
(2001) 01 PAT CK 0024

In the Patna High Court

Case No : C.W.J.C. Nos. 10596 and 11952 of 1999

Sri Amrendra and Others, etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0024

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In the first writ petition, bearing C.W.J.C. No. 10596 of 1999, the petitioners have prayed for quashing of Item No. 20 of the resolution of the Bihar State Housing Board (in short "the Board") taken in its 187th meeting dated 27.9.1999, as contained in Annexure 5, to the effect that the work from the petitioners may be taken on contract basis with effect from 1st November, 1999 as per the need and further a direction to the respondents has been sought for to regularize the services of the petitioners against the vacant sanctioned post, on which they have been working for the last ten years without any break in service and also not to disturb them except in accordance with law.

2. In short, the relevant facts of the first case are that the petitioners No. 1 to 4 were appointed by the Managing Director of the Board u/s 16(iii)(a) of the Bihar State Housing Board Act, initially for a period of three months on 4.7.1989, 28.11.1990 and 5.10.1989 respectively. The services of the petitioners were duly extended after every three months and thereby they have rendered continuous service for more than ten years under the Board. According to the case of the petitioners, they have been working against the permanent vacant sanctioned posts and their jobs are perennial in nature. Out of three posts of Law Supervisors, petitioners No. 1 and 2 are working on two and likewise, against the four vacant sanctioned posts of Typist, petitioners No. 3 and 4 have been working. Accordingly, the petitioners claim to be entitled to regularization on the respective vacant sanctioned posts on which they have been working for the last ten years.

It appears that in 171st meeting dated 27.7.1996, the Board while extending the services of the petitioners decided to regularize the services of 18 daily wages employees, including the petitioners by following the Rules of the State Government. A photo copy of the said decision has been annexed as Annexure.

3. The petitioners of the second writ petition, bearing, C.W.J.C. No. 11952 of 1999, are also aggrieved by the same part of the aforementioned resolution dated 27.9.1999. and have also sought for similar relief. As such, the same has been heard along with the first writ petition for final disposal, as agreed.

4. In the second writ petition, initially the petitioners No. 1 to 6 were appointed for a period of three months on 8.8.1989, 30.3.1991, 7.8.1990, 23.11.1990, 19.1.1991 and 17.10.1989 respectively and their services were also duly extended from time to time and thereby they have rendered continuous service of almost ten or more than ten years under the Board. They also claim to have been working on the permanent vacant sanctioned posts and that their jobs are also perennial in nature. Accordingly, they have also sought for direction to regularize their services.

5. In the counter-affidavits filed in both the cases, the case of the Housing Board, its Managing Director and the Secretary (respondents No. 2 and 3 respectively) is common. Their plea is that the petitioners were engaged as daily rated workers between August 1989 and January 1991. According to them, the Administrative Reforms Department, Government of Bihar, vide their letter No. 212 dated 1.3.1985, took a decision not to make appointment of daily rated workers with effect from 1.8.1985. It is stated that the Housing Board has not framed its service condition and hence the service Rules existing in the State Government are in force in the Board, As regards third and fourth grade posts, it is stated that the procedure has been laid down by the Administrative Reforms Department's letter No. 16440 dated 3.12.1980 and without following of which the petitioners cannot be appointed. The other plea taken is that due to financial position, the Board is not in a position to make appointment on regular post and that is why the Board has taken decision to keep these petitioners on contract basis if they are ready to work otherwise they have to face retrenchment. According to the respondents, the petitioners were never appointed in the Board rather they are engaged as daily waged workers. The Board has, however, admitted in the counter-affidavit about the decision taken in its 171st meeting dated 27.7.1996, but it is stated that it is not implemented due to financial position. However, according to the case of the Board, the petitioners have been given opportunity to remain engaged on contract basis.

It is, however, not disputed that the petitioners have rendered continuous service of almost or more than ten years under the Board. They also admitted that the posts are vacant but keeping in view the financial position, the Board is not a position to fill up such vacant posts by way of appointment.

