowed increment, time-bond-promotion and all facilities, which were being allowed to a regular employee. In case it is alleged by the Respondents that entries made in their Service Book is forged and fabricated, it was necessary for the Respondents to make enquiry in this regard from such persons, whose signatures are there in the Service Book of the Petitioners. The Executive Engineers, who have verified their Services time to time, in case it is alleged that those signatures are forged, it was mandatory that in presence of Petitioners, enquiry should have been made from such persons. Only on their denial, the allegation regarding forged signature or interpolation in the Service Books could

have been made by the Respondents. The enquiry, which has been conducted by the Respondents in the light of the direction of the High Court, is an ex-parte enquiry. This has been the case of Petitioners, right from beginning that the Executive Engineer under whom they were working had taken from them their original Appointment Letters for its submission before the High Level Committee. The Executive Engineer failed on his part and he did not submit it before High Level Committee, due to which no recommendation could be made in their favor by the High Level Committee. In order to examine this statement of the Petitioners, it was essential that the concerned Executive Engineer should have been interrogated, but that was also not done.

13. Petitioners were allowed to continue in service almost for 26 years. In the last phase of their service, in stead of giving them benefit of absorption, they were removed from their service by the order, dated 18.07.2002. This order was quashed by the High Court and again by the impugned order dated 05.05.2003, they have been terminated from their service. So far Petitioner Nos. 4 and 10 are concerned, their names find place in Annexure-4/1, dated 08.05.1996, which is the list of residual employees, to be absorbed. In this way, the statement made in the Counter Affidavit of the Respondents that all documents produced by them including their Service Book are full of interpolations, as such forged and fabricated, can not be believed. They were admittedly in the list of such employees, who were working under the Water Development Corporation on the date of its merger under Minor Irrigation Department. So far Petitioner Nos. 1, 2, 3, 5, 6, 7, 8 and 9 are concerned, they have also worked for a very long time, almost more than 26 years. In the fag end of their service career, they should not have been thrown out of service on this ground that in their favor no legal appointment letters were issued. In case they would not have been appointed, how they were allowed to continue on their posts by the Respondents for such a long time. The enquiry was also not conducted properly, rather it was just an eye wash. For all these reasons, I find that Respondents could not be allowed to discriminate the Petitioners, by taking decision of absorption of other employees of the erstwhile Water Development Corporation, subsequently merged under the Minor Irrigation Department, Government of Bihar, and refuse same benefit to Petitioners.

14. Accordingly, the impugned order, contained in Annexure-8, is quashed. Respondents are directed to absorb the Petitioners on the posts they were working with effect from the date similarly situated persons / juniors to the Petitioners have been absorbed on such posts with all consequential benefits. The dues arrears of salary shall be paid to the Petitioners for the period they have worked. For the period they have not worked, they will be given benefit of continuation in service and all other consequential benefits on account of their continuation, except the arrears of salary. Admittedly, the Petitioners have worked till the date of issuance of termination letter, dated 13.07.2002. The payments of salary have been stopped to the Petitioners since 1995. They are entitled for arrears of salary with effect from 1995 till 13.07.2002. The

Respondents are directed to comply the direction of this Court regarding the issuance of order of absorption, their reinstatement and all other consequential benefits within eight weeks from the date of production / communication of this Order.

Accordingly, this Writ Application is allowed.