

(2006) 07 JH CK 0068

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 1436 of 1999 (P)

Salimuddin Ansari and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 4 JCR 405

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Jitendra S. Singh and K.K. Mishra, for the Appellant; I. Sen Choudhary, SC-III and K.K. Ambastha, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The petitioners and others had moved the High Court earlier in CWJC No. 1709 of 1989, which was disposed of by giving certain directions. The said judgment has been annexed as Annexure-7 to this writ: application.

2. The petitioners were engaged by the irrigation Department to work on Daily Wages as Muster Roll Employees under Irrigation Division, Nala and Jamtara in the district of Dumka on different dates in between 1980 to 1985 against various Class-IV posts of Mali, Peon, Chowkidar, Sweeper, Jeep Driver, Pump Operator etc. The main claim of the petitioners was that from the date of their respective appointment, they were working without any break.

3. The grievance was raised by the petitioners before the High Court that though they were also displaced persons like the Respondent nos. 13 to 96 therein due to acquisition of their land for execution of various schemes of the State Government but the respondent authorities arbitrarily regularized the services of the aforesaid respondent nos. 13 to 96 ignoring the claim of the petitioners.

4. In the aforesaid judgment (Annexure-7) the High Court held in para-8 that

undisputedly these matters require adjudication of different facts, which was not possible for Court in examines at this stage. However, it was stated that it cannot be ignored that this Court itself while disposing of C.W.J.C. No. 10224 of 1995 and its analogous cases had held that the employees working prior to 01/08/1985 from a different class and their cases can be considered for regularization in terms of the policy decision of the State Government dated 18th June 1993. That apart, respondent authorities have themselves regularized services or respondent nos. 13 to 96 on the ground that they were displaced persons.

Accordingly, the High Court directed the respondent authorities to consider the claim of the petitioners also in the light of the order of this Court in C.W.J.C. No. 10224, 1995 and its analogous cases as also the order passed in C.W.J.C. No. 2261/1995. It was further observed that the authorities are also expected to bear in mind that having regard to identical claim, the respondent nos. 13 to 96 were already regularized and further that the petitioners were continuing in view of the interim order of this Court.

5. Pursuant to the said direction the Secretary cum Commissioner, Water Resource Department, Government of Bihar (Respondent No. 3 herein) passed the impugned order, as contained in Annexure-1 to the writ application, whereby rejected the claim of the petitioners for their absorption/regularization in the service.

6. Mr. Jitendra S. Singh, learned counsel appearing for the petitioners submitted that the impugned order, as contained in Annexure-1 to this writ application, was not at all in consonance and in compliance of the order/directions of this Court as contained in Annexure-7 to this writ application. As a matter of fact on erroneous consideration the claim of the petitioners for absorption and/or regularization of the service of the petitioner has been rejected.

Since the petitioners were continuing in service and the other similarly situated persons, i.e. respondent nos. 13 to 96 in the aforesaid writ petition (CWJC No. 10224/95) were already regularized and, therefore, the direction in this regard is required to be issued for the regularization/ absorption of the petitioners in service on permanent basis.

7. Mrs. I. Sen Choudhary, learned SC-III appearing for the respondents by citing a recent decision of the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . has submitted that in view of this decision now no relief can be granted to the petitioners.

She submitted that the Supreme Court has specifically held that in case of public employment regarding absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/ recruited and continued for long in public employment de hors the constitutional scheme of public employment, the Supreme Court and the High Court should not issue such directions unless the recruitment itself was made regularly and in

terms of the constitutional scheme. According to the Supreme Court, the wide powers under Article 226 are not intended to be used for issuance of such directions, certain to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment.

8. From perusal of the aforesaid judgment of the Supreme Court, it appears that it has been held therein that the phenomenon of "litigious employment" which had arisen due to issuance of such directions by High Court, and even Supreme Court, was merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

9. It was further held in the decision of the Supreme Court in para-39 that there have been decisions which have taken the cue from Dharwad case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in *Workmen v. Bhurkunda Colliery of Central Coalfields Ltd.* though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent.

10. In para-54 of the said judgment of the Supreme Court it was further held that 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 was held herein, will stand denuded of their status as precedents.

11. In view of the above judgment of the Supreme Court, as the position stands today, no direction can be issued for regularization/ absorption of the petitioners on permanent basis since the State has taken a specific stand that without following the procedure for appointment the petitioners were engaged on daily wages and were continuing as such and, therefore, it did not confer any right on them to continue any further.

12. In this view of the matter, following the decision of the Supreme Court, I hold that the petitioners are not entitled to any relief whatsoever.

13. Accordingly, having found no merit, this writ application is dismissed.