

(2006) 07 PAT CK 0057

In the Patna High Court

Case No : CWJC Nos. 7359 of 2002 and LPA Nos. 150 and 225 of 2005

Ram Tapeswar Sah and Others

APPELLANT

Vs

The State of Bihar and Others
 The State of Bihar and
Others Vs Baidyanath Pandit and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : (2006) 07 PAT CK 0057

Judgement

1. This is a batch of 165 cases, out of which, 160 cases are Writ Petitioner and 5 cases are Letters Patent Appeals, which have arisen out of interlocutory orders passed in some of the aforesaid writ cases.

2. So far LPA Nos. 150 of 2005, 153 of 2005 and 225 of 2005 (Serial Nos. 159, 160 and 161) are concerned, they are barred by law of limitation but interlocutory applications have been filed for condoning the delay and copies thereof have been served upon the other side. LPA Nos. 111 of 2006 and 122 of 2006 (Serial Nos. 162 and 163) are also barred by law of limitation and interlocutory applications for condoning the delay have been filed but copies thereof have not been served upon the learned Counsel for the other side, However, the writ petitions, out of which the said two Letters Patent Appeals have been filed, are pending and are included in the aforesaid batch of writ cases at serial Nos. 149 and 148 respectively and the respondents of these appeals are petitioners in those writ cases.

3. In the aforesaid circumstances and considering the points raised in the aforesaid interlocutory applications filed in the five Letters Patent Appeals, we find that sufficient ground has been made out for condoning the delay and accordingly the delay in filing the five Letters Patent Appeals are condoned and the said interlocutory applications are allowed.

4. In these matters, the petitioners have challenged the legality and validity of orders of the State of Bihar (Public Health Engineering Department) issued vide various memos dated 13th April, 2002 under the signature of the Commissioner-

cum-Secretary of the Department of Public Health Engineering, Government of Bihar directing the petitioners to show cause as to why their appointments in the work charge establishment be not reverted to daily wages with benefits of daily wages with effect from 13.4.2002 as their appointments in the work charge establishment were found illegal and not made according to the resolution of the Finance Department vide memo No. 6394 dated 23.10.1987.

5. The main contention of the learned Counsel for the petitioners has been that they were duly appointed by the competent authority prior to the fixed date 1.4.1982 on the basis of the decision of the Departmental Committee and were absorbed in the regular scale of pay in the work charge establishment and have continued in service on sanctioned strength posts with satisfactory service since 1980-82. They further claimed that the State Government has itself laid down a policy decision of cut off date of 1.1.1988 with respect to daily wages and work charge establishment employees for their regularisation, but instead of regularising their services the petitioners are sought to be reverted. Learned Counsel for the petitioners also averred that with respect to the work charge employees the circular of the State Government contained in F.D. memo No. 1344 dated 4.2.1949 is a statutory rule framed under Article 309 of the Constitution of India which envisages that such employees on completing one year continued approved service will be included as permanent employees in the permanent establishment, hence the petitioners who had admittedly been working on the approved posts in the establishment for more than 22 years were legally to be included as permanent employees but instead they are sought to be reverted. This also finds support from Rule 59(3) of the Bihar Public Works Department Code.

6. Learned Counsel for the petitioners also stated that even for daily wagers the cut off date provided by the State Government for consideration of their regularisation on completion of 240 days was 1.8.1985 which was subsequently enhanced to 11.12.1990 by the State Government itself, but the Government is oblivious of the said facts and is taking action against the petitioners who had been admittedly working since much prior to 1990 or 1985. Learned Counsel for the petitioners also averred that they had been duly appointed by the competent authorities at the relevant time by adopting due procedure of law and at the time of their appointments, the petitioners fulfilled the requisite qualifications and hence the authorities concerned committed grave illegality and irregularity in assuming that their appointments were illegal. It is further claimed by the learned Counsel for the petitioners that the impugned orders of reversion of the petitioners from work charge establishment to daily wages without giving them any reasonable opportunity to place their case and show that their appointments were legal, valid and proper, were absolutely unfair, unreasonable, arbitrary, against the principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India.

