
(2013) 06 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8156 of 1995

Radha Pandey

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 3 BLJud 121

Hon'ble Judges : S.N. Hussain, J.

Bench : Single Bench

Advocate : Dr. Uma Shankar Prasad and Mr. Kamala Kant Tiwary, Advocates, for the Petitioners; Mr. Souvendu Pandey, A.C. to 23, for the State; Mr. Satish Chandra Jha-3, Advocate, for the Respondents No. 2 and 3

Final Decision : Allowed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioners for the following reliefs :-

(i) For issuance of a writ in the nature of certiorari or any other appropriate writ/writs quashing the order dated 07.07.1995 passed by the Secretary (respondent no.3), by which the claim of petitioners being Treasure Guard and promotion to the post of Clerk and in selection grade scales was rejected.

(ii) For issuance of a writ in the nature of mandamus or any other appropriate writ/writs commanding and directing the respondent-Gandak Command Area Development Agency, to give promotion/appointment to the post of Clerk with effect from 11.02.1982.

(iii) For issuance of an appropriate writ commanding and directing the respondents to give promotion both time bound and selection grade scales from the cadre of clerk.

(iv) For a direction to the respondents to make payment of the arrear of salary due to the petitioners in promoted scales.

2. I.A. No. 1374 of 1997 was filed in the said writ petition by the petitioners for adding one more relief to the aforesaid reliefs claimed in the writ petition, which is as follows petitioners :-

(v) For quashing order dated 06.03.1997 as contained in office order no.1 Estab. 40/93-94/74 passed by the Area Development Commissioner-cum-Chairman, Gandak Command Area Development Agency, Muzaffarpur (respondent no.2) to the extent of closure of two Sub-Divisions of the Agency.

3. The claim of the petitioners was that on 08.12.1978, the Board of Gandak Command Area Development Agency (hereinafter referred to as "the Agency" for the sake of brevity), which was a statutory body created by the State Government under the Bihar Agricultural Rural Area Development Agency Act, 1978 (hereinafter referred to as "the Act" for the sake of brevity), issued resolution no. 14 resolving under section 8 of the Act to create and fill up various posts in the Agency including the post of Treasure Guards and, accordingly, an advertisement was issued on 12.07.1979 in the newspaper.

4. Learned counsel for the petitioners submitted that in pursuance of the said advertisement, these petitioners (ten in number) were called through the Employment Exchange for the 11 sanctioned posts of Treasure Guards requiring minimum qualification of Matriculate. Thereafter, the petitioners were called for interview on 07.03.1980, where after, a merit list was prepared and letters of appointments were issued to the petitioners on different dates appointing them in the scale of Rs.165-204/- and after joining the petitioners continued to serve the Agency as Treasure Guards on the sanctioned posts and, thereafter, they were also allowed to cross the efficiency bar.

5. Learned counsel for the petitioners further submitted that on 10.01.1988 some of the petitioners were even allowed to officiate on Class III posts in the Agency by issuing letters to that effect. Thereafter, on 03.12.1990 the petitioners and others were declared regular employees of the Agency. In spite of the aforesaid facts, five persons, who were initially appointed in Class IV posts as Treasure Guards/Peons in lower scale of Rs.155-190/-, were granted promotion to the posts of Clerk although they did not even possess the minimum qualification of Matriculation, without considering the petitioners' claims, who, apart from having required qualification, were working in a higher scale.

6. In the said circumstances, the petitioners approached this Court by filing C.W.J.C. No. 12816 of 1993, in which the respondents filed counter affidavit taking a plea that the post of Treasure Guard was not a sanctioned post and hence the petitioners' appointments were not according to law and as such they were not entitled to be considered for their promotion. However, a Bench of this Court, vide order dated 10.05.1995, disposed of the aforesaid writ petition holding that the only question for determination was as to whether the petitioners were entitled to consideration of their case for promotion and the relevant document, prima-facie, supported the assertion made on behalf of the

petitioners that their appointments on Class IV post were valid and hence the authorities of the Agency were directed to consider the grievance of the petitioners and decide the question as to whether the posts of Treasure Guards had been sanctioned and, thereafter, to pass an appropriate order in accordance with law within two months from the date of receipt/production of a copy of that order.

