
(1993) 08 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7251 of 1992

Ravi Nandan Pd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Citation : (1993) 08 PAT CK 0001

Final Decision : Allowed

Judgement

U.P. Singh, J.—In these writ applications, the Petitioners, who are Class III and IV employees of the State Government in the Water Resources Department, have challenged the order issued by the Chief Engineer, Planning and Monitoring, Water Resources Department, contained in letter No. 838 dated 24.7.1992 directing termination of the services of all such Class III and Class IV employees who were appointed by Shri R.P. Singh, the then Chief Engineer, Planning and Monitoring, on the ground that the appointments were made without following the procedures and were, thus, illegal. Individual orders of termination issued on the basis of the said letter dated 30.7.1992 have; therefore, been sought to be quashed. The individual orders of termination of all the Petitioners are of the same date, i.e., 30.7.1992.

2. Since the common question of law and facts are involved, except a few variations of facts in the connected writ applications, they have been together and are being disposed of by this common judgment. All the individual orders of termination are of the same date, i.e., 30.7.1992, based on latter No. 838 dated 24.7.1992 directing termination of services. In the main writ application (C.W.J.C. No. 7251 of 1992), there are twenty-five Petitioners. All of them were appointed on daily wages in between 1980 and 1982. Their services were extended from time to time and in between 1983 and 1984, they were appointed on ad hoc basis. In the year 1980, only Petitioners 1 to 18 were made permanent, the details of which are contained in Annexure 4. In C.W.J.C. No. 7665 of 1992, the sole Petitioner was appointed on ad hoc basis on 7.2.1980. It

was extended from time to time and with effect from 31.10.1990, he was made permanent on 9.7.1991. In C.W.J.C. No. 7059 of 1992, there are five Petitioners, out of whom Petitioners Nos. 1 to 3 were appointed on daily wage basis in the year 1980. It was extended from time to time and in between 1980 and 1983, all of them were appointed on ad hoc basis. In the year 1991, only Petitioners Nos. 4 and 5 were made permanent. In C.W.J.C. No. 7012 of 1992, the sole Petitioner was appointed on ad hoc basis on 26.10.1983. It was extended from time to time and on 30.5.1987, he was appointed on regular basis and on 25.5.1991 he was made permanent. In C.W.J.C. No. 7013 of 1992, the sole Petitioner was appointed on ad hoc basis on 26.10.1983 and the same was extended from time to time and on 30.5.1987 he was appointed on regular basis and on 25.5.1991 he was made permanent. In C.W.J.C. No. 2488 of 1993, there are four Petitioners appointed on daily wage basis in the year 1979. It was extended from time to time and in 1983 they were appointed on ad hoc basis and out of them Petitioners 1 and 2 were made permanent in the year 1991.

3. Till the year 1979, Planning and Monitoring Wing of the Water Resources Department was not in existence. In the year 1978, an advertisement was published in a daily English newspaper "The Indian Notion" 6.12.1978, by which the then Irrigation and Electricity Department invited applications for appointment on different Class III and Class IV posts, including the posts of Typist, Junior Accounts Clerk, Correspondence Clerk, Tracer, Blue Printer, Peon, Chaukidar, etc. In the year 1979, the Planning and Monitoring Wing was created under the Water Resources Department (earlier known as Irrigation Department) In pursuance of the said advertisement, the Petitioners applied along with many Ors. for class III and class IV posts. The Chief Engineer, Planning and Monitoring, Bihar, Patna, was made the Head of the said Wing. Almost six Circles were created under the said Wing. A number of Divisions were also Created under each individual Circle. A number of Subdivisions were created under each and every Division of the Planning and Monitoring Wing. Superintending Engineer is the controlling authority of a particular Circle whereas Executive Engineer is the controlling authority of a Division and the Assistant Engineer is the controlling authority of a Sub-division, by virtue of creation of the said Planning and Monitoring Wing in the then Irrigation Department, a number of Class III and Class IV posts were created in the year 1979, including the posts, of Typist, Correspondence Clerk, Blue Printer, Tracer, Peon, Chaukidar, etc., under each and every Circle, Division and Subdivision of the said Wing. At that point of time, the power of appointment on daily wage basis was vested in the Superintending Engineers and since the works were to be taken against such posts, the then Chief Engineer, Planning and Monitoring Wing, soon-after the constitution of the Wing in the year 1979, directed the Superintending Engineers of different Circles of the said Wing to take steps for filling up Class III and Class IV posts by way of daily wage appointment because it was not known as to when the regular appointment will be made in pursuance of the said advertisement dated 16.12.1978 published in the newspapers in which the Petitioners had also

