

(1996) 05 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 5036 of 1992

The Bihar State Adult and Non-formal Educational Employees Association and Others **APPELLANT**

Vs

The Sate of Bihar and Others **RESPONDENT**

Date of Decision : 24-05-1996

Acts Referred:

Army Act, 1950 — Section 4(1), 4(4)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 2 PLJR 394

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Advocate : Y.V. Giri, Navniti Prasad Singh and D.K. Dubey, in 5036 of 1992, Binod Shankar Tiwary and Pankaj Kumar, in 8703 of 1992, R.N. Mukhopadhyaya and Kishore Kumar Thakur, in 1119 of 1992, Vishwanath Singh and Anil Kumar Singh in 5163 of 1992, Ganesh Prasad Singh and Anisur Rahman, in 5129 of 1992, S.P. Sinha and Braj Mohan Kr. Singh, in 3114 of 1994, Pawan Kumar Mishra, in 8071 of 1992 and Nilima Sinha, in 5115 of 1990, for the Appellant; Anil Kumar Jha, Rameshwar Prasad and Veena Kumari Jaiswal and Surendra Kr. Sinha and Braj Mohan Kumar Singh, in 5036 of 1992, for the Respondent

Judgement

N. Pandey, J.—By means of these writ applications under Articles 226 of the Constitution, Petitioners have assailed the orders dated 1st June, 1992 (Memo No. 24/V-038/91 (Part I) 433), 16th June, 1992 (Office Order No. 24/C-02-92 Shiksha 1047), 17th June, 1992 (Memo No. 24/V6- 036/91 Part Ed. 1494) as also the other order of the Director (Adult and Non-formal Education, Bihar) dated 16th June, 1992, whereby services of the Petitioners were terminated, consequent upon abolition of the posts of "Supervisors" in the Adult Education Programme of the Adult and Non-formal Education Department, sponsored by the Government of India as part of the National Adult Education Scheme.

A prayer has also been made to quash the Cabinet's decision dated 9th July, 1992, granting post-facto approval for abolishing the posts of Supervisors.

In alternative prayer for an appropriate writ and/or direction in the nature of mandamus commanding the Respondent State to absorb/adjust the Petitioners against any other posts, equivalent to the posts, which they were holding, strictly in terms of the Government's policy, contained in resolution of the Personnel and Administrative Reforms Department, Government of Bihar, dated 5th September, 1979.

2. To have a brief survey of the factual background of the cases with relative brevity, it is advisable to notice few facts: The Central Government with a view to impart at least a functional literacy to illiterate persons in the age group of 15 to 35 years, pre-dominantly living in the rural areas, sponsored various schemes of Adult Education Programme. In compliance of such schemes different Adult Education Programmes were started all over the country, including the State of Bihar with effect from October, 1978. Such programmes were getting approval for five years from the Planning Commission. The grants- in-aid to the State Govt. were being released on yearly basis by the Ministry with approval of the Integrated Finance Division.

3. To give full effect to the scheme 312 projects were established in this State. With respect to 56 projects total expenditure were borne by the Central Government, whereas with respect to the remaining 256 projects, the State Government had the full liability. It was also clarified that any deviation from the norms with regard to the expenditure etc. shall be the sole responsibility of the State Government. Therefore, the State Government constituted a High Power Selection Committee and also prescribed norms and. criteria to fill up the posts. Accordingly, in the year, 1978 and even at subsequent stages advertisements were published in daily newspapers for appointment to the posts of Adult Education Supervisors. Undisputedly all the Petitioners having fulfilled the requisite criteria were appointed on regular pay scale to the posts of Adult Education Supervisors in different phases by the order of the State Government on the basis of recommendation of the above mentioned committee.

4. As usual, in the year, 1987-88 the Government of India, Ministry of Human Resources Development, Department of Education, revised the scheme and suggested the State Governments to endeavour to bring about a parity, both In regard to number of projects and centers under Rural Functional Literacy Project and State Adult Education Projects. As per the revised programme, number of centers and supervision costs per centre were to be reduced substantially. Persons engaged under the said scheme were required to function only on honorarium basis for limited hours.

5. It appears the State Government having regard to the revised scheme of Central Government, abolished 771 posts of Adult Education Supervisors after adjusting them suitably to different posts, which would be evident from Memo No. 24/Y 4-29/89-2366 dated 19th December, 1990 and other details, contained in File No. 24/B6-038/91 Part I. Remaining 367 Supervisors continued to work until abolition of the posts in the year, 1991.

