
(2012) 05 PAT CK 0004

In the Patna High Court

Case No : LPA No. 1682 of 2010 in CWJC No. 7851 of 2009

Ram Pravesh Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Citation : (2012) 05 PAT CK 0004

Judgement

Chakradhari Sharan Singh, J.—The sole appellant was the writ petitioner in C.W.J.C. No. 7851 of 2009, which has been dismissed by the learned Single Judge vide an order dated 3.8.2010. Aggrieved by the said order dated 3.8.2010 passed by the learned Single Judge, this appeal has been preferred under Clause 10 of the Letters Patent of this Court. In the writ petition the petitioner sought for following four reliefs:--

(a) For grant of an appropriate writ for quashing the letter No. 3/vi/1/1017/2001-4022 dated 27th December, 2001 of the Commissioner and Secretary, Public Health Engineering Department, Government of Bihar (Annexure-4) declaring the service of the petitioner terminated on the ground, inter alia, that the appointing authority of the petitioner is unknown.

(b) For quashing the letter No. 4031 dated 28.6.2002 issued under the signature of the Secretary and Commissioner, Public Health Engineering Department amending the letter No. 4022 dated 27.12.2001 to the effect that the petitioner would be given the benefit of the daily wage employee in place of work charge employee with effect from 1.4.2001 (Annexure-8).

(c) For grant of an appropriate writ for quashing order No. 19 dated 18.1.2008, issued under the signature of the Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna issued under memo No. 64 dated 18.1.2008 (Annexure-13) rejecting the representation of the petitioner for his regularization.

(d) For grant of an appropriate writ for quashing that part of the resolution No.

639 dated 16.3.2006 (Annexure-9) whereby it has been resolved that the inter-seniority of daily wagers would be determined on the basis of their age.

2. 5th being omnibus, for issuance of appropriate writ and consequential relief. As regards 1st and 2nd relief, the writ petitioner has mentioned in the writ petition itself that against the order dated 27.12.2001 and 28.6.2002 the petitioner had preferred earlier writ petition vide C.W.J.C. No. 7210 of 2002.

3. The said C.W.J.C. No. 7210 of 2002 came to be disposed of alongwith other analogous cases vide an order dated 13.7.2006 (Ram Tapeswar Sah and Others vs. The State of Bihar and Others, C.W.J.C. No. 7359 of 2002 Reported in 2010 (3) PLJR 459 being the leading case). The order passed by the Division Bench of this Court dated 13.7.2006 has been annexed as Annexure-2 to the present writ application and has been reported in 2010 (3) PLJR 459.

4. A Division Bench of this Court considering rival contentions of the parties in the abovementioned C.W.J.C. No. 7359 of 2002 Reported in 2010 (3) PLJR 459 (Ram Tapeswar Sah & Others vs. State of Bihar & Others) and other analogous cases including the case of the petitioner herein passed the following order:--

13. From the aforesaid decisions of the Hon''ble Apex Court it is quite apparent that the law with regard to the matter in dispute is already settled and the authorities concerned are duty bound to deal with all such matters as per the law and spirit of the said order of the Hon''ble Apex Court and all the decisions of any Court, running contrary thereto, shall have no effect in the said matter. Hence, the State of Bihar is directed to immediately take steps to constitute a committee of three high officials concerned, presided by the Commissioner-cum-Secretary, Public Health Engineering Department, Govt. of Bihar and also including the Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department to consider the cases of all the petitioners after giving them opportunity to place their respective claims and to decide the matters in issue afresh in accordance with the directions given in aforesaid judgment of the Hon''ble Apex Court in the case of Secretary, State of Karnataka (supra) and the law settled therein with respect to the various schemes of the State Government concerning such appointments and regularization. The State Government is further directed to take steps for appointment of such committee preferably within a period of one month from the date of this order so that the said Committee may be able to decide the entire matters by 30th September, 2006 as it has been stated on behalf of the State Government on 10.5.2006 that the case of the petitioners who are fulfilling the eligibility criteria as per the policy will also be considered and finalized on or before 30th September, 2006. The petitioners will be at liberty to move the said Committee after it is appointed by the State Government raising their grievances in accordance with law settled by the Hon''ble Apex Court.

5. In pursuance to the order passed by the Division Bench of this Court, the impugned order dated 18.1.2008 came to be passed rejecting the petitioner's case for regularization. This is the order dated 18.1.2008 which came to be

challenged by the appellant in C.W.J.C. No. 7851 of 2009 which has been dismissed by the learned Single Judge against which the present appeal has been preferred.

6. The case of the appellant/writ petitioner is that he was appointed as a Khalasi on muster roll on 1.8.1980 at section-1 of Public Health Sub-Division, Motihari. Further plea is that vide letter dated 16.1.1981 of the Executive Engineer, Public Health Division, Motihari, the petitioner was appointed on a sanctioned post of Khalasi for repair and maintenance of water supply to the Government building and was posted at Public Health Sub-Division, Motihari. The said letter dated 16.1.1981 is Annexure-1 to the writ application. Subsequently, by order dated 30.3.1989 (Annexure-2 to the writ application), the Chief Engineer, Public Health Engineering Department, Muzaffarpur the appellant/writ petitioner was transferred to Public Health Division, Sitamarhi, from where he was posted at Kupri Sub-Division. Subsequently, as contended by the appellant, his status was converted into the regular establishment by a communication issued vide Memo No. 114, dated 27.1.1996 issued by the Chief Engineer, Rural Public Health Engineering Department, Government of Bihar. The communication is placed Annexure-3 to the writ petition, The list of the employees, according to writ petitioner, who were inducted into the regular establishment includes the name of the appellant herein.