7. In view of the aforesaid order of this Court, the petitioners filed their representation before the authorities of the Agency and the authorities passed a cursory and non-speaking order dated 07.07.1995 rejecting the claim of promotion raised by the petitioners without assigning any reason and without even appreciating the facts and circumstances of the case. In the said circumstances and having no other remedy left, the petitioners had to file the instant writ petition bearing C.W.J.C. No. 8156 of 1995 on 27.09.1995 for the reliefs mentioned above.

8. Learned counsel for the petitioners averred that during the pendency of this writ petition the petitioners were removed/terminated from their services by the Agency pursuant to an order issued by the State Government on 09.05.2006 without appreciating that they had worked for more than 25 years on the sanctioned posts of Treasure Guards and Soil Samplers. Hence, the petitioners filed C.W.J.C. No. 9129 of 2006 questioning the authority of the State Government to issue direction to the statutory Agency to remove the petitioners on the solitary ground that the petitioners were appointed against the posts, which had not been sanctioned or approved by the State Government.

9. Although the respondents vehemently opposed the contentions of learned counsel for the petitioners, but a Bench of this Court, after fully considering the claim of the petitioners along with the claims of other similarly situated persons, who had filed C.W.J.C. No. 8555 of 2006, allowed both the writ petitions vide order dated 12.04.2007 holding that the petitioners had been regularly appointed on the vacant posts created by the Agency and had worked as such for more than 25 years and hence they had a fundamental right to continue in service and be paid their salaries regularly. It was also held that the action of the State Government directing the Agency to remove the petitioners by the impugned letter dated 05.04.2006 deserved to be quashed and, accordingly, it was quashed and the respondents were directed to reinstate the petitioners in service. The said order of the learned Single Judge was upheld by a Division Bench of this Court vide order dated 25.09.2007 dismissing L.P.A. No. 409 of 2007 and L.P.A. No. 410 of 2007, both filed by the Agency. The Agency also moved the Apex Court vide S.L.P. (Civil) No. 3570 of 2008 and S.L.P. (Civil) No. 3985 of 2008, but both of them were dismissed by the Supreme Court vide order dated 26.07.2012.

10. Learned counsel for the petitioners argued that the foregoing facts clearly show that the plea of respondent-authorities that the petitioners were appointed against non-sanctioned posts had been finally rejected by the courts of law up to

the Supreme Court and hence the petitioners, who possessed the requisite qualifications and were appointed in a higher scale of pay of Rs.165-204/-, were entitled to get priority in the matter of promotion to Class-III posts reserved to be filled up by promotion i.e. at least 50% of all the sanctioned posts of Class III. Thus, the impugned rejection of the petitioners representation by the authorities concerned without disclosing any ground by a non-speaking order was clearly illegal, arbitrary and mala fide and was fit to be quashed and the petitioners were fully entitled to promotion on Class III posts as even their juniors, who were working in a lower scale of pay of Rs.155-190/- and were lesser qualified, had been promoted as far back as in February, 1982.

11. On the other hand, learned counsel for both the sets of respondents, namely, respondents no. 2 and 3 as well as respondents no. 1 and 4, vehemently opposed the contentions of learned counsel for the petitioners claiming that the object of the Act of 1978 was to provide integrated rural and agricultural development of Command areas of Irrigation Projects and other specified areas in the State of Bihar by the Agency. Section 8 of the said Act provided that the Board of the Agency may appoint such officers and staff on such employments and on such conditions of services as may be laid down in the regulations, but, admittedly, at the time of petitioners' appointment no regulation having been framed, any such appointment made by the Agency was ab initio illegal and void.

12. Learned counsel for the respondents stated that section 24 of the Act provided that the Agency shall use the grants or subscriptions received from the Central Government, State Government or local authorities for the purpose, for which those grants or subscriptions were made and will not divert it to any other heads. The Agency did not have any fund of its own and was managed and run from the funds made available by the State Government and the Central Government. Each of them had to contribute half and half and its budget was also approved by the Government, which had effective control in the matter of appointment and hence no payment can be made to any employee unless the post is approved by the Government and the budget of the Agency is approved by the Government post-wise.