6. In reply, the petitioners have stated that they were not simply engaged by the

respondents but were appointed by the Managing Director on temporary basis under the powers envisaged u/s 16(iii) of the Bihar State Housing Board Act. They were getting less than Rs. 840 at the time of their appointment. It is stated that since the appointments were made under the Act, therefore, applicability of the circular, if any, issued by the State Government with regard to appointments in its services will not be binding upon the Board. It is stated that the purpose of formation of the Board by an Act is to provide housing facility and other facility connected therewith to the people at large on a reasonable price and the Board runs on no profit and no loss basis. It is also stated that the establishments of the Board all over Bihar are running smoothly and there is no incidence that any of the employees of the Board has not been given salary in a particular month. All the employees are getting other allowances in due time and the Board is ready to grant house building loan, motor/vehicle advances to its employees if demanded. Therefore, according to the petitioners, the plea of financial stringency prevailing in the Housing Board is merely an alibi in order to defeat the claim of the petitioners for absorption/regularization. It is stated that there is no such provisions under the Act to keep an employee on contract basis and, therefore, the aforesaid decision, of the Board is in contravention of the Act itself and, further, it will amount to changing the terms and conditions of appointments as approved. The petitioners claim to be duly qualified to hold the posts and petitioner No. 3 of the first case claims to be well qualified graduate and is qualified in Computer Application also. As such, he has been given the work under the Managing Director Cell and has been performing all the duties of Computer Operator, Personal Assistant to the Managing Director, Typist along with work of despatch, issue, etc. in Managing Director Cell. Having satisfied with his work, he was sent for Computer Training by the Housing Board in the year 1988 and on 10.3.1999 his daily rate was revised on that count. Likewise, petitioner No. 4 has been performing his duty by pleading, defending the cases filed on behalf of the Board before the competent authority constituted under the Act. In support of this, petitioners have annexed the copy of the office order dated 10.3.1999 and the authority letter issued by the Managing Director as Annexures 8 and 10 respectively to the reply affidavit. It is reiterated that the respondent-Board has admitted that the posts are vacant and that the Housing Board has taken a decision to absorb/regularize the petitioners on the respective vacant posts. With respect to the financial stringency it is reiterated that the Board is competent enough to bear the Administrative expenditure incurred in case of regularization/absorption of the petitioners. It is stated that under the provisions of the Act, the Government may every year a grant in the Board to enable it to meet the deficit in its administrative expenses. Apart from the above, the petitioners state that the Board is running on no profit and no loss basis and there is no financial stringency. The Board is spending huge amount of about Rs. 3 lakh per annum on providing vehicle and petrol and diesel to the various officials of the Board and the Housing Department beyond the Government directions which is more than the establishment cost likely to be incurred in case of absorption/regularization of the petitioners. It is also stated that recently four

Drivers of the Board were engaged on daily wages at a monthly payment of Rs. 1,612 but there is proposal to replace them by requisitioning the services of the Driver from the Security Agency on a higher payment of Rs. 2,730 per month.

7. On 23.11.2000, a supplementary affidavit was filed on behalf of respondents No. 2 and 3 in which it was pointed out that in other similar two writ petitions filed separately by two similar daily wage employees, bearing C.W.J.C. No. 6867 of 2000 and 9218 of 2000, this Court had directed the respondents to consider their case for regularization and, accordingly, the Board sought for disposal of the present writ petition also in terms of the said orders. Photo copies of the orders have been annexed as Annexures A and B in which the Board had agreed for consideration of the case of the petitioners for regularization in the light of the direction of the Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., .

8. This Court on 6.12.2000 after taking notice of the said two orders had asked the learned Counsel for the Board as to how much time the Board authority will take to consider the case of the petitioners of this case and others for regular appointment. On the information given by the learned Counsel for the Board that the present Managing Director has recently joined, as such, it will take some time to consider their cases for regularization, this Court in the order dated 6.12.2000 noted the said facts as also the submissions advanced on behalf of the Board that the earlier order could not be complied on account of ongoing strike of the Bihar Administrative Services Association and even after the Strike, the Board was facing difficulty as some of its officers have been transferred to the newly-created Jharkhand State. It also noted the stand of the Board that the process for consideration shall be expedited. However, a new plea was taken that in view of the Government decision, contained in Memo No. 5940 dated 18.6.1993, the reservation policy and roster have to be complied even in the matter of regularization of service. This Court expressed doubt that the said Government decision will bind the Board, which is an autonomous body and, further, made it clear that the said Government decision only provides that while preparing panel for regularization of the existing employees already working, policy regarding reservation and roster is to be applied to the employees whose cases are to be considered for regularization and, accordingly, this Court directed the respondent Board to complete the process of regularization positively within one month with a clear direction that the Board shall inform all concerned authorities in order to see that the order is strictly complied within the said time. On the request of the learned Counsel for the Board, a copy of the order was also supplied to him for strict compliance.

