
(2016) 04 PAT CK 0065

In the Patna High Court

Case No : Letters Patent Appeal No. 1741 of 2012 in Civil Writ Jurisdiction Case No. 14242 of 2005

State of Bihar

APPELLANT

Vs

Rajendra Rai

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : (2016) 3 PLJR 554

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Kaushal Kumar Jha, AAG-14, Mr. K.C. Jha, AC to AAG-14 and Mr. Amish Kumar, AC to AAG-14, for the Appellant; Mr. Pramod Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—Heard the parties and with their consent this appeal is being disposed of at this stage itself.

2. This is an intra-court appeal preferred by the State against the judgment and order dated 03.04.2012, passed in C.W.J.C. No. 14242 of 2005 by which the learned Single Judge disposed of the writ petition with direction that the writ petitioner, who is the sole contesting respondent in this appeal, be included in the panel of 2005, which would be amalgamated with the panel of 1990 for appointment as Class-IV employee in Motihari Collectorate.

3. It appears that pursuant to various orders of the State and the orders of this Court a panel for recruitment of Class-IV employees in the Collectorate had been drawn up in 1990. In 1990 the writ petitioner-respondent also joined as a candidate peon. A candidate peon is a person who is essentially brought in on daily wage on ad hoc basis, to be brought into the service upon availability of vacancy. He is a paid daily wager. Allegedly, writ petitioner though continued to work, his name suddenly disappeared from the panel. He re-agitated the matter

without success and, therefore, when certain recruitments were made ignoring his right in the year 2005, he filed the present writ petition in the High Court. The stand of the State was that, in 1993, it was another person by the same name, who was an ex-army personnel, who figured in that panel. It was wrong on part of the writ petitioner to claim that position only on basis of similarity of name. However, plea was rejected by the learned Single Judge on the ground that the stand of the State was rather belated. The learned Single Judge then directed that the writ petitioner's name be included in the panel of 1990 by including him in the panel of 2005 and giving him due seniority. State is in appeal.

4. Having considered the matter, perused the records and heard the parties, we are of the view that the order of the learned Single Judge cannot be sustained for more than one reason. First, we would like to examine what this 'candidate peon' concept is. To us, it has no constitutional or legal sanction. It is rank exploitation by the State. State can employ a person only against the sanctioned post and that too temporarily in exigency of work, as an ad hoc daily wager but that too after due selection process. A person cannot be made to work for years after years as a candidate peon and getting daily wage even when there is no sanctioned post available in the hope of being absorbed/appointed as and when vacancy arises. If there be perennial requirement then the State must sanction additional post but this system of carrying on with daily wagers ad infinitum cannot be permitted. It would be ultra vires, unconstitutional, especially in view of Articles 14 and 16 of the Constitution.

5. The next is the issue of this continuing panel. In earlier orders, we had already noticed the parties about this issue indefinitely. A panel is made for specific appointment against notified vacancies. The moment that those vacancies are fulfilled, the appointment exercise is exhausted, the panel so prepared becomes defunct. It is unusual to allow a panel to continue beyond vacancies notified or in anticipation of vacancies.

6. From the facts, it would be noticed that a panel was first prepared in 1990. To this every year or thereafter names are added and people, who get employment, their names are deleted. It acts as an unending reservoir for all future appointments. This is a thing which is not permissible so long as Articles 14 and 16 remain in the Constitution. The effect of this would be that if top people have been included in the panel in the year 1990 then so long as they are not absorbed in service, may be after five years or ten years, no other fresh person can even attempt to get employment. Thus, this reservoir would only grow and people grow older everyday with no employment. The fresh generation would have no opportunity even to apply because they would be added below in the panel. This on the face of it is arbitrary and contrary to Article 14, which denies equal opportunity in public employment to every citizen. It is unheard that a panel created in 1990 would still continue and will be followed after 26 years in 2016. We are afraid, the Constitution does not permit it nor law can sanctify it.

We have, thus, no option but to hold that no sooner appointments/panel is made the panel would cease. It cannot be carried out ad infinitum. The circulars of the State Government being contrary would be clearly ultra vires in view of Articles 14 and 16 of the Constitution. We, therefore, cannot justify the order of the learned Single Judge and accordingly allow the appeal, set aside the order of the learned Single Judge, dismiss the writ petition with further direction that all the panels, which have been carried on under the aegis of various circulars issued by the State Government, would forthwith stand cancelled, and as and when vacancies occur they would be filled up in accordance with law i.e. by issuing advertisement to public and after due procedure of recruitment process. The concept of the employment of persons as candidate peon also cannot be sanctified, for the reasons already indicated above.

7. With these observations and directions, this appeal stands allowed.