13. Learned counsel for the respondents submitted that the authorities of the Agency appointed the petitioners in complete violation of the legal provisions and adopted the practise of paying their salaries by diverting salaries of other posts, which were vacant as payments to Treasure Guards were made from salaries earmarked for the post of "Blue Printer" and payments to Soil Samplers were made from the salaries earmarked for the post of "Cartographer". The State Government had never approved any such post of Treasure Guard or Soil Sampler nor sanctioned any budget for payment of salary against these posts. In the said circumstances, when the Workers' Union of the Agency raised grievances of the workers regarding promotion, the Board of Directors of the Agency considered the matter and recommended six Class IV employees working on the posts sanctioned by the Government for their promotion to Class III posts

and vide memo dated 11.02.1982 promotions were allowed to the said six Grade IV employees. Hence the aforesaid promotions were not at all illegal or perverse.

14. Learned counsel for the respondents averred that although post of Treasury Guard is Grade IV post, but its cadre is separate from other Grade IV posts and its seniority list is also separate. In the said circumstances, when a Bench of this Court, vide its order dated 10.05.1995 passed in C.W.J.C. No. 12816 of 1993, directed to dispose of the representation of the petitioners, the authorities considered the claim of the petitioners for promotion to Class III post and after appreciating all aspects of the matter rejected their claim and communicated the same to the petitioners vide letter dated 07.07.1995.

15. Learned counsel for the respondents argued that the petitioners had been granted time bound promotion to Jr. Selection Grade and no persons, junior to them, had been granted regular promotion. Now Bihar Agriculturist & Rural Area Development Agency Service Condition (Discipline, Control & Appeal) Rules, 2010 (hereinafter referred to as "the Rules" for the sake of brevity) has been framed, Rules 43 and 44 of which deal with the procedure of promotion. Hence, now the case of the writ petitioners and other similarly situated employees of the Agency with respect to promotion has to be considered in terms of the aforesaid Rules.

16. Considering the averments made by learned counsel for the parties and the materials on record, it transpires that a Bench of this Court, vide order dated 12.04.2007 passed in C.W.J.C. No.9129 of 2006 and C.W.J.C. No. 8155 of 2006, had specifically held that the petitioners had been regularly appointed on the vacant posts created by the Agency and had worked as such for more than twenty five years and hence they had a fundamental right to continue in service and be paid their salaries regularly. Furthermore, the respondents have themselves admitted that time bound promotions to the posts of Jr. Selection Grade had also been granted to the petitioners. In the said circumstances, they cannot validly claim now that the posts of Treasury Guard and Soil Samplers were not approved by the Government and as such the petitioners were not entitled to any relief as they were working on those posts.

17. No doubt, section 8 of the Act of 1978 provides that the Board of the Agency may appoint such officers and staff on such employments and on such conditions of service as may be laid down in the regulations and as such the said Rules was prescribed in 2010, but during the interim period of 32 years, all the affairs of the Agency were governed by the resolutions and Government letters issued by the authorities themselves and in absence of any rules or regulations prescribed by the authorities, such resolutions, rules and instructions were legal and effective. Hence resolution dated 08.12.1978 issued by the authorities under the provision of section 8 of the Act was legal and valid and according to the said resolution, posts were created and filled up.

18. This also finds support from resolution no. 2215 dated 11.02.1985 issued by

the Department of Personnel, State of Bihar itself, which was followed by letter dated 12.12.1985 issued by the Agency and subsequent resolution no. 786 dated 04.10.1990 issued by the Department of Personnel and Administrative Reforms, Government of Bihar. Hence, the respondents are not justified in claiming that the appointments of the petitioners on the posts of Treasure Guard and Soil Samplers as well as their promotions to higher grade/scale were illegal and as such the impugned order of the Secretary of the Agency (respondent no.3) dated 07.07.1995 rejecting the claim of the petitioners apart from being an absolutely non-speaking order without considering any point or material, is also illegal, arbitrary and per verse. Similarly, subsequent order dated 06.03.1997 passed by the Area Development Commissioner-cum-Chairman of the Agency (respondent no.2) is also similarly illegal, arbitrary and perverse.

19. In the said circumstances, the above mentioned two impugned orders are hereby quashed and respondent-authorities of the Agency are directed to grant promotion/appointment to the petitioners to the posts of Clerk with effect from 11.02.1982 including time bound promotions and selection grade scales in the cadre of Clerk and to make payment of arrears of salary to the petitioners in the promoted scales with effect from the aforesaid date within six months from the date of receipt/production of a copy of this order.

20. Accordingly, this writ petition is allowed.