

(2018) 01 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22 Of 2015

Ram Ekwel Singh

APPELLANT

Vs

State Of Bihar Through Its Secretary And Ors

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Citation : (2018) 2 PLJR 172

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Ajay Kumar Singh, Harish Kumar

Final Decision : Allowed

Judgement

1. Head the petitioner and the State.

2. The petitioner is aggrieved by the fact that the respondent no.2, while making appointment in compliance of the policy decision of the Government for retrenched employees such as the petitioner, who were working on daily wages on or before 11.12.1990, has overlooked the claim of the petitioner, though others being junior to the petitioner having less period of service as daily wage employee to their credit, have been appointed.

3. The facts giving rise to the claim of the petitioner is that the petitioner was found fit for the benefit of regular appointment keeping in view his past service as daily wage employee. The Executive Engineer, Water Resources Department, Champaran Division, Motihari (respondent no.5) submitted petitioner's name in the list to the District Magistrate, East Champaran at Motihari for consideration of his candidature for appointment on regular basis along with others. The meeting of the District Establishment cum Selection Committee was held on 08.07.2008 and the select list was prepared for making appointment of daily wages against the vacant post of the respective department of the District in which the respective panelist had been working. Petitioner's name in the said list was at Serial no. 100. Though the petitioner had been recommended by the office of the

Executive Engineer, Water Resources Department, Champaran Division, Motihari (respondent no.5) but his name was assigned at Serial No. 100 in the panel of the Malaria Department, East Champaran at Motihari. This was clearly a mistake as the petitioner had neither been recommended by the District Malaria Officer nor had he been working in the said office. Due to the said mistake, the petitioner was not appointed.

4. Counsel for the petitioner submits that only when others, junior to the petitioner having less period of service as daily wage employee to their credit were appointed, then the petitioner realized that he had been left out.

5. Annexure 6 dated 16.09.2009 and Annexure 6a dated 18.09.2009 are the two applications made by the petitioner before the Chief Engineer, Water Resources Department, Balmikinagar, Camp Motihari (respondent no.3) and the District Magistrate, Motihari (respondent no.2). At the top left corner of both applications there was receiving by the respective office. The petitioner has raised his grievance that due to the said mistake on part of the authorities, his name has wrongly been mentioned at Serial No. 100 against the wrong department and as such he has been denied appointment on the regular post, even though others being junior to him having less period of service as daily wage employee to their credit, have been appointed.

6. No action was taken by the authorities in the case. When the petitioner approached this Court by the instant writ petition two counter affidavits have been filed. One on behalf of the respondent no.3 and the other on behalf of the respondent no.2. Specific assertion of the petitioner regarding his two aforesaid applications addressed to these respondents vide Annexures 6 and 6a respectively have not been denied in specific terms in the counter affidavits of respondents no. 2 and 3. In the counter affidavit filed on behalf of respondent no. 2, it is accepted that due to clerical mistake the name of the writ petitioner appears to be typed in the list of workers of Malaria Department whereas his name should have been mentioned in the list of the Water Resources Department. The counter affidavit further states that the claim of the petitioner cannot be considered as the age of the panel in question was of one year and the petitioner did not bring into the notice of the District Magistrate for necessary rectification.

7. This has been stated by the District Magistrate for the first time in the instant proceeding. The said stand has been taken in spite of the fact that Annexure 6/a was submitted before him on 18.09.2009 i.e. within the validity of the Panel as per the policy made by the District Magistrate. In the aforesaid circumstances, because the two authorities sat tight over the petitioner's application for making necessary correction in the panel dated 20.09.2008, the petitioner cannot be made to suffer. The petitioner was entitled to consideration of his case for appointment on regular post in the light of the recommendation/select list dated 20.09.2008 as he has also been found fit for the benefit of regularization. However, since the petitioner has not impleaded the persons, who were junior to

him and were regularized ignoring his case, he cannot claim for giving him seniority over those whom he alleges to be junior to him. The petitioner, in the said facts can only claim consideration and benefit of regularization prospectively.

8. This Court finds that delay which has now been relied upon by the respondent authorities to deny the petitioner consideration of his case for regularization has been occasioned by the mistake of the respondents in placing the petitioner's name in the panel of another department than to which he was entitled and also due to fault of the respondent authorities in not considering the petitioner's representations contained in Annexures 6 and 6a made within the subsistence of the panel. For the lapse committed by the respondent authorities petitioner cannot be permitted to suffer and be denied consideration for the benefit of regularization. Respondents are clearly themselves to be blamed for the injustice meted out to the petitioner. The impugned denial seeks to take advantage of the lacuna on the part of the respondents in placing the petitioner at the undue position in the list of Malaria department and thereafter by not considering petitioner's claim even though he had made his representation within currency of the panel. Respondents cannot be permitted to take advantage of their own wrong. Reliance may be placed upon the judgment of the Apex court in the case of M.K.Sah Engineers & Contractors Vrs. State of M.P. reported in 1999(2) SCC 594 , paragraph 17 (relevant extract) of which is as follows:-

"17. No one can be permitted to take advantage of his own wrong....It will be a travesty of justice if the appellants for the fault of the respondents are denied the right to have recourse to the remedy of arbitration... The party at fault cannot be permitted to set up the bar of non-performance of pre-requisite obligations so as to exclude the applicability of operation of the arbitration clause".

9. Respondent no.2 in the aforesaid circumstances, would be obliged to consider petitioner's legitimate claim for regular appointment as he has already been found fit and was empanelled for appointment on regular post in the Water Resources Department. Since the District Magistrate has not assigned any other reason for not rectifying their own mistake other than lapse of panel, which also is due to the respondents inaction in considering the petitioners applications Annexures 6 & 6a which had been made within subsistence of the panel, there appears to be no other impediment to appoint the petitioner on the regular post. Respondents would be obliged to consider the petitioner for regular appointment within a period of 8 weeks from the date of receipt/production of a copy of this order, in Water Resource Department, subject to availability of post.

10. With the aforesaid observations and directions, the writ petition stands allowed.