9. When the matter was taken up on 10th January, 2001, a complete U-turn was taken in the matter and on the instruction of the Managing Director, learned Counsel for the Board submitted that in view of financial stringency, the Board is not in a position to consider the cases of the petitioners for their regularization in the service of the Board.

10. This Court finds that the action of the Managing Director in the present case is not fair and completely against the decision of the Board taken in its 171st meeting, as contained in Annexure 4 to the first writ case, so much so that even since he took over as Managing Director stand on his behalf till last time has been that the cases of the petitioners shall be considered and that the process of regularization shall be completed within one month since the last order dated 6.12.2000 was passed in the present case and now that the Board is not in a position to consider their cases for regularization. The plea that the Board is facing acute financial crisis on the face of record appears to be mala fide to defeat the claim of the petitioners for regularization after they have rendered almost or even more than ten years in the service of the Board and now almost all of them have become overage for employment elsewhere. This is also evident from the fact that vacant sanctioned posts are available on which these petitioners were initially appointed and the Board has continuously taken work from them now for almost or more than ten years and even in its last meeting decided to take work from them but not regularize them in service. It is not the case that the Board has in any of its meeting considered about the financial stringency and has resolved about Board's facing with any such stringency. It is really shocking to the conscience that even recently the Board has taken decision to take work from these petitioners but on contract basis and not to treat them as regular employees and pay salary like other regular employee which, in my opinion, clearly amounts to exploitation of their labour by the Board which obviously is in commanding position, The exploitation of labour by the employer has on a number of occasions been deprecated by the Apex Court and the Apex Court issued directions for regularization of service even of such persons, who completed five years of service as daily wagers on Grade III post. Reference in this regard can be made to the case of Amrit Lal v. State of Haryana and Ors. 2000 (2) BLJ 630 . Recently in the case of Rudra Kumar Sain and Others Vs. Union of India and Others, , the Constitution Bench of the Apex Court has held that according to the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc".

11. The plea of the respondents taken in the counter-affidavit that the initial appointment/engagement of the petitioners was contrary to the Government decision is also not at all tenable especially in the facts and circumstances of the present case, the Board is an autonomous body. Learned Counsel for the Board has failed to show any provisions which can bind and affect the autonomy of the Board in taking such decisions. Moreover, such plea after lapse of all most ten years is not tenable in view of the decision of the Apex Court in the case of Roshni Devi and Others Vs. State of Haryana and Others, , wherein the recruitment process through which the appointments were made was found invalid, but the Apex Court keeping in view that the persons concerned had

rendered more than nine years" service invoked equity and their appointments were saved.

12. In *Piara Singh's case* (Supra), the Supreme Court, while laying down the general law concerning the issue of regularization of ad hoc/temporary employees in Government service, held that if for any reason (underlining is mine) such employee is continued for a fairly long spell the authorities must consider his case for regularization provided he is eligible and qualified according to the Rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. In my opinion, the words "if for any reason" are of wide import and include a situation where the authorities overlook or fail to notice the illegality or irregularity in the appointment and the appointment is continued for fairly long spell and the work subsists, the authorities are bound to consider his case for regularization subject only to the aforementioned conditions laid down by the Supreme Court.