6. In the year, 1990-91 the Government of India after having complete evaluation of the matter again sent a revised scheme to the State Government. As per the staffing pattern under this scheme, in place of "Project Officer" a post of "Co-ordinator" at a honorarium of Rs. 1800/- per month was created. Since the posts of supervisors were already abolished, therefore, in their places "Prerak" were to be engaged on honorarium basis at the rate of Rs. 400/- per month. No post of Assistant Project Officers existed In the revised scheme.

7. The case of the Petitioners is that decision of the Government either to abolish the posts or to terminate their services was quite illegal, arbitrary and uncalled for. Even reasons as assigned by the Respondents in their counter affidavits to justify their decision are concocted and based on a malicious design. Because a bare reference to the original scheme of the Central Government or even those revised from time to time, it would appear that the State Government was left with full option to sanction any post and to make appointment. The total financial burden to carry out most of the scheme was of the State Government. Therefore, it is wrong to say since the Central Government revised the scheme or withdrew certain financial aid, the State Government had no option but to abolish such posts.

8. There is no dispute that appointment of Adult Education Supervisors were made after following all the prescribed criteria including advertisement etc. This is not a case of appointment by way of back-door entry. That apart, while taking a decision to abolish the posts, the Respondents failed to appreciate that almost all the Petitioners had worked continuously at least for 10 to 14 years. Therefore, on a plain thinking one can say that the decision to remove them from job was unfair and unreasonable which ultimately rendered Petitioners to face serious consequences. It can not be ignored that family of such employees had already settled and accommodated their needs with the aid of emoluments received by such employees so far.

9. It has been alleged that malafide design of the Respondent authorities can also be noticed from their conduct when they advertised 421 posts of "Pariyojana Adhikari" in the pay scale of Rs. 2000/- to Rs. 3800/-for appointment on regular basis, immediately after termination of the Petitioners. However, those posts could not be filled up because of an interim order of this Court, dated 5th May, 1993.

10. Further submission is that even relevant nothings of the concerned file as well as different correspondences of the higher authorities of the Department, copies of which have been brought on the record, would show that the impugned decision to abolish the post of Adult Education Supervisors and termination of the Petitioners was taken only with a view to defeat the claim of Non-formal Education Supervisors, who had filed writ petitions bearing C.W.J.C. No. 1458 of 1988 and the analogous cases, for a direction to the Respondents to make payment of their salaries at par to the Adult Education Supervisors. It is stated that from the documents placed on record of these cases, It is apparent that a

suggestion was made by the authorities to the State Govt. to abolish the post of Adult Education Supervisors failing which the Government will have to bear additional expenditure of pearly about 12/13 crores for payment to the Supervisors working under Non-formal Education Scheme.

11. It was next contended that even if a decision was taken by the Respondents to abolish the posts of Adult Education Supervisors, there was no Justification to abolish the posts of "Assistant Project Officers" or "Project Officers" when against those posts 771 Supervisors were admittedly adjusted on regular basis as back as on 19th December, 1990 itself as per the Government's decision.

12. It was submitted that even the decision of the Respondents to abolish the posts against which Petitioners were working is held justified, the State Government cannot escape from its commitment notified vide the resolution dated 5th September, 1979, laying down different modalities and norms for absorption of daily rated or temporary employees. A copy of such resolution has also been brought on the record as Annexure 26 to C.W.J.C. No. 5036 of 1992. As per the resolution, even before issuing orders of termination of such employees, the State authorities were required to ensure their absorption. It is stated that from the different correspondences of the Respondent authorities, including the nothings of different authorities, like Commissioner-cum- Secretary of the concerned Department, a copy of which is Annexure-44 to the supplementary affidavit, would show that initially proposals were submitted for regularisation/absorption of the Petitioners after giving all the benefits to their service rendered by them prior to retrenchment.