applied. In March, 1980, an advertisement was also published on the Notice Board issued by different Superintending Engineers of different Planning and Monitoring Circles calling for applications for appointment on daily wage basis against Class III and Class IV posts with a view to take work on the posts of Typist. Typing tests were also taken by the Superintending Engineers.

4. In pursuance of the said notice issued by different Superintending Engineers of different Planning and Monitoring Circles, the Petitioners applied for appointment against different Class III and Class IV posts. The Petitioners Nos. 1, 2, 4, 6, 7, 12, 13, 15, 17, 18 and 20 were thereafter appointed against different Class III and Class IV posts of Typist, Blue Printer-cum-Despatcher,-Peon, Chaukidar, etc. A Chart (Annexure 4) has been annexed with the, writ application showing the details including date of daily wage appointment, posts against which they were appointed by the Superintending Engineers, post against which they were made regular and still functioning, the dates of ad hoc appointment, the dates of regular appointment and the dates of confirmation.

5. It may be stated that under the jurisdiction of each and every Superintending Engineers, who were Incharge of different Planning and Monitoring Circles and were the appointing authorities to make appointments against Class III and Class IV posts on daily wage basis, a Committee was constituted From time to time, such Committee took decisions as to how many posts of Class III and Class IV were vacant in each Division/Subdivision and were required to be filled up on daily wage basis for smooth functioning of the Government work. One such decision was taken by the Superintending Engineer, Planning and Monitoring Circle No. 3 vide order dated 13.5.1980 and Anr. such decision was taken by a Committee under the Chairmanship of the Superintending Engineer vide its letter dated 28.8.1980 (Annexures-5 and 6).

6. It may be stated that a number of persons were earlier appointed and were working on daily wage basis in the regular scale of pay in the Irrigation Department in its Work Charged Establishment. In respect of such employees, the State Government took a decision to absorb them in the Regular Establishment and the decision was communicated vide letter dated 19.2.1981. As earlier staged, on account of increase in the work load of the Planning and Monitoring wing, vide Annexures 5 and 6 dated 30.5.1980 and 28.8.1980 it had already been decided to fill up more posts of Blue Printer, Peon, etc., on daily wage basis and such decision was taken by the Superintending Engineer, Planning and Monitoring Circle No. 3 in a meeting of the Committee vide its letter dated 20.7.1981 (Annexure 7). In the said meeting of the Committee, under the Chairmanship of the Superintending Engineer of Circle No. 3, it was decided that those persons who were appointed on daily wage basis, including some of the Petitioners, their services being satisfactory, they be continued in the service. Thus, it was decided to allow them to continue on daily wage basis till the Irrigation Department could make some sort of alternative arrangement. In effect, the Petitioners who were appointed on daily wage basis prior to 20.7.1981

continued to function on daily wage basis against their respective Class III and Class IV posts.

7. In its subsequent meeting held on 12.9.1981, the Committed decided to raise the emoluments of the daily wage employees. In the meantime, on the basis of the need and the decision of the Committee, further notices were published on the Notice Board in the year 1981 and 1982 and in pursuance of which the rest of the Petitioners were appointed on different dates against different Class III and Class IV posts on daily wage basis in between the year 1981 and 1982 details of which have already been shown in the chart contained in Annexure 4,