13. The Supreme Court in the case of *Surya Narain Yadav and Ors. v. Bihar State Electricity Board and Ors.* AIR 1988 SC 941 also invoked the principle of equitable doctrine and held that the Board was bound to regularize the appointments of the appellants who had been taken as Trainee Engineers initially and had been continued since long to be in the employment of the Board and accordingly confirmed the mandamus earlier issued to the Board to offer regular appointment to the appellants of the said case. The relevant passage may usefully be quoted hereunder:

4. We have referred to these two documents out of several of them available on the record to show that the Board was aware of the position that these trainee engineers formed a special class and very peculiar circumstances warranted a definitely special treatment in regard to them. Yet it is unfortunate that a statutory body like the Board has failed to stand up to its representations made from time to time to a group of engineers who had spent years of their valuable life for qualifying themselves as engineers and who believing the representation of the Board and acting upon the same continued to remain in the employment of the Board as trainee engineers forgoing opportunities available to seek other employments and in the process have become age-barred for any public employment. This Court almost a score of years back in clear language indicated in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, :

(Quotation omitted)

In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , this Court went ahead to state that the doctrine of promissory estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice and it can be basis of a cause of action.

5. In our view, the principle relied upon in these case has full application to the facts before us. The Board is a statutory authority and in "State" within the meaning of Article 12 of the Constitution. The Board has tried to seek shelter

under a set of Rules framed by it in exercise of the powers vested u/s 79 of the Electricity (Supply) Act of 1948. In the peculiar facts of the case, we are of the view that the defence is ill-placed and cannot hold as a shield against the application of the equitable doctrine. Admittedly, the trainee engineers before us formed a specific class and from time to time the Board treated them as members of a class and in its resolution of April 26, 1979, recognized this fact and swore to the position that such treatment should never be repeated even if apprentice engineers were appointed.

14. In the case of Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, also the Supreme Court invoked the equitable doctrine and issued direction that the "service of such temporary teachers who have, worked as such for three years, including the break till today shall not be terminated. They shall be adsorbed as and when regular vacancies arise", it was further directed that "From the date of Judgment every temporary teachers should be paid salary as is admissible to teachers appointed against permanent post. Such teachers shall be continued in service even during vacations".

This Court also relying upon the said decision in the case of Bihar Fruit and Vegetable Development Corporation v. State of Bihar 1994 (1) PLR 377 considered about the general law concerning the issue of regularization of ad hoc/ temporary employee.

15. Thus, in my opinion, if the authorities concerned do not wake up even after the decision of the Supreme Court in the case of Piara Singh (supra) and are not vigilant in detecting the irregularities in any appointment at the earliest stage i.e., before an employee has already continued for a fairly long spell, then they cannot be allowed to question the legality of the appointment of such an employee and such employee will be entitled for regularization of service subject to the conditions as laid down by the Supreme Court in Piara Singh's case (supra) and their claim of regularization cannot be defeated on such vague plea of financial incapability about which nothing has been brought on record in support thereof.

16. Learned Counsel for the Board, however, submitted that in view of the Government decision, contained in Memo No. 5940 dated 18.6.1993, the reservation policy and the roster have to be complied even in the matter of regularization of service. This Court already in its order dated 6.12.2000 had taken note of the said submission and had directed that even if assuming that the said Government decision will bind the Board, which is an autonomous body, then the said Government decision only provides that while preparing panel for regularization of the existing employees already working policy regarding reservation and roster is to be applied to the employees whose cases are to be considered for regularization. Thus, in my opinion, the said plea taken on behalf of the Board is also wholly untenable and fit to be rejected.

17. This Court really feels shocked with the attitude of the Managing Director in the instant case inasmuch as on 6.10.2000 on the stand taken by the learned Counsel appearing for him and the Board, this Court directed the respondent Board to complete the process of regularization positively within one month and further made it clear that the Board shall inform all concerned authorities about this order in order to see that the order is strictly complied within the said time, yet now instead of carrying out the said direction, a complete different stand has been taken on their behalf, which this Court highly deprecates.

18. In the result, both the writ applications are allowed. The respondents are directed to regularize the services of the petitioners by completing the formalities, if any, and issuing orders within two weeks of the receipt/production of a copy of this judgment/order.

19. From the supplementary affidavit filed on behalf of the petitioners, this Court finds it to be shocking that despite the interim order passed on 12.5.2000 for maintaining status quo as on the said date in respect of service of the petitioners and taking work from them, the Board has not paid them their wages. Accordingly, this Court directs that the petitioners should be paid their wages in the light of the aforesaid interim order forthwith on receipt of a copy of this judgment/order.