
(2010) 08 PAT CK 0119
In the Patna High Court
Case No : CWJC No. 10442 of 1997

Sahdeo Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 PLJR 101

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

A.K. Tripathi, J.—Heard learned Counsel for the parties.

2. This is the second round of battle initiated by these two Petitioners seeking regularization under the Respondents who were working as contingent menials. Earlier CWJC No. 2834 of 1994 was filed by the Petitioners alongwith one Sunil Kumar Chatterjee seeking similar kind of direction upon the Respondents and that writ application was disposed of on 27.3.1995. The said decision is Annexure-10 to the writ application. The issue has been discussed by learned Single Judge and sum outcome of the said decision is that there was a kind of cut-off date i.e. 2.5.1991 for considering the case of such persons who were engaged as daily wagers for regularization. Prior to the said date another aspect which has emerged is that there were 252 posts available in Class-IV category which was required to be filled up by regularization of persons similarly situated.

3. When the earlier writ application was filed the position stood that 226 persons had already been regularized and only 26 posts were left to be filled up from the persons available seeking regularization. The High Court did record that cut off date i.e. 2.5.91 may not be strictly adhered to, if there were posts available which were required to be filled up and if there were persons available who came within the zone of consideration based on their seniority even beyond 2.5.91.

4. From the record and specially reasons recorded in Annexure-1 it emerges that

in a contempt application i.e. MJC No. 481 of 1998 a direction was given to the Respondents to take a decision on the issue in terms of the order contained in Annexure-10. Annexure-1 dated 6.12.96 has thereafter come to be passed rejecting the claim of these two Petitioners for regularization, for the reasons indicated therein. This order is under challenge in the present application by the Petitioners who want yet another direction upon the Respondents to consider their case and appoint them on a regular basis. Learned Counsel representing the Petitioners terms Annexure-1 to be erroneous both on facts as well as law.

5. Before the Court takes into consideration the argument made against Annexure-1, it is required to take note of the reasoning indicated in Annexure-1. In the concluding part of the said order the Director, Secondary Education has categorically recorded that of the various appointees prior to 2.5.91 there were 31 claimants and the number of posts sanctioned and available to be filled up were only 25. His reasoning is that since there are not enough posts available even for the people appointed prior to 2.5.91 there was no occasion to consider the case of these two Petitioners who were appointed on 17.5.1991. Their claim was rejected for the above reason.

6. On behalf of the Petitioners it is submitted that there was no cut-off date dated 2.5.91. The finding that the Petitioners were appointed on 17.5.91 is based on wrong finding or record. Certain persons have come to be accommodated subsequently by the Respondents. Yet another submission is that there is a policy of the State to make all vacancies available which may arise due to death or retirement, only to such persons, for regularization.

7. So far the first submission of cutoff date is concerned, it cannot be said that it has no relevance. 2.5.91 was made a referable point because of the number of claimants who were available and who were appointees prior to 2.5.91. The High Court in its earlier order contained in Annexure-10 has categorically held that right of regularization will first accrue to such persons who were appointed prior to 2.5.91 based on their seniority. Only if vacancies would still be left to be filled up and there were no appointees prior to 2.5.91, the case of others would be considered. If that is the referable date fixed by the High Court in its earlier decision then it cannot be said that 2.5.91 has no application with regard to consideration of regularization of the cases of daily wagers. Subsequent appointees would have got a right provided there were no appointees of 2.5.91 left to be regularized.

8. On the submission made with regard to wrong finding about the date of appointment of these two Petitioners to be 17.5.91, attention of the Court has been drawn to Annexure-8 which is supposed to be a chart drawn up by the Principal indicating the actual state of affairs with regard to engagement of these Petitioners and others. Submission is that though 17.5.91 has been indicated as the date of their first appointment, in yet other column there is indication to show that these two Petitioners had worked as contingent menials prior to that date. That entry is being now used by the Petitioners to claim seniority or at least

to come within the cut-off or referable date which is 2.5.91. But the entry made in the chart does not seem to be wrong or misplaced if it is read in context of Annexure-6 which is the date of engagement of these two Petitioners on daily wages. Petitioners have themselves brought Annexure-6 on record which is dated 17.5.91 and it is the letter of appointment which will have to be taken into consideration and the engagement of any other kind which may have been made by the Principal may not come entirely within the frame work of the guideline of such engagement.

9. The date of engagement is being made a point of debate by these Petitioners now in the present writ application when it has been in existence since 17.5.91. At no point of time there was any dispute on this score that the Petitioners were engaged or appointed on daily wages on 17.5.91. In the face of Annexure-6 the submission made by learned Counsel for the Petitioners that the reasoning contained in Annexure-1 that the Petitioners were engaged on 17.5.91 seems to be correct and is no error of record.

10. Yet another submission is the ground of discrimination due to subsequent engagement of some persons. On this score this Court can only observe that a subsequent development cannot be taken into consideration for declaring an order passed in Annexure-1 to be illegal. The validity of the order contained in Annexure-1 has to be tested within time frame and the facts as it existed when the impugned order was passed on 6.12.1996. Certain persons or person has been accommodated for the reasons unknown cannot be used as ground to consider the case of the Petitioners to be a case of discrimination and violation of Article 14 of the Constitution of India. If such accommodation or regularization has been made for extraneous reasons, detrimental to the interest of these Petitioners, the remedy for them would lie in challenging the order for regularization and not claim parity on the basis of the subsequent decision, whose background or the circumstance are neither pleaded nor explained in the present proceeding. Same rational or reasoning applies to the claim of the Petitioners that as per the Government circular all vacancies to arise in future will be filled up by the category of the people to which the Petitioners belong. In this regard the application of such policy and its enforcement is yet another issue.

11. In the present writ application the Court has to look into the validity of the order impugned based on the reasoning given in Annexure-1 and not enforcement of a policy based on subsequent developments which may take place.

12. In the totality, with a clear finding that there were only 25 sanctioned posts to be filled up and 31 persons were claimants to be appointed prior to the two Petitioners and that they were appointees after 2.5.91 the Petitioners have no case. The reason for rejection of the claim of the Petitioners cannot be said to be arbitrary, irrational or contrary to fact or law.

13. This writ application has no merit. It is dismissed.