8. On the basis of the earlier decision of the Government contained in the letter dated 19.2.1981, to absorb the Work-Charged employees in the regular establishment, intimation was given by the Chief Engineer, Planning and Monitoring on 5.6.1982 to the Superintending Engineer of the Circle that the government had taken steps for absorption of Work-Charged employees under the regular establishment and, therefore, the need of filling up Class III and Class IV posts under the Circle was required to be filled up on that basis. However, in the forwarding portion of the said letter dated 5.6.1982, he directed the different Executive Engineers, who were the Heads of different Divisions, to terminate the services of the daily wage employees, i.e., the Petitioners. On that basis, different orders were issued on 15.9.1982 by which the services of daily wage employees, including the Petitioners, were terminated. The said orders of termination were challenged in this Court and vide its judgement dated 27.11.1982 the orders of termination were set aside. In the result, the Petitioners 1 to 19, 23 and 24 were reinstated by virtue of the Court's order dated 27.11.1982. Those Ors. , who had not challenged the orders of termination in this Court, were also reinstated to their respective original posts on daily wage basis.

9. In May 1983, the Chief Engineer, Planning and Monitoring, constituted one Selection Committee for the purpose of appointment, promotion and confirmation under his establishment. It was also for the purpose of filling up posts by way of absorption on the basis of seniority and eligibility after due selection. In the meantime, the State Government issued one direction to all the Chief Engineers on 22.4.1983, including the Chief Engineer, Planning and Monitoring, relating to appointments; of Typist, Tracer, Blue Printer as also Class IV posts of Khansama. The said direction was to absorb persons who were already working in the Work-Charged Establishment against different Class III and Class IV posts. It was further directed that if after such absorption no person is available in the Work-Charged Establishment, then those posts should be filled" up after following all the procedures by way of direct recruitment. At this stage, it is relevant to mention that there were no employees who were working in the Work-, Charged Establishment, since the Planning and Monitoring. Wing was created for the first time in the year 1979. Such work-charged employees were functioning under different Chief Engineers. The work-charged employees

who were functioning against different Chief Engineers, were absorbed in the regular establishment of their respective Chief Engineers and/or other Chief Engineers and no person was absorbed from the Work-charged establishment under the jurisdiction of Chief Engineer. Planning and Monitoring Wing. It is only the daily wage employees like the Petitioners who were available in different Circles, Divisions and Subdivisions, of the Planning and Monitoring Wing.

10. Steps were taken for absorption of daily wage employees including the Petitioners, who were functioning since 1982-83 against their respective Class III and Class IV posts. The Selection Committee held its meeting in the year 1983 and recommended the Petitioners to be fit for absorption. On the basis of such recommendation of the Selection Committee, the Respondent Chief Engineer is sued two orders Nos. 1574 and 1575 on 26.10.1983. By the first order, Petitioners 1 to 19 were absorbed in the regular establishment of Class III and Class IV posts on ad hoc basis for a period of six months and by the second order Petitioners Nos. 20 to 25 were so absorbed. In the case of some other Petitioners like Petitioners 12 and 22, certain changes were made by the Selection Committee in their absorption or extension of the ad hoc appointment order taking into account the duty they were performing against such posts. The posts against which the Petitioners were absorbed on ad hoc basis have already been indicated in the chart contained in Annexure 4. The proceeding of the Selection Committee is available in the office of the Respondent Chief Engineer. Thereafter, from time to time, on the recommendation of the Selection Committee, the services of the Petitioners were extended and two such extensions were granted on 23.6.1984 vide memo Nos. 674 and 675 issued by the Chief Engineer on the recommendation of the Selection Committee (Annexures 15 and 15/A).

11. In July 1984, the Respondent Chief Engineer requested the Employment Exchange for taking steps in filling up different Class III posts under his jurisdiction on regular basis. The Employment Exchange then came out with an advertisement in the daily newspapers "The Indian Nation" on 31.7.1984 calling for applications for filling up different Class III posts, including the posts of Typist, Tracer, Blue Printer, etc. In pursuance of the said advertisement, a number of persons, including the Petitioners, who were eligible for Class III posts, applied. The Selection Committee held its meeting on 15.12.1984 and decided that the services of the ad hoc employees like the Petitioners be further extended. The Committee further decided that, in the meantime, steps for regular appointment in pursuance of the advertisement aforesaid be taken by calling names from the Employment Exchange. It was decided that, when the cases of outsiders will be considered for regular appointment against different Class III and Class IV posts, along with them, the cases of ad hoc employees, like the Petitioners, will also be considered for absorption/regular appointment. Names were called for appointment against Class IV posts from the Employment Exchange by the Chief Engineer, Planning and Monitoring. Thereafter, two orders were issued by the Chief Engineer, Planning and Monitoring, dated 30.1.1985

