
(2006) 05 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 16285 of 2004

Ram Lakshan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Citation : (2006) 3 PLJR 21

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Vishwa Nath Ram and Ajay Kumar, for the Appellant; S.S. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Work Charge Establishments were constituted by the State for its different Engineering Divisions in order to cope up with the work that those divisions were required to execute. Accordingly, when there would be work it would require engagement of additional workers. Such works will be executed and after the work is completed the workers engaged for such works will be disengaged. A policy decision was taken that if a person has worked in a Work Charge Establishment for a period in excess of three months and the work still remains to be done, he would remain associated with the Work Charge Establishment. Subsequently, it transpired to the State that there are many people attached to the Work Charge Establishments, who were working in the said establishments for a considerable period of time. Such engagees, by way of a policy, were decided to be regularized as regular permanent employees of the State. This policy was taken in 1981. In 1984, by way of another policy the State clarified that a person who was working in the Work Charge Establishment and brought in the regular establishment shall carry with him the post in the Work Charge Establishment to the permanent establishment of the State. Inasmuch as, the original thought of establishing work charge establishment did not remain a reality and instead whoever joined the work charge establishment continued to

remain associated with the work charge establishment and later on became members of the permanent establishment, the basic concept of engaging people in the work charge establishment was lost sight of. There was no provision to give promotion to people working in the work charge establishment, while, however, the word "promotion" used to be used loosely at the time of giving an assignment with higher responsibility to a person already working in the work charge establishment. The real meaning thereof was that the person is being given an assignment of higher responsibility. It was not a promotion in the strict sense. A person, who was working as Chowkidar for a considerable period of time in the work charge establishment, was found to be suitable for being assigned a higher responsibility and accordingly he was assigned the job of a Work Sarkar, but while assigning the job of a Work Sarkar, the authorities felt that the same should be treated as promotion. This created the confusion. While Work Charge Establishments did not provide for rules for promotion, the same were Government Establishments and any one working in any establishment of the Government can be promoted in terms of the rules made therefore. Overlooking that fact and also the fact that work charge establishment requires assignment of appropriate work to the people engaged by it and accordingly, there was no bar in assigning the job of a Work Sarkar to a Chowkidar, and vice versa, on the availability of work, by the letter dated 15.7.1994 the State directed to take appropriate steps against those who have been given promotion in the work charge establishments. As a fallout thereof, the order impugned in the instant case had been passed, compelling the petitioner to file this writ petition. The fact remains that the petitioner was engaged as Chowkidar in the work charge establishment. Subsequently, he was assigned the job of Work Sarkar. This happened on 10.10.1981. While, however, assigning the job of Work Sarkar to the petitioner it was mentioned that the petitioner is being promoted, when it act the same was not a promotion. That was only assignment of the job of Work Sarkar to the petitioner. In terms of the policy referred to above, the petitioner, as Work Sarkar, was regularised in the regular establishment on 1.1.1988. Petitioner, having worked as Work Sarkar continuously from 10.10.1981 until 9.10.1991, was accorded first time bound promotion with effect from 10.10.1991 in terms of the policy of the State framed for according such promotion, which, amongst others, provides that in the matter of grant of such promotion it has to be seen whether the person concerned continuously worked in the same post for a period of ten years. The aforesaid, by a stroke of pen, contained in the impugned order dated 15.10.2004, being Annexure-1 to the writ petition, has been over turned and the assignment of the petitioner as Work Sarkar in the work charge establishment has been cancelled proceeding on the basis that the same was a promotion and in the work charge establishment there was no scope of grant of promotion. Having assigned the petitioner with the responsibility of the Work Sarkar in 1981 and having permitted him to work as such in the work charge establishment upto 1.1.1988 and after having permitted him to work as such in the regular establishment since thereafter, by a stroke of pen he was reverted to the post of Chowkidar with a direction to recover the

difference of salary in between the salary of Chowkidar and Work Sarkar.

2. Having regard to the fact that the petitioner was assigned the duty of Work Sarkar with effect from 10.10.1981 and having regard to the fact that the petitioner was regularised in the permanent establishment as Work Sarkar and having regard to the fact that petitioner continuously worked as Work Sarkar upto the time he was regularised in the permanent establishment, in terms of the policy decision of the Government referred to above and thereafter continuously rendered service as Work Sarkar in the regular establishment, the benefits already accorded to the petitioner of such work already rendered, cannot be recovered on the ground that promotion of the petitioner from the post of Chowkidar to the post of Work Sarkar could not be given in the work charge establishment. There is no reason to consider the same to be a promotion. The same should have been considered as assignment of duty and payment of remuneration commensurate thereto.

3. In those circumstances, having noted the fact that the petitioner was accorded work to which he was found suitable and same having been denied to the petitioner unjustly by Annexure-1 to the writ petition, I quash Annexure-1 to the writ petition and allow the writ petition. No further recovery be made from the petitioner in terms of Annexure-1 to the writ petition and recovery that has been made from the petitioner be refunded to him within three months from today. In default, interest @ 10% p.a. will have to be paid.