
(2014) 08 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 1837 of 2014

Shankar Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2015) 1 PLJR 62

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Pramod Mishra, Advocates for the Appellant; Udai Shankar Singh, Advocates for the Respondent

Judgement

Birendra Prasad Verma, J.—Heard the parties. Originally, the present writ petition was filed on behalf of the writ petitioner seeking a direction to the respondents for regularization of his service on a Class-IV post on the ground that he was working there on that post for more than three decades.

2. The present writ petition was filed on 21.1.2014 and two copies of the writ petition was served upon the learned Advocate General, Bihar, Patna enabling him to obtain instructions from the respondents/authorities, who are party in the present proceeding.

3. Learned counsel appearing on behalf of the petitioner submits that once the authorities of the respondent-State came to know about filing and pendency of the present writ petition for the reliefs enumerated in paragraph 1 of the writ petition, during pendency of this application, by order dated 12.3.2014 the Additional Registrar, Co-operative Societies, Bihar, Patna has passed an order removing the petitioner from service on the ground that his continuance on the post of Night Guard since 18.4.1982 was not against the sanctioned post and has also rejected his claim for regularization purportedly in the light of Judgment of the Hon''ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

4. It is submitted that, in the above view of the matter, the petitioner filed I.A. No. 2743 of 2014 seeking amendment in the writ petition and seeking permission of this Court to assail the validity and correctness of the aforesaid order dated 12.3.2014 brought on the record as Annexure-7 to the aforesaid Interlocutory Application. The prayer made in the aforesaid Interlocutory Application has been allowed by a Bench of this Court (Coram: Jayanandan Singh, J.) vide order dated 10.4.2014. It is next submitted that the impugned order dated 12.3.2014 is a mala fide one and has been passed by the authority concerned with an ulterior motive only with a view to defeat the claim raised on behalf of the petitioner in this writ petition.

5. Though the present writ petition was filed on behalf of the petitioner on 21.1.2014 after serving two copies of the writ petition upon the learned Advocate General, Bihar, Patna but till date no counter affidavit has been filed on behalf of the respondents. However, when the matter has been called out, learned AC to GA-2, appearing on behalf of the respondents, makes a prayer for adjournment enabling him to obtain instructions and file a counter affidavit.

6. However, in view of the facts stated in the impugned order dated 12.3.2014 (Annexure-7 to the Interlocutory Application) admitting therein that the petitioner has been working on the post of Night Guard, a Class-IV post, since 18.4.1982, this Court is of the opinion that no useful purpose will be served by adjourning the matter and allowing the State counsel to file a counter affidavit. The respondent-State and its authorities, now, cannot go back from the finding recorded in the impugned order that the petitioner has been working on the post of Night Guard since 18.4.1982, i.e., about 32 years, and he is virtually on the verge of retirement.

7. After having heard learned counsel for the parties and taking into consideration the materials available on the record as also admission made in the impugned order, this Court is of the opinion that the order dated 12.3.2014 (Annexure-7) passed by the Additional Registrar, Co-operative Societies, Bihar, Patna cannot be approved. The petitioner, who has served for about 32 years, cannot be permitted to show the door at this stage, when he is at the verge of retirement. This is not the true spirit of the judgment of the Hon'ble Apex Court in the case of Uma Devi (supra).

8. For the reasons recorded above, the impugned order dated 12.3.2014 (Annexure-7) passed by the Additional Registrar, Co-operative Societies, Bihar, Patna is hereby set aside and quashed. The petitioner is directed to be reinstated in service with back wages. The respondent-authority is hereby directed to pass a fresh order in accordance with law regarding regularization of his service, mainly on the ground that he has worked on the post of Night Guard since 18.4.1982, at an earliest preferably within a period of three months from the date of receipt/production of a copy of this order. The writ petition stands allowed to the extent indicated above, but with the observations/directions made above. However, there shall be no order as to costs.