vide the services of the Petitioners for a further period of six months on the recommendations. In the mean time, the State Government appears to have issued a general direction to different Chief Engineers, including the Chief Engineer, Planning and Monitoring not to make any regular appointment and the cases for regular appointment in respect of the Petitioners along with other outsiders could not be taken up. Thus, on the recommendation of the Selection Committee issued from time to time, different orders were issued by the Chief Engineer, Planning and Monitoring, extending the services of ad hoc employees, i.e., the Petitioners and two such orders Nos. 821 and 822 dated 3.7.1985 have been annexed marked Annexures-20 and 20/A. Further, it would be evident from one of the circulars dated 20.7.1985 that the Selection Committee gave approval of extension of such ad hoc appointments. On 18.8.1985, while giving further approval for extension of ad hoc appointment of the Petitioners and Ors. , the Selection Committee made an observation for moving the State Government to lift the ban on regular appointment so that the matter relating to filling up of the posts on regular basis could be taken up. Annexures-23 to 29 continuing from 1985 to 1987 are the different orders issued from time to time extending the services of the Petitioners and other ad hoc employees on the recommendation of the Selection Committee.

12. In its letter dated 9.1.1984 (Annexure-30), a general decision was taken by the Government for regularisation of the services of ad hoc employees and as such, directions were issued from the Cabinet Secretariat Department to all the departments, including the Water Resources Department concerned and the ban on regular appointment was lifted some time in the beginning of the year 1987.

13. Thereafter, the Selection Committee considered the cases of the Petitioners and other, ad hoc employees and having found them, fit for regular appointment against their respective posts, had recommended for their regular appointment. The cases of direct recruits were taken up separately. By its letter No. 103/86-5 dated 29.1.1987, the Government intimated the Chief Engineer allowing extension of their service until further orders and had further intimated that they were making enquiry in respect of appointment of the employees.

14. In this process, by now, the Petitioners completed more than 8 to 10 years of service taking into account their appointment on daily wage and ad hoc basis. Since the Petitioners had completed 8 to 10 years of service and were fulfilling all the criteria for regular permanent absorption their cases were considered on the basis of seniority and eligibility by the Selection Committee and the Selection Committee recommended the Petitioners for such regular permanent absorption and only on that basis an office order was issued by the Superintending Engineer under the direction of the Chief Engineer, Planning and Monitoring, in its office order No. 2513 dated 31.10.1990, whereby Petitioners 1 to 19 were permanently absorbed in the regular establishment on the basis of the recommendation of the Selection Committee (Annexure-33). In respect of the rest of the Petitioners 20 to 25, although they were recommended by the Selection Committee for regular

absorption/appointment on permanent basis along with the Petitioners 1 to 19 but the Superintending Engineer under whom these Petitioners 20 to 25 are posted has not yet come out with such orders in respect of them.

15. On 21.2.1992, the Joint Secretary of the Water Resources Department intimated the Chief Engineer, Planning and Monitoring Wing that the appointments which were Made by the then Chief Engineer Shri R.P. Singh, were made without following the procedure and, therefore, their appointments be terminated by giving them show cause notice (Annexure-34). Thereafter, the cyclostyle show cause notices were given by the Chief Engineer to the Petitioners dated 25.2.1992 (Annexure-35) asking them to show cause to why their appointments be not declared illegal and be cancelled since the appointments were made without following the procedure is violation of the reservation policy (Annexure-35). The Petitioners submitted their show cause categorically stating that they were appointed after following all the procedures and on the recommendation of the Selection Committee. They have been regularised in service on the recommendation of the Selection Committee and no illegality was committed in their appointment (Annexure-37). It was further pointed out that altogether there were 20 vacant posts in the Planning and Monitoring Wing out of which only 26 persons were appointed and 20 of them were absorbed on regular permanent basis. Out of the said appointments, two persons belong to the Scheduled Castes category and six persons belong to the Backward category and, thus, it would be evident that the reservation policy was followed.