13. It is further stated since the decision regarding abolition of the posts and/or retrenchment of the Petitioners were taken prior to Government's new policy, as adopted vide Resolution No. 16 dated 16th July, 1992, claim of their absorption/Regularisation has to be considered in terms of the previous resolution dated 5th September, 1979, contained Annexure-26. Because the effect of the 1992 resolution cannot be given retrospectively so as to defeat the claim of Petitioners. In support of such a contention learned Counsel placed reliance to a decision of the Apex Court in the case of Smt. Sushma Gosain and Ors. v. Union of India and Ors. AIR 1989 S.C. 1989: 1999 (1) PLJR 1 (SC). It would be useful to quote the relevant findings from judgment in these words:

In September 1985, Sushma Gosain filed writ petition in the High Court of Delhi for a direction against DGBR to appoint her in a suitable post. She was entitled to appointment in terms of Government Memorandum O.M. No. 14034/1/77/Estt. (d) dated November 25, 1978 issued by the Ministry of Home Affairs. DGBR however, resisted the writ petition with the primary contention that the appointment of ladies in the establishment was prohibited. In support of the contention, DGBR relied upon a notification dated January 25, 1985 issued by the Central Government under Sub-sections (1) and (4) of Section 4 of the Army Act, 1950. The DGBR however, mercifully stated that It approached other departments to get an employment to Sushma Gosain in order to mitigate her

hardship, but everyone regretted. Interestingly it was also stated that if Sushma Gosain nominates a male member of her family, he could be considered for appointment. This was not without the knowledge that she has only a minor son.

14. The submission is that the question regarding regularisation of service must be examined keeping in mind the historical as well as the constitutional perspectives. Therefore, those who had been in continuous service for last ten to fourteen years, have certainly a vested right for their absorption even in light of the Government's decision, as adopted vide the resolution, contained in Annexure-26. In support of such contention reliance was made to a decision of the Supreme Court in the case of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, . Relevant findings of the report on the facts in issue can be usefully noticed in these words:

If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job.

To strengthen the submission, reliance was also made to Anr. case of the Apex Court in the case of Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . In that case also having regard to the long services rendered by the casual workers, the authorities were directed to prepare a scheme on rational basis for absorbing as far as possible the casual labourers, who had been continuously working for more than several years in the concerned department.

Similar view was taken by the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., . It was held that ordinarily the creation and abolition of a post is the prerogative of the executive. The main concern of the Court in such matters is to ensure the rule of law and to see that the executive acts fairly to give a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution. It was held that normally a person should not be kept in a temporary service for long, but where such a temporary or ad hoc appointment is continued for long period, a Court must direct regularisation. The relevant findings of the aforesaid case on the present context is reproduced hereunder:

The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation....

15. Mr. Giri contended that having regard to the authoritative pronouncements of the Apex Court, as noticed above, as also since the State Government had itself vide its previous resolution dated 5th September, 1979 decided to absorb all such employees, who have been working for a long period even before a decision is taken for their retrenchment or for abolition of the post, it would be in the interest of justice that this Court in exercise of jurisdiction under Article 226 of the Constitution, issue a writ of mandamus directing the State Government to absorb the Petitioners strictly in terms of the previous policy decision. Reference in this regard was also made to a decision- of the Supreme Court in the case of Union of India and Anr. v. V.K. Singh, AIR 1987 S.C. 537. The relevant passage of the aforesaid report is being quoted hereunder:

There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a Statute or a rule or a policy decision of the Government or has exercised such discretion malafide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.

16. There is no dispute that in the year, 1979, the Govt. had decided to absorb casual or daily wages employees, who had worked for a long period. But a question may arise, if such a view is taken that all those daily wages or temporary employees, retrenched even prior to the resolution of the State Government dated 16th July, 1992, are required to be absorbed in terms of the 1979 decision, it would certainly lead to an anomalous situation. Because admittedly after 1979 and prior to the last resolution dated 16 July, 1992 large number of employees might have been retrenched or terminated. Therefore, having regard to such a interpretation, if any, the Government in no circumstance would be able to ensure jobs to all even before a decision is taken for termination.

17. The grievance although with respect to the cases of retrenched employees of the Consolidation Department, the Government has already absorbed them in different departments, but no such steps were taken for the Petitioners who were retrenched much before those employees.

18. It was pointed out that the State of U.P. also in the year, 1992, had decided to abolish the Adult Education Directorate and all the posts of Adult Education Supervisors, who were in the pay scale of Project Officers, Adult Education and Assistant Project Officer. But subsequently a decision was taken by the concerned department on 27th March, 1992 to absorb/appoint such employees having regard to their educational qualification and also after granting relaxation in age etc., if any. Such a relaxation was only applicable to those Project Officers, Assistant Project Officers and Supervisors, who were working in the Adult Education Department and were appointed through direct recruitment basis.

19. The case of the Respondents is that having regard to the revised programme of the Central Government, the State Government had no option but to abolish the posts of Supervisors, Assistant Project Officer and Project Officer and also to cancel the decision dated 19th December, 1990 whereby, some of the Supervisors were adjusted against the posts of Assistant Project Officers, Non-formal.

