
(2011) 03 PAT CK 0103
In the Patna High Court
Case No : CWJC No. 1504 of 2005

Sanat Kumar Das and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 59 BLJR 2652 : (2011) 2 PLJR 1014

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the Petitioners and the counsel appearing for the State.

2. There are four Petitioners in CWJC No. 1504 of 2005 and nine Petitioners in CWJC No. 3480 of 2005. All these Petitioners have challenged the order contained in notification No. 860(s) dated 11.3.2005, issued under the signature of the Deputy Secretary, Road Construction Department, Government of Bihar, whereby Petitioners have been terminated from their post, on which they were earlier appointed in the year 1989. The termination order has been challenged by the Petitioners on the ground that their appointment, made as per the Government's own decision, and notification relaxing the rules, just in order to absorb services of all those Junior Engineers, who were earlier appointed on ad hoc basis, could not have been terminated subsequently on the ground that without following the rule and procedure for regular appointment, their appointments have been made. Another ground, which has been taken by the Petitioners for challenging the impugned order is that in a similar circumstance, termination order of one Vijay Kumar Singh has been quashed by the Court by order dated 7.12.1993 passed in CWJC No. 6901 Of 2002 (S/o-1992 ?).

3. Facts of the case so far Petitioners in both the writ applications are similar, except a minor distinction so far the case of Petitioners in CWJC No. 3480 of

2005 is concerned. All these Petitioners were diploma holders and duly qualified, for being appointed on the post of Junior Engineers. Initially the State Government advertised the post of Junior Engineers and also invited applications through the Employment Exchange for filling up the posts of Junior Engineers on daily wages basis in the different districts of State of Bihar. Petitioners also applied against the post of Junior Engineers in pursuance of the advertisement. The Selection Committee recommended Petitioners' name for their appointment on daily wages on the post of Junior Engineers. By different orders appointment letters were issued in favour of the Petitioners by the District Magistrate. Subsequently, the State Government took a decision to regularize the service of daily wages Junior Engineers, having qualification of diploma in Civil Engineering. The Deputy Development Commissioner were also directed not to terminate the service of the daily wages Junior Engineers but on account of some question being raised on the floor of Legislative Assembly an assurance was given by the Chief Minister that the cadre posts will be created and the Junior Engineers working in NREP Scheme will be appointed on regular basis as per their qualification. Thereafter, the State Government took a policy decision to appoint Junior Engineers on ad hoc basis for six months in pay scale of Rs. 785-1,210/-, Vide Office order No. 34 dated 5.2.1987 the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar. On completion of six months, services of all such Junior Engineers were terminated. In the meanwhile some of the Junior Engineers appointed on ad-hoc basis were appointed on regular basis under the services of the State of Bihar but 80 Junior Engineers were left. As per the resolution of the Department of Personnel and Administrative Reforms, criteria had been fixed relating to regular appointment of direct recruits to the post of Junior Engineers. Clause 3(ka) of this resolution provided that all direct recruitment of Junior Engineers will be made by the Head of the Department appointing authority on the basis of recommendation of the Bihar Public Service Commission. Since a large number of Junior Engineers earlier working on daily wages basis were continuing in Road Construction Department as well as in other Department of the State, as such it was taken as a policy decision to regularize services of such Junior Engineers. The State Government took up the case of regularization vide notification No. 839 dated 15.12.1989 issued by Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department and it was decided to appoint the Junior Engineers on regular basis after relaxation of Rule 3(ka). As per this Rule 3(ka) only on the basis of the recommendation of the Bihar Public Service Commission direct regular appointment could have been made. The decision regarding relaxation of the rule was approved by the Chief Minister as well as by the Cabinet. The Junior Engineers who could not get their appointments in other Departments on regular basis, their cases were taken up. The number of such Junior Engineers was initially 80. It was subsequently reduced to 54 and out of those 54, firstly 44 cases were taken in a batch and subsequently cases of 14 Junior Engineers were taken for appointment without the recommendation of the Bihar Public Service

Commission. They were appointed as per the relaxed rule.

4. Counsel appearing for the State has taken an objection so far the relaxation of the rule is concerned, giving reference of noting of Chief Minister but on consideration of this noting, it is apparent that rule was relaxed for all such Junior Engineers, who were initially appointed on Muster Roll and subsequently on ad hoc basis but in whose favour recommendation of the Bihar Public Service Commission was not available, despite the fact Government has decided to regularize all of them against the vacancies available in different category. Annexures-7 and 8 annexed with CWJC No. 1504 of 2005 indicate the Government decision to relax the rule and also that for regular appointment of these Junior Engineers, posts were available in general as well as in reserved category. Such relaxation was made only for those Junior Engineers who were appointed on Muster Roll only.

5. Counsel for the Petitioners in both the writ applications have submitted that all these Petitioners come within those 54 Junior Engineers, whose cases were later on taken up for regularization. So far Petitioners in CWJC No. 1504 of 2005 are concerned, they come within the first batch of 44 Junior Engineers and the Petitioner in CWJC No. 3480 of 2005 belong to the batch of 14, whose cases for regular appointment was taken, subsequently as at the relevant time, their bio-datas and relevant documents were not available. It has also been submitted that the case of the Petitioners who are in batch of 14 is identical to the case of Petitioners in CWJC No. 6901 of 1992, which has been annexed as Annexure-12 with the first writ application. In this judgment, in detail, all the matters have been discussed and the termination order which was under challenge was quashed. In Para 8 of the judgment a finding has been recorded for quashing of the order of termination which is as follows:

The short point which arises for consideration in the facts and circumstances of the present case is as to whether termination of the services of the Petitioner could be justified when he remained in service for continuously long ten years and the services of similarly situated other Junior Engineers were regularized whether the same treatment to the Petitioner's case could be denied. The admitted position is that the Petitioner as also the other Junior Engineers were appointed in the same manner. The Petitioner was appointed against the permanent vacant sanctioned post. In the case of others in respect of 44 and 14 Junior Engineers there was no recommendation of the Bihar Public Service Commission and their services were regularized pursuant to the Cabinet decision by relaxing Rule 3(ka) of the resolution of the Personnel and Administrative Reforms Department. In the present case, I do not see any reason why the Petitioner could not be given the same treatment while it was given in the case of those 54 others by making relaxation in the Rule. Without making any precedence, in the peculiar facts and circumstances of this case, the Petitioner's case being similar to those who have been given relaxation of Rule 3(ka), the Petitioner should be given the same treatment and I direct accordingly.

6. The finding which has been recorded in the case of Petitioner of CWJC No. 6901 of 1992 is applicable in the case of these Petitioners also, as facts of these cases are identical to the case of Petitioners in these two writ applications. They were also appointed on regular basis against the sanctioned vacant posts, giving relaxation of Rule 3(ka). The Rule 3(ka) was relaxed as per the Government policy decision with the approval of the Chief Minister. I find that these Petitioners are also entitled to similar relief as it has been allowed in the earlier writ petition as well as in cases other similarly situated Junior Engineers. Petitioners, despite issuance of impugned termination order have continued on their posts on the basis of stay order passed in the writ applications. Impugned order of termination is quashed. The Petitioners will continue on the post as they were continuing, and will get all consequential benefits available to permanent Government employees.

7. These writ applications are allowed.