16. on 24.7.1992, the impugned order contained in Annexure-1 was passed stating that the show cause reply was not found satisfactory and the appointments having been made without following the procedures, without advertisement and without following the reservation policy were illegal and, therefore, their promotion/confirmation, etc., were also illegal,

17. At this stage, it is relevant to mention that by its letter dated 11.6.1986 (Annexure 36) the Government had communicated its decision intimating that those persons, who have been appointed illegally after 1.8.1985 only their services be terminated. While taking the said decision, the State Government had taken into account the fact that a number of persons had been appointed on daily wage basis and/or ad hoc basis in different departments of the State Government and that such appointments were not strictly made in accordance with the procedures for appointment. Thus, the Petitioners, who were appointed prior to 1.8.1985, came within the fold of such exemption.

18. The stand taken in the Counter-affidavit is that the Petitioner's appointment was ab initio void on the ground that the reservation policy and the procedure for appointment were not followed and, therefore, all subsequent actions regarding increment, seniority, promotion and confirmation were void. The appointment made, by the Selection Committee was without examining the issue of reservation and roster clearance and the Selection Committee selected the candidates in an irregular manner by pick and choose method.

19. On consideration of the entire facts enumerated above in detail, there is no escape from the conclusion that Petitioners were appointed after following the due procedures on the recommendation of the Selection Committee. They were regularised in service on the recommendation of the Selection Committee, and now the Respondents cannot say that the Selection Committee has wrongly appointed them. It was not specifically mentioned in the show cause notice as to which particular procedure and guidelines were not followed and in absence of such infirmities not specifically pointed out in the show cause notice, the Petitioners were prevented from submitting their effective reply. Even in the counter affidavit, vague allegations have been made that the reservation policy was not followed. Contrary to that, Annexure-4 demonstrates that the appointments from the reserved category were also made. Petitioners 1 to 19 are permanent confirmed employees and their services could not be terminated without any departmental proceeding. In any view of the matter, whether the appointments were irregular or illegal, the decision of the Government contained in its letter dated 11.6.1986 (Annexure-36) was specific that even then the services of those appointed prior to 1.8.1985 would be exempted from termination. While taking such a decision, the Government was considering the larger issue that since a number of persons have been appointed on daily wage basis and/or ad hoc basis in different departments of the State Government and even though such appointments may not have been made strictly in accordance with the procedures of appointment, the services of those appointed before 1.8.85 would not be terminated and they would be exempted from such termination. Thus, a cut off date was fixed as 1.8.1985. The statement to this effect contained in paragraph 55 of the Writ application has not been controverted in the counter-affidavit.

20. In the facts of the present case, it appears that there is complete non-application of mind while passing the impugned order. It is based on non-est grounds. The Petitioners were not afforded adequate opportunity to explain the infirmities which are being pointed out now for the first time in the counter-affidavit. They were never disclosed in the show cause notice issued to the Petitioners which prevented them from demonstrating before the authorities that their appointments were quite legal and valid since they were appointed after following regular procedure on the recommendation of the Selection Committee and from time to time their services were extended on the recommendation of the Selection Committee and, further, that they were regularised in service only on the recommendation of the Selection Committee. In this way the Petitioners have continued in service for long eight to ten years and their services could not be terminated on imaginary and nonest grounds. Averments made in the writ applications giving the details as to how the procedure was followed and that the appointments were made after following the due procedure at every stage have not been controverted in the counter-affidavit. The Respondents have failed to point out as to how and in what manner the appointments were void ab initio.

