

(2007) 11 PAT CK 0096

In the Patna High Court

Case No : CWJC Nos. 8652 of 1997 and 14979 of 2001

Suresh Yadav and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Citation : (2007) 11 PAT CK 0096

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners and learned Counsel for the State.

2. C.W.J.C. No. 8652/97 questions the show cause notice issued to the Petitioners for the proposed termination of their services. C.W.J.C. No. 14979/01 arises out of a claim for salary for certain periods by the Petitioners in the aforesaid writ application.

3. It is the case of the Petitioners that they were appointed in 1986. The Respondents issued a show cause notice on 1.9.1997, at Annexure-1 that in pursuance of an enquiry the appointment of the Petitioners had been found to be illegal, inasmuch as, prescribed procedures were not followed and they were required to show cause as to why their appointments be not terminated.

4. This Court on 25.9.2007 noticed the submission on behalf of the Respondents that the impugned order was only a show cause notice, and that no steps shall be taken to terminate their services, until further orders of the Court. That is how the Petitioners have continued in service.

5. Learned Counsel for the Petitioners in C.W.J.C. No. 8652/97 submitted that they had been appointed in 1986 in the Public Health Engineering Department on different posts. The State Government initially took a decision to terminate all such persons who had illegally been appointed after 1.1.1988. Pursuant to certain further decisions, a final determination has been made by the Respondents in their order dated 10.5.2005 extending the cut-off date for

determination of the validity of appointments from 1.8.1985 to 11.12.1990. The Petitioners quite clearly on the face of it have been appointed much prior to the cut-off date.

6. Learned Counsel next relies upon a Division Bench order of this Court passed in C.W.J.C. No. 7359/02 reported in Ram Tapeswar Sah and Others Vs. The State of Bihar and Others and analogous cases (Ram Tapeswar Sah and Ors. v. State of Bihar and Ors.) wherein a similar question arose for determination when the writ applications were disposed off with certain directions as incorporated in para-13 of the order dated 13.7.2006 inter alia taking note of the present position in law with regard to regularization as enunciated by the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, The case of the Petitioners was therefore clearly required to be examined in light of the Government decisions fixing the cut-off date as 11.12.1990 for termination of illegal appointments.

7. Learned Counsel for the State had no objection to the disposal of these writ applications in similar terms as that ordered by the Division Bench in C.W.J.C. No. 7359 of 2002 reported in Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, He has, however, raised certain doubt with regard to claim for wages which this Court shall consider appropriately at a subsequent stage.

8. There is no pleading in the writ application that the appointment of the Petitioners was in accordance with law inasmuch as it was made by open selection from amongst competing candidates after having made availability of vacancies known.

9. The Division Bench in the case of Ram Tapeswar Sah (supra) at paragraph-12 of the judgment noticed paragraph-53 of the judgment of the Supreme Court in the Secretary, State of Karnataka (supra). Thereafter on a concession made by the State to regularize the present appointments under a policy decision the Division Bench at paragraph-13 of the order proceeded to direct the constitution of a three member committee of the Public Health Engineering Department comprising of senior officers to consider the case of the Petitioners therein after giving them opportunity to place their respective claims. The State was directed to take steps for constitution of the committee within a period of one month from the date of the order so that the committee may decide the entire matters by 30th of September, 2006. The Petitioners therein were given the liberty to raise their claims before the committee.

10. The Petitioners in Ram Tapeswar Sah (supra) and analogous cases came to this Court in 2002. The writ applications have been disposed in the year 2006. They had come questioning the issuance of show-cause notices to them with regard to validity of their appointments. The writ petition enabled them to continue in service. The present Petitioners quite clearly have continued in service by virtue of the orders of this Court dated 25.9.1997.

11. This Court considers it proper to set out relevant extract of paragraph-53*of

the case of Secretary, State of Karnataka (supra) :

*53. One aspect needs to be clarified, There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Naray-anappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals?.In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further. ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed?.

(emphasis supplied)

12. It is relevant to take note of paragraph-54? of the same also:

?54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

13. The Division Bench in Ram Tapeshwar Sah and Ors. (supra) appears to have proceeded more on a concession by the State. What has been noticed above from paragraph-53* of the judgment in Secretary, State of Karnataka (supra) did not fall for consideration by the Division Bench. Nonetheless, judicial discipline requires this Bench to follow the orders of the Division Bench. This Court therefore considers it proper to dispose off this writ application in similar terms as the case of Ram Tapeshwar Sah and Ors. (supra) requiring the Respondents to place the case of the Petitioners also before the three member committee within a period of ten weeks from the date of receipt or presentation of a copy of this order. The Petitioners shall be given adequate notice of the grounds on which their services are proposed to be terminated and adequate opportunity to submit their case, including personal hearing, if a request is made by them for the purpose. Till such determination is not arrived at, the Respondents shall not interfere with the discharge of duties by the Petitioners. Annexure-1 is accordingly set aside with the aforesaid liberty to the Respondents. The writ applications are therefore allowed to that extent.

14. Needless to add that the Petitioners shall be entitled to their current wages. Their claim for continuity will certainly depend on the outcome of the enquiry.

15. Insofar as the claim for wages is concerned, quite naturally it involves a question of fact, with regard to the dates that the Petitioners may have worked, may have been absent, whether it be authorized, unauthorized etc. This Court does not consider it feasible to pass any positive orders for release of their

salary. The Petitioners shall be at liberty to file a representation before Respondent No. 5 within a period of four weeks from today. The representation may spell out the periods for which they claim their arrears of salary. The Respondent No. 5 shall be obliged to carry out an enquiry with regard to the Petitioners as noticed above and release the legitimate dues of the Petitioner for the days that they have worked. If such representation is filed within the time indicated above, Respondent No. 5 shall consider and dispose off the same within a period of eight weeks from the date of filing of such representation. Should he arrive at a determination that the Petitioners were not entitled to wages for any particular period, he shall be required to communicate the same to the Petitioners in writing setting out the grounds for the same.

16. The writ applications stand allowed only to the extent indicated.

* Para 44 of PLJR

* Para 45 of PLJR