

(2008) 03 PAT CK 0015
In the Patna High Court
Case No : LPA No. 1532 of 1999

State of Bihar and Others	Vs	APPELLANT
Jawahar Ram and Others		RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Citation : (2009) 1 PLJR 19

Hon'ble Judges : S.K. Katriar, J; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Nilu Agrawal and J.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Katriar and Kishore K. Mandal, JJ.—The State of Bihar has preferred this appeal in terms of Clause 10 of the Letters Patent of the High Court of Judicature at Patna. The writ petition at the instance of the four petitioners has been allowed by judgment dated 10.9.1999, passed by the learned Single Judge of this court in CWJC No. 1635 of 1998 (Jawahar Ram & Ors. vs. The State of Bihar & Ors.), whereby the State of Bihar has been directed to pay minimum of the time scale to the post on which they were working until their claim for regularisation is considered one way or the other by the competent authority. We shall go by the description of the parties occurring in the writ petition. The four petitioners, namely, Jawahar Ram, Ram Sagar Pd. Singh, Ratendra Kumar Mallik, and Chhotelal Gope @ Chhotelal Yadav (respondent Nos. 1 to 4 herein), jointly preferred the said CWJC No. 1635 of 1998 seeking the following two reliefs:-

- (i) to regularize the services of the petitioners, and
- (ii) to give equal pay for equal work.

The petitioners had joined as Class-IV employees on daily wage basis in different engineering establishments of the State of Bihar and continued as such for sometime. The writ petition was allowed with the aforesaid directions. Aggrieved

by the same, the State of Bihar has preferred the present appeal.

2. It is submitted on behalf of respondent authorities (the appellants herein) that the issues relating to regularization is now concluded by judgment dated 15.3.2007, passed by a Division Bench of this Court in a batch of appeals including LPA No. 736 of 2006 (The State of Bihar and Others vs. Jawahar Ram and Others), in so far as the second issue is concerned, it is submitted that there was no basis for the aforesaid direction for grant of the minimum of the time scale.

3. None has appeared on behalf of the writ petitioners (the respondents herein) in spite of valid service of notice.

4. We have perused the materials on record and considered the submissions of learned counsel for the parties. We shall begin with the first issue. After the aforesaid order dated 1.10.1999, was passed disposing of CWJC No. 1635 of 1998, the respondent authorities dispensed with the services of four writ petitioners, vide order dated 29.11.2001, w.e.f. 31.12.2001, leading to CWJC No. 16247 of 2001. The same was disposed of by a learned Single Judge of this Court by order dated 28.6.2006. CWJC No. 16247 of 2001 was preferred by ten persons including the present four writ petitioners.

5. Aggrieved by the order dated 28.6.2006, disposing of CWJC No. 16247 of 2001 (Jawahar Ram & Ors. vs. The State of Bihar & Ors.), the State of Bihar preferred LPA No. 736 of 2008, which was disposed of by a Division Bench (alongwith various other appeals), by a common judgment dated 15.3.2007, whereby the order of the learned writ court was set aside, and the appeals were disposed of with the following directions:-

"It is in these facts, upon consensus, as well as, the subsequent decisions of this court in other cases based on the decision rendered in Uma Devi (3) case (supra), like in the The State of Bihar and Others Vs. Purendra Sulan Kit and Others etc. etc., and The State of Bihar & Others vs. Bipin Prasad Singh and Others analogous cases (LPA No. 1211 of 2005)" decided on 2.11.2006, we are inclined to issue the following directions to the State of Bihar in respect of the original writ petitioners in respect of which the decision of the learned Single Judge is challenged in these group of appeals:-

(1) The Chief Secretary, Government of Bihar shall constitute a Committee of three Secretaries within a period of two months from today to examine the manner and mode and the type of appointment and whether such appointments are in consonance with the Recruitment Rules on regular posts, irregularly made or illegally made or not.

(2) Such Committee shall consider the individual case after giving an opportunity of hearing to the affected employees, the procedure for which the Committee will evolve its own modality and modus operandi so as to reach to a conclusion as to the nature of the appointments of the employees covered in this group of

petitions and to ascertain whether their appointments are regular, irregular or illegal and whether they are falling within the ambit of the observations made in paragraphs 45 and 53 of the decision in Secretary, State of Karnataka and Others vs. Uma Devi (3) (supra) case judgment.

(3) The committee shall, undoubtedly, take a decision in the light of the law laid down by the Constitution Bench of the Hon"ble Apex Court in Uma Devi (3) (supra) and in particular in the light of the observations which are quoted herein above.

(4) It shall, also, be remembered that the exercise of regularization, if required, shall be a one time measure.

(5) The exercise by the Committee is directed to be completed within six weeks after the creation thereof and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.

(6) The contention that in some of the cases out of the present group in earlier round of litigation finality has been attained and achieved shall, also, be examined by the Committee.

(7) Until the Committee concludes its process and exercise directed hereinabove, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained."

We are of the view that the claim of the present writ petitioners for regularization is covered by the aforesaid direction and it is accordingly disposed of.

6. In so far as the direction for payment of the minimum of the time scale is concerned, we respectfully disagree with the order of the learned writ court. We agree with the submission advanced on behalf of the State counsel that the writ petitioners did not lay the requisite factual foundation for the contention. The relevant averments have been made in para-20 of the writ petition and is reproduced hereinbelow for the facility of quick reference:-

"That it is humbly submitted that, the petitioners are poor person and they are rendering his service more than 10 years and they are still getting only daily rate which is prescribed by the Labour Department whereas a similarly situated person junior to the petitioners and who were appointed till 5.7.1985 in Godda Division are getting minimum time scale of pay fixed scale and as such petitioners are also entitled to similar relief as has already been granted by the respondents to similarly situated persons like petitioners."

We are of the view that the aforesaid averments are woefully lacking in relevant particulars. The requisite details have not been provided as to who were junior to the petitioners, who were appointed on which date, worked up to which date, whether or not there was break in service, who were the persons allegedly junior to the petitioners in what respect, and the nature of duties and functions being performed by them.

There was thus lack of sufficient materials before the learned writ court to issue the direction that the writ petitioners were also entitled to the pay scale on the ground of discriminatory treatment, or on the ground of equal pay for equal work. We, therefore, respectfully disagree with this part of the order dated 1.10.1999, passed in CWJC No. 1635 of 1998. In the result, this appeal is allowed in the aforesaid manner. In the facts and circumstances of the case, however, there shall be no order as to costs.