21. In the case of State of Haryana and others Vs. Piara Singh and others etc.

etc., , the Supreme Court held:

The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service. The main concern of the Court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason, it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is need and warrant for a regular post and, accordingly, directs regularisation. While all the situations in which the Court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having bearing upon the issue involved here. They are: The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., and Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, . In the first case, . was alleged that about 50000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment. In that view of the matter, following directions were given after reviewing the earlier decisions of this Court:

(a) From amongst the casual and daily rated employees who have completed 10 years of service shall immediately be regularised on the basis of seniority-cum-suitability.

(b) In the second case (Jacob v. Kerala Water Authority), while interpreting Rule 9(a)(1) consistently with the spirit and philosophy of the Constitution, which is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualification for the job, should not be thrown out but their service should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells, they are entitled to regularisation in service.

22. In the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , it was stated:

The main controversy centres round the question whether some Petitioners are

possessed of the requisite qualifications to hold the posts so as to entitle them to be Confirmed in the respective posts held by them. The indisputable facts are that the Petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for different posts is undoubtedly a factor to be reckoned with but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification. In our view, three years' experience ignoring artificial break in service for short period created by the Respondents, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three year's period. Since the Petitioners before us satisfy the requirement of three year's service as calculated above, we direct that 540 of the seniormost workmen should be regularised with immediate effect and the remaining 118 Petitioners should be regularised in a phased manner and promoted to the next higher post according to the standing orders. All the Petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharging similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the Petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the Respondents should consider the eligible candidates for being promoted to such posts.

23. Again, in the case of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, , while considering the particular rule regarding appointment to serve the emergent situation consistent with the spirit and philosophy of Article 41 of the Constitution, the Supreme Court held:

Appointments made under Rule 9(a)(1) were intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointment to serve the stated purpose and not long terms ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by Sub-rule (e). Employees who have been working, on the establishment since long and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been

rendering service since some time as such removal has serious consequences. The family of the employee which has settled down and accommodated its need to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore Rule 9(a)(1) if interpreted consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible.

24. In view of the principles laid down by the Supreme Court, I have no hesitation in holding that the Petitioners who have continued in service for long eight to ten years and were regularised in service only on the recommendation of the Selection Committee should not be suddenly thrown out of the job since the same would run counter to the constitutional philosophy, particularly the concept of right to work enshrined in Article 41 of the Constitution. Such behaviour would be an affront to the concept of job security. It would be unfair to use them in service for a long spell of time, generate hope in the life and feeling of security to them and to suddenly throw them out of job leading to serious consequences and ruination of the family of such employees.

25. In the present case, the Petitioners have served for long eight to ten years, their services being extended from time to time on the recommendation of the Selection Committee and subsequently regularised on the recommendation of the Selection Committee. The averments that appointments were made after following the due procedure at every stage and that the procedure was followed have not been controverted in the counter-affidavit filed by the Respondents. The infirmities brought out, for the first time, in the counter-affidavit were never disclosed in the show cause notice and the Petitioners were prevented from filing any effective reply and were, thus, deprived of their valuable right of natural justice. A Cabinet decision had been taken to regularise the services of such persons who had been appointed before 1.8.1985 and, the said decision of the Government had been taken after due consideration of the fact that a large number of employees who were appointed as daily wagers, had continued for long and, therefore, even if any such irregularity or illegality could be pointed out, such appointment made before 1.8.1985 were to be regularised and not terminated. It has also been brought, to our notice that, while disposing of the earlier writ application in the year 1982 quashing the impugned orders of termination challenged by some of the similarly situated persons liberty had been

given to the Respondents to take such action in accordance with law but since 1982 no such action in terminating the services of the Petitioners was taken until the impugned order came into existence in the year 1992. In one of the writ applications, the question has also been raised alleging violation of Article 311(2) of the Constitution but I am not going into that question since on the other grounds I find it impossible to uphold the impugned orders of termination.

26. For the reasons stated above, the impugned orders contained in Annexure 2 series dated 30.7.1992 as also the order contained in letter No. 838 dated 24.7.1992 directing termination of the services of the Petitioner (Annexure-1) are quashed and the applications are allowed but there shall be no order as to costs.

Gurusharan Sharma, J.

27. I agree.