7. A detailed counter affidavit has been filed on behalf of the State of Bihar

alleging therein that regarding appointments of persons in work charge establishment from daily wages, the department after a detailed exercise has identified between December, 2001 and April, 2002, nearly 2799 persons as leaving been appointed in work charge establishment after the dates laid down by the Department of Finance and the Department of Personnel respectively and out of 2799 persons, 1890 persons have been engaged after the cut off date determined by the Finance Department for engagement in the work charge establishment, but their engagement is prior to the date determined by the Department of Personnel for engagement on daily wages and these persons have been informed that they would from the date of withdrawal of the budget provision be paid as daily wagers.

8. A reply to the counter affidavit has also been filed, but when the matter was finally heard on 10.5.2006, learned Additional Advocate General-II, on behalf of the respondent-State Government made the following submissions;

(a) The Government has taken a policy decision dated 16.3.2006 that any employee of Class IV having been appointed and having completed 240 days working as a daily wager prior to 11th December, 1990 shall be entitled to be considered for regularisation in the Public Health Engineering Department.

(b) The work charge employees of Class III and IV who have been reverted to the status of daily wager will be also entitled to be considered for the purpose of benefit of the said decision for regularisation.

(c) The case of the petitioners who are fulfilling the eligibility criteria as per the aforesaid policy will be considered and finalised on or before 30th September, 2006 and the inter-se seniority will be fixed on the basis of the initial entry in the work or service.

9. Learned Additional Advocate General -II also relied upon a judgment of the Hon"ble Apex Court dated 30.10.2000 passed in SLP (C) No. 18164 of 1999; State of Bihar and Ors. v. Laghu Sichai Karamchari Sangh and Ors. in which the State of Bihar was specifically directed to take steps to constitute a necessary committee and to take expeditious steps to implement its scheme depending upon the number of vacancies available from time to time.

10. In the aforesaid facts and circumstances, the bone of contention in these batch of cases is that whether the daily wages employees who have been appointed as a daily wager prior to 1982 and appointed as a work charge establishment employee on regular pay in 1988 under the recommendation of Departmental Committee, can be reverted back as daily wage employees after a lapse of more than 15 years on the ground that their appointments in work charge establishment was against the resolution of Finance Department vide memo No. 6394 dated 23.10.1987. In the aforesaid facts and circumstances, it is quite apparent that the claims of the petitioners in all these cases are that their initial appointments were not illegal as the authorities themselves have not cancelled their initial appointments, rather they have issued show causes to the

petitioners as to why their appointments in the work charge establishment be not reverted to daily wages. The further claims of the petitioners are that the impugned orders with respect to the petitioners reversion from the work charge establishment to daily wages without giving them any reasonable opportunity to place their cases about the validity of their appointments/postings in the work charge establishment, were absolutely unfair, unreasonable, arbitrary, against the principle of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India.

11. In this connection, reference may be made to a decision of Hon''ble Apex Court in case of M.A. Hameed v. State of A.P and Anr in which it was held that reversion of employees after they had held the higher post for more than a decade was not justified as even if their appointments were temporary or irregular in any manner they should have been reverted within a reasonable period. Furthermore, the Hon''ble Apex Court has also held in case of Badri Prasad and Others Vs. Union of India (UOI) and Others, that employees are entitled to claim age relaxation and advantage of experience for the long period spent on higher posts while being considered for promotion. In this connection, another reference may be made to the decision of a learned Single Judge of this Court, dated 13.8.2004 taken in CWJC No. 3670 of 1999, which was affirmed by a Division Bench of this Court on 22.7.2005 passed in LPA No. 685 of 2005, in which relying on a decision of Apex Court in case of Abhay Kumar Pandey Vs. The State of Bihar and Others, , it was held that the petitioners of that case being appointees of much before cut off date i.e. 1.1.1988 and having continued in service for more than 10 years and therefore equity demands that they should not be terminated on the said grounds.

12. Similar matters came up for consideration before the Hon''ble Apex Court recently in a batch of cases of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. reported in 2006(2) BBCJ 398 . In the said cases a Five Judge Bench of the Hon''ble Apex Court considered the entire matter in detail and all the issues involved and after taking note of all the relevant decisions of the Hon''ble Apex Court, including in the case of State of Mysore and Another Vs. S.V. Narayanappa, , in the case of R.N. Nanjundappa Vs. T. Thimmiah and Another, as well as in the case of B.N. Nagarajan and Others Vs. State of Karnataka and Others, , came to the following conclusions:

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagrajan (supra), and referred to in paragraphs 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the

Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

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 regularisation. 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 finalised 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 grievance in accordance with law settled by the Hon"ble Apex Court.

14. With the aforesaid directions, all these matters are disposed of.