7. Thereafter vide communication, dated 27.12.2001, which is Annexure-4 to the writ petition, the regular induction of the petitioner in regular establishment was cancelled with immediate effect on the basis that source of appointment of the appellant was unknown.

8. The appellant has relied on several communications which has been annexed in the writ application to the effect that subsequently it was communicated to the competent authority as regards his initial induction in daily wage basis and his subsequent induction into regular establishment.

9. It appears that the appellant and other similarly situated persons approached this Court by filing several writ applications challenging the action of the State, terminating the services of several employees who were inducted into regular establishment on various grounds including the fact that there were engaged without there being available sanctioned post and without following the procedure for appointment as has been quoted above. Those writ applications were disposed of by a common order as reported in 2010 (3) PLJR 459, Ram Tapeshwar Sah (supra) with a direction to constitute a three men committee to consider the cases of the petitioners/appellants before the said Division Bench in terms of the law laid down and directions issued in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, As regards the grievance of the writ petitioner/appellant herein against the order dated 27.12.2001 and 28.6.2002 raised by him in the Writ Court, we are of the view that the same could not have been re-agitated as the matter was already adjudicated upon by a Division Bench of this Court which attained finality. Any claim raising such plea

again is barred by doctrine of res judicata and any adjudication of such plea at this stage could amount to review of the earlier order of the Division Bench which is not the scope of the present proceeding.

10. In our opinion, therefore, the petitioner's case has to be considered within the four corners of the order passed by the Division Bench in case of Ram Tapeswar Sah and Others vs. The State of Bihar and Others (supra), read with the law laid down by the Apex Court in case of Secretary, State of Karnataka and Others vs. Uma Devi and Others.

11. In pursuance to the order passed by the Division Bench the impugned orders came to be passed on 18.1.2008. Learned counsel appearing on behalf of the appellant Mr. Kumar Kaushik has vehemently contended that the impugned order dated 18.1.2008 as contained in Annexure-13 to the writ application by which the representation of the appellant has been rejected is in teeth of the order passed by the Division Bench inasmuch as the Committee was not required to consider his case for regularization, rather the committee was required to adjudicate with regard to his illegal termination from regular service vide order dated 27.12.2001 and his reversion to the status of daily wage employee. In C.W.J.C. No. 7851 of 2009 a counter affidavit was filed by the State to the effect that the petitioner was not appointed against a sanctioned post and as such the rejection of his representation by the impugned order dated 18.1.2008 was valid, in accordance with the directive of the Division Bench of this Court as also the ratio laid down by the Apex Court in case of Secretary, State of Karnataka vs. Uma Devi.

12. We have perused Annexure-13 dated 18.1.2008 which was under challenge in C.W.J.C. No. 7851 of 2009, which contains altogether 7 paragraph, 6 of which are just recitals how the committee was constituted for the purpose pursuant to the order of the Division Bench and the matters were referred to the Committee for consideration of cases of the writ petitioners before the Division Bench. The last paragraph of the impugned order dated 18.1.2008 i.e. paragraph-7 which contains only one sentence rejecting the claim of the appellant herein recording that his representation dated 9.8.2006 was being rejected because he did not fulfill the requisite qualification in terms of age. It merely refers vaguely regarding sanction of posts adding that the appellant did not deserve to be regularized in terms of the Resolution No. 639 dated 6.3.2006. For ready reference paragraph-7 of the order is being quoted hereinbelow:--

13. In view of the nature of the order which we are going to pass in this case, we restrain ourselves from commenting on the merits of the case of the appellant for induction in regular establishment so that it may not prejudice the case of either of the parties. We are of the considered opinion that the impugned order dated 18.1.2008 is non-speaking and as it does not assign specific reason how the appellant does not possess the requisite qualification in terms of age at the time of his initial appointment on daily wage basis. It has been repeatedly held by the Apex Court and has been followed by this Court in several pronouncements that

every person who approaches the authority is entitled to know the reasons for the rejection of his prayer. Reference may be made in this regard to the judgment of the Apex Court in case of East Cost Railway and Another vs. Mahadeo Appa Rao reported in (2010) 7 SCC page 678, wherein it has been reiterated that reason must be assigned in the order itself and consideration an application of mind must be reflected in the order itself passed by an administrative authority.

14. In that view of the matter, we set aside the order dated 18.1.2008 as contained in Annexure-13 to the writ application being non-speaking and showing non-application of mind.

15. In the facts and circumstances of the case, we remit the matter back to respondent No. 2, the Principal Secretary, Public Health Engineering Department, Government of Bihar, to consider the representation of the appellant dated 19.8.2006 afresh. While considering the case of the appellant, the law laid down by the Hon"ble Supreme Court in case of State of Karnataka and Others Vs. M.L. Kesari and Others, , paragraph-11 of which is being extracted herein below for ready reference must be taken into account:--

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 the date of decision in Umadevi (3) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decisions in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees the right to be considered for regularization in terms of the above directions in Umadevi (3) as a one-time measure.

16. It has not been disputed, even on behalf of the State, that the appellant has in fact continued working as daily wage employee for more than 10 years.

17. In view of the fact that the appellant herein has been continued since long as daily wage employee, we direct the respondent No. 2 to complete the entire exercise of consideration on the representation to be filed by the appellant herein within a period of two months from the date of receipt/production of a copy of this order alongwith the representation of the appellant.

18. With this observation and direction, the order dated (sic) 8.2.2010 passed by the learned Single Judge in C.W.J.C. No. 7851 of 2009 is accordingly modified. Before we part with this order, we record our appreciation for the perseverance and tenacity with which learned counsel Mr. Kumar Kaushik and Mr. Ashhar Mustafa have assisted the Court on behalf of the appellant and Mr. Manoj Kumar Sinha on behalf of the State of Bihar.