19. It was contended that the scheme itself to which the Petitioners were employed, was purely temporary. The appointment of the Petitioners or any other such employees to such a scheme was purely temporary. Therefore, their claim for regularisation against such posts is not permissible, because such appointment was available until the scheme is in existence.

The moment Government took a decision to abolish the scheme, employees working under such scheme will have no right to claim absorption or regularisation against such posts. In support of such a view the Advocate General placed reliance to different decisions of the Apex Court in the cases of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, , Surendra Kumar Gyani Vs. State of Rajasthan and Another, as also Union of India and others Vs. Dinesh Kumar Saxena and others, .

21. Learned Counsel while referring to statement of the Respondents in the counter affidavit, as well as supplementary counter affidavits submitted that having regard to the claim of the Petitioners for absorption and similar other retrenched employees, the Personnel and Administrative Reforms Department of the Government vide its resolution No. 16/VEN 06-05/90-209 dated 16th July, 1992, has already taken a decision to prepare a consolidated list of such employees to find out a definite solution for their absorption or regularisation.

22. Learned Advocate General further contended that because of appointment of large number of Supervisors in the scheme during operation, the State Government was burdened with heavy expenditures. The Central Government had also discontinued totally all the financial assistance. Therefore, the State

Government having faced with such a situation had no option but to take a decision to abolish the schemes and all the posts including that of Assistant Project Officers and Project Officers. He also emphasised that it was erroneous to predict that posts of "Assistant Project Officers" and "Project Officers" were independent substantive posts.

23. We have been informed that similar complication was noticed by the Supreme Court, while disposing of the writ petition (Civil) No. 88 of 1993 filed on behalf of Smt. Veena Rani Ambastha and Ors. Therefore, having regard to the facts that adjudication of such question was dependent upon different facts, it was left open to the parties to raise before this Court. It was also brought to the notice of the Supreme Court that subsequent to abolition of the scheme, the Government of Bihar initiated a different scheme by changing nomenclature as "Non-Formal Education in the Adult Education Department" and envisaged recruitment against 421 posts of Project Officers of Non-Formal Education under that scheme. But the implementation of said scheme however, was stayed by the High Court in C.W.J.C. No. 5036 of 1992 and the connected cases. Therefore, Petitioners are apprehending unless specific direction is issued for their absorption, the Respondents would fill up those posts by direct recruitment.

24. From the facts, noticed above, there is no doubt that initial appointment of the Petitioners to the posts of Adult Education Supervisors were made by the competent authorities after observing all the required formalities, including advertisement etc. This has also been established that at the relevant time, while abolishing the post of 771 Supervisors, the Government had by Memo dated 19th December, 1990, absorbed all of them against different posts, Including Assistant Project Officers, Non-formal. But remaining 367 Supervisors who could not be absorbed continued to work only till the year, 1991 when those posts were also finally abolished.

25. Besides the aforesaid, from copies of different correspondences of the concerned authorities as well as nothings of their files there appears no doubt that previously having regard to the long service rendered by the Petitioners, as also since their appointments were made in accordance with the prescribed norms, a decision was taken to absorb them against different posts. But ultimately, when it was brought to the notice of the authorities that claim of the Supervisors, working under Non-formal scheme, for equal pay at par to these Supervisors was being considered by this Court, the Respondent authorities being apprehensive that in case of success of those writ application additional amount of Rs. 12/13 crores would be necessary to make their payment, took a decision to abolish all the posts of Supervisors including those 771 Supervisors, who were adjusted against different posts only with a view to defeat the claim of Non-formal Supervisors.

26. But this can not be denied that the scheme to which Petitioners were engaged was purely temporary. The moment illiterate adults of villages became literate, pursuant to the education imparted, need for adult education had

ultimately ceased to some extent. Therefore, as a natural consequences such a scheme cannot continue for indefinite period therefore in such a situation whether a candidate can ask regularisation. To answer the question a reference in this regard can be made to following decisions of the Apex Court in the cases of Bhagwan Dass and Others Vs. State of Haryana and Others, and Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . It was held where the object of the scheme was not to provide right to work, no fault can be found if a decision was taken to abolish the scheme. Employees working under such scheme cannot claim more than what the scheme intended to give. To get employment under such scheme and subsequently laying a claim for regularisation would naturally frustrate the main object.

