
(2012) 09 PAT CK 0093
In the Patna High Court
Case No : CWJC No. 11076 of 2004

Surendra Dwivedi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : (2013) 2 PLJR 928

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Hari Narayan Singh in 11076 and Mr. Pramod Kumar in 6643, for the Appellant; Ghanshyam Sharma in 11076, Mr. Rajeev Kumar Singh, Mrs. Sumita Kumari in 6643, Rajiv Nayan Singh, Prakash Shekhar Kumar in 11076 and Mrs. Binita Singh in 6643, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Both the aforesaid writ petitions were heard together as the points involved therein are same and in both the cases the main respondents are the State of Bihar, the Commissioner of Building Construction & Housing Department, Govt. of Bihar as well as Bihar State Housing Board and its authorities and hence they are being decided by this common order. In both the aforesaid writ petitions their respective petitioners have sought directions to the authorities to regularize their services with retrospective effect, give time bound promotions on the period rendered in the work as well as all the arrears of salary, gratuity and other pecuniary benefits alongwith interest.

2. The claims of the petitioners are that the petitioners served for a very long period and there were Government resolutions and orders whereby petitioners were entitled to regularization of their services on their respective posts, whereafter the petitioners were transferred to the Bihar State Housing Board (hereinafter referred to as "the Board" for the sake of brevity), which is a statutory body under the Ordinance of 1972, on the same posts as regular employees.

3. It was further claimed by learned counsel for the petitioners that several work charge employees were regularized by the Housing Department of the Government of Bihar and their services were transferred to the Board. The petitioners were also regularized in the regular establishment of the Board, whereafter the resolution of the year 1977 was also issued by the Finance Department on the subject regarding regularization of services of work charge employees. However, although the petitioners were entitled for regularization of their services by the concerned Department of the Government of Bihar vide Resolution dated 23.10.1987 and 20.9.1990, but that has been denied by the authorities concerned.

4. Learned counsel for the petitioners submitted that their cases are exactly similar to the cases of the petitioners of CWJC No. 14866 of 2006: Niranjana Kumar Sinha Vs. The State of Bihar and Others, which was allowed by a Bench of this Court vide order dated 18.9.2008 after arriving at the following findings:--

The stand by the State does not seek to be acceptable by this Court especially when there is evidence on record to show that even on 14.2.2008 when 224th meeting of the Board was held in Item No. 7, the Board had resolved to get the service regulations legally examined before its formal notification after taking the approval of the Government. If this is what emerges from the record then the affidavit filed on behalf of the State is misleading by saying that there is a regulation in place right from the year 1989. The Court gets a feeling that State wants to shirk its responsibility by scuttling the issue rather than facing the situation affront.

In the totality of the facts and also keeping in mind that since no service regulation is yet in place and the background of the claim and his work in the Housing Board is not different from all those persons who had been extended benefit in terms of Annexure-11 dated 18th November, 1989, respondent no. 1 is hereby directed to do the exercise needed in this regard and keeping in mind the order dated 18th November, 1989 contained in Annexure-11 pass appropriate orders giving similar relief as that of 21 persons of Annexure-11 within a period of four months from the date of communication/production of a copy of this order.

5. On the other hand, learned counsel for the respondent-Board stated that the services of the petitioners appointed by the State of Bihar on different class of posts under its work charge establishment, were placed at the disposal of the Board after its creation in the year 1972, whereafter the Board in the year 1977 decided to regularize the services of such work charge employees, whereafter the respective services of the petitioners were regularized and most of them were also granted time bound promotions.

6. Learned counsel for the respondent-Board also submitted that after regularization of their respective services, the petitioners discharged their duties attached with their respective posts under the Board and some of such employees have also superannuated and hence prayer for regularization of

petitioners" services by the State of Bihar at the level of State Government is not within the domain of the Board and such reliefs can be claimed only against the State of Bihar.

7. Learned Counsel for the respondents-State of Bihar averred that in similar circumstance CWJC No. 8493 of 1995 was filed by Raja Ram Paswan & Ors, vs. State of Bihar & Ors. who were also employees under work charge establishment and were transferred to the Housing Department and after hearing the parties a Bench of this Court held that petitioners of that case not being regular employees of the Government they cannot be given any such relief. The said order was challenged by the petitioners of that writ petition in LPA No. 1287 of 1996, but the Division Bench affirmed the order of the Single Judge and even the Petition for Special Leave to Appeal (Civil) No. 17503 of 1998 filed by those petitioners was dismissed by the Supreme Court on 12.3.1999.

8. Learned counsel for the respondents-State of Bihar and its authorities argued that it is established that petitioners are regular employees of the Board since 1977 and hence they do not fall within the parameters of regularization at the Government level as the petitioners cannot be entitled to get dual benefits, one from the Housing Board while in service and other after retirement from the Housing Department for seeking benefit of pension etc. Hence, the instant writ petitions have got no merit and are fit to be dismissed.

9. From the arguments of learned counsel for the parties as well as from the materials on record, it is quite apparent that reliance of the respondents upon decision of this court dated 16.10.1996 passed in CWJC No. 8493 of 1995 is not justified as the facts of the said case as well as the points involved therein are different from the facts and the grounds which are the root cause of filing of the instant writ petitions and in any view of the matter, relevant resolution issued vide memo no. 3420 dated 23.9.1977 was not taken into consideration in the said case. Thus, the order of the Division Bench or the order of the Apex Court confirming the said order of a Bench of this Court will not have any bearing on the facts and circumstances of these cases.

10. Furthermore, the aforesaid case law relied upon by learned counsel for the respondents is a very old decision and much time has lapsed thereafter and much developments have taken place which were all considered by another Bench of this Court in CWJC no. 14866 of 2006 : 2009 (1) PLJR 258 filed by Niranjana Kumar Sinha and Others vs. The State of Bihar & Ors., the facts of which are exactly similar to the facts of the instant cases as is apparent from a bare perusal of order dated 18.9.2008 by which the said writ petition was allowed with certain directions which have already been enumerated above.

11. The facts and circumstances of the instant writ petitions as well as of CWJC No. 14866 of 2006 : Niranjana Kumar Sinha Vs. The State of Bihar and Others, being the similar and the findings of the Court in the aforesaid order dated 18.9.2008 passed in CWJC No. 14866 of 2006* being in accordance with law,

this Court does not find any reason to differ with the said order.

12. Accordingly, on consideration of the totality of facts and also keeping in mind that since no service regulation is yet in place and that the claim as well as the work of petitioners in the Housing Board is not different from all those persons who had been extended benefits in terms of order no. 2329 dated 18.11.1989 issued by the Department, the respondent authorities concerned are hereby directed to do the exercise noted in this regard and keeping in view the aforesaid Government order dated 18.11.1989, pass appropriate orders giving similar reliefs to the petitioners as given to those 21 persons mentioned in the aforesaid Government Order dated 18.11.1989 within a period of four months from the date of communication/ production of a copy of this order. With the aforesaid observations/ directions, both these writ petitions are allowed.