27. There is no doubt that at the time of Petitioner's appointment the State Government had prescribed standard and modalities for appointment after making advertisement in daily newspapers. There is no allegation that such appointments were illegal or on pick and choose basis. This also stands admitted that Petitioners had worked continuously for more than ten to fourteen years, it can not be ignored that family members of the Petitioners had settled with the situation with the financial aid, the Petitioners were getting. In the case of State of Haryana v. Piara Singh (supra), the Apex Court has already held that to ensure the rule of law and to see that executive acts fairly and gives a fair deal to its employee consistent with requirement of Articles 14 and 16 of the Constitution, the Court should see that State may not exploit its employees in order to take advantage of the helplessness and misery of such employee. In such a situation where a temporary or ad hoc appointment is continued for long, the Court should presume that there is need and warrant for a regular post. But the Court while taking such recourse must see that ad hoc or temporary employment had necessitated on account of administrative exigencies, of course for such ad hoc or temporary appointment, ordinarily names should be drawn from the Employment Exchange or through proper advertisement. It was further held if the work-charged employees and casual labourers are found working consistent with the observation of the Supreme Court, efforts must be made to regularise them subject to their fulfilling the qualifications, if any, prescribed for the post and subject to availability of the work.

28. There is no denial that from time to time Respondent authorities had taken steps to consider the scope and desirability to absorb all the Supervisors. It has already been noticed that while implementing the decision for absorption of such Supervisors, admittedly 771 were absorbed in different departments. Therefore, to my mind there was no justification for the Respondents to cancel the absorption of those Supervisors, who were already absorbed. But this has been disputed by the Respondents saying that such absorption was also against the posts of a temporary scheme.

29. But this cannot be ignored that initial appointment of the Petitioners was made after observing all the required formalities. I have also noticed that in the

State of Uttar Pradesh also the Adult Education Supervisors were absorbed/appointed as per the Government's policy. Similarly the Respondent State also has absorbed large number of retrenched employees of the Consolidation Departments on regular basis.

30. It has been noticed that in fact, at the time when decision was taken by the Government for abolition of the posts of Supervisors, about 771 such Supervisors were absorbed against different posts. It has also been noticed that the Government after abolition of the posts of the Petitioners, had advertised 421 posts of "Pariyojana Adhikari" but the Court having realised the grievance of the Petitioners, restrained the Government from making any appointment, until further orders.

31. Unfortunately in spite of sufficient opportunity, no reply was given by the learned Advocate General under what circumstances, employees of the Consolidation Department although retrenched subsequent to the Petitioners, were absorbed in different departments, but no such consideration was made with regard to the Petitioners. Similarly no satisfactory reply could be furnished by the Respondents under what circumstances steps were taken to terminate even those 771 Supervisors, who were already absorbed in different departments.

32. There is no doubt that Petitioners' initial appointments were made to a scheme which was purely temporary, therefore, it may not be possible for me to ask the Respondent authorities to regularise their services. But I have already noticed that their appointments were made as per the prescribed norms of the Government after proper advertisement etc. I have also noticed that having regard to their past services rendered continuously for ten to fourteen years, the State authorities had themselves absorbed at least 771 of such Supervisors and for rest steps were under contemplation. Petitioners have also been able to establish successfully that the decision of the authorities to cancel such adjustment was not only mala fide rather shamful. But now a stand is being taken by the Respondents that those 771 posts were also temporary hence a decision was taken to terminate the Petitioners. Therefore, in these backgrounds, it would not be proper to quash the order of Petitioners' termination.

33. But it can not be ignored that having regard to the long services rendered by the Petitioners, administrative authorities had suggested steps for their absorption even in other departments. Therefore, having taken into consideration entire facts and circumstances of the cases, I dispose of the writ petitions with the following direction to the Respondent- authorities: (a) to allow the Petitioners and interveners to continue against these 771 posts, against which they were adjusted in terms of the letter of the concerned department, dated 19th December, 1990. But such adjustment is to be made as per their seniority OR (B) in case those posts have also been abolished, take steps to absorb/adjust the Petitioners along with the interveners in a similar manner, the employees of Consolidation Department were adjusted OR (c) if for any justified reason

condition Nos. (a) or (b) are not possible, take a decision similar to the State of Uttar Pradesh, which I have already indicated in paragraph No. 18 of this order and adjust/absorb them accordingly. But in the facts and circumstances of the case, I could not persuade myself to quash the impugned order.

34. With the aforesaid directions/observations, these writ applications are, thus, disposed of. But the parties are left to bear their own costs.

I.P. Singh, J.

35. I agree.