

(2003) 04 PAT CK 0109

In the Patna High Court

Case No : L.P.A. Nos. 540, 541, 542, 543, 544, 545, 551, 552, 562, 672, 675, 682, 683, 691, 693, 698, 705, 707, 709 and 711 of 2001

The Bihar State Co-operative Land Development Bank Ltd.
and Another

APPELLANT

Vs

Anil Kumar Singh and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0109

Final Decision : Allowed

Judgement

Nagendra Rai and R.S. Garge, JJ.—This order shall dispose of LPA 540/ 2001 arising out of CWJC 4791/2001 decided on 7-5-2001 where under the order Annexure 2 has been quashed by the learned single Judge; LPA 541/2001 arising out of CWJC 2059/2001 decided on 7-5-2001 whereunder the order Annexure-2 has been quashed; LPA 542/2001 arising out of CWJC 1371/2001 decided on 7-5-2001 whereunder the order Annexure 1 has been quashed; LPA 543/2001 arising out of CWJC 1120/2001 decided on 7-5-2001 whereunder the order Annexure 1 has been quashed; LPA 544/2001 arising out of CWJC 1118/2001 decided on 7-5-2001 whereunder the order Annexure 1 has been quashed; LPA 545/2001 arising out of CWJC 3573/2001 decided on 7- 5-2001 whereunder the order Annexure 7 has been quashed; LPA 551/2001 arising out of CWJC 6621/2001 decided on 17-5-2001 whereunder the order Annexure 1 has been quashed; LPA 552/2001 arising out of CWJC 1634/2001 decided on 7-5-2001 whereunder the order Annexure 21, 22 and 23 have been quashed; LPA 562/2001 arising out of CWJC 5833/2001 decided on 7-5-2001 whereunder the order Annexure 6 has been quashed; LPA 672/2001 arising out of CWJC 67:99/2001 decided on 19-6-2001 whereunder the order Annexure 1 has been quashed; LPA 675/2001 arising out of CWJC 5432/2001 decided on 21-6-2001 whereunder the order Annexure 1 has been quashed; LPA 682/2001 arising out of CWJC 7526/2001 decided on 25-6-2001 whereunder the order Annexure 3 has been quashed; LPA 683/2001 arising out of CWJC 7475/2001 decided on

25-6-2001 whereunder the order Annexure 5 has been quashed; LPA 691/2001 arising out of CWJC 7255/2001 decided on 20-6-2001 whereunder the order Annexure 1 has been quashed; LPA 693/2001 arising out of CWJC 7685/2001 decided on 27-6-2001 whereunder the order Annexures 8 to 12 have been quashed; LPA 698/2001 arising out of CWJC 7540/2001 decided on 26-6-2001 whereunder the order Annexure 13 has been quashed, LPA 705/2001 arising out of CWJC 7725/2001 decided on 27-6-2001 whereunder the order Annexure 1 has been quashed; LPA 707/2001 arising out of CWJC 7721/2001 decided on 27-6-2001 whereunder the order Annexure 2 has been quashed; LPA 709/2001 arising out of CWJC 7343/2001 decided on 21-6-2001 whereunder the order Annexure 9 has been quashed and the LPA 711/2001 arising out of CWJC 7830/2001 decided on 28-6-2001 whereunder the order Annexure 2 has been quashed.

2. The fact which now are not in dispute are that each of the writ petitioner/contesting respondent in these appeals were appointed somewhere in the year 1981 or near about on different post by the erstwhile Bihar State Co-operative Land Mortgage Bank Limited, which was a registered society, has now become Bihar Rajya Sahkari Bhumi Vikas Bank Ltd. It is common ground between the parties that in the year 1981 looking to the requirement of the staff certain appointment orders, to fill-up the vacancies temporarily or on ad-hoc basis, were issued. The said Co-operative Land Mortgage Bank (erstwhile bank) was governed by its byelaws and the relevant provisions of Bihar and Orissa Co-operative Societies Act, 1935. Under the byelaws the Registrar, Co-operative Societies or a person especially appointed by the State Government was to be trustee for certain purposes specified in the byelaws. The Board of Directors had been vested with the powers which include the power to regulate the strength of bank staff and their salaries, allowances and service conditions. Under the byelaws the board had the power to appoint, suspend, remove and exercise disciplinary control for officers and staff of the erstwhile bank, with the approval of the Registrar. The erstwhile bank framed rules for direct recruitment to the cadre of Peons/LDC/Supervisors etc. The said rules were approved by the Registrar in June, 1970. It appears from the records that 10-8-1976, the Registrar, Co-operative Societies imposed ban against new appointments or give promotion to the employees by the Co-operative Societies of the State until certain procedure was finalised by the State Government.

3. The writ petitioner contended that the said ban imposed in the year 1976 was not to act in detriment to the interest of the erstwhile bank as it had already framed its byelaws, which were to govern the appointment and the allied matters. It is case of the petitioners that because of the felt need the bank thought of appointing some new staff as it was to open, new branches between 1976 to 1982. On 8-1-1981 the Board of the bank resolved to make a request to the Government to lift the ban and further resolved to engage persons on ad-hoc wages basis to meet the exigencies of work. A Committee for the purpose was constituted by the Board. In the meeting of the Board the

Secretary of Co- operative Department, Government of Bihar represented the State and took active part. On 15-3-1981 the committee in its meeting decided to engage filed officers and Accountants on ad-hoc basis. From the records it appears that number of the appointments were made in pursuance to the recommendations made by the Committee which in its turn relied upon the byelaws. On 4-10-1985, the Registrar, Co-operative Societies approved the draft of staffing patterns and certain new posts were sanctioned as per the demand of the bank. A meeting of the Committee was held on 13-11-1986 which was followed by a meeting by the Board of Directors on 4-12-1986. The Board decided to regularise the services of the employees who were appointed on daily wages/ad-hoc basis, In its meeting the board further observed that Rules relating to reservation was not required to be observed, as the Board was of the opinion that in case of the regularisation the rules were not required to be observed but at the same time the Board further observed that for the future appointments the reservation and prescribed procedure shall be strictly observed. It appears that the writ petitioners were ordered to be regularised under different office orders. It is necessary to point out that in this meeting the Government's representative Mahendra Singh. Secretary, Co-operative Department also took part. It appears that in accordance with the bank's application for withdrawal of the alleged ban, the ban was lifted and the bank thereafter issued an advertisement to fill the post but the process was abandoned and orders for regularisation were issued. The records show that a two member Committee consisting of Commissioner -cum-Secretary, Co-operative Department namely, Shri Mahendra Singh, and Smt. S. Jalja, Additional Secretary, Personnel and Administrative Reforms Department was required to enquire into appointments made between 29-9-1981 and 1984. The Committee found against the employees and recommended for cancellation of the appointment vide its report dated 14-3-1984. Some of the employees were retrenched/ removed by the Chairman of the Bank vide order dated 3-4-1984 and 6-8-1986 but due to intervention of this Court in number of writ applications their retrenchment were quashed and their services were regularised.

4. In accordance with the earlier recommendations made by the Committee on 14-3-1984 the Government constituted another high level enquiry committee vide order dated, 2-7-1992 consisting of three members to make enquiry into the appointments made between 1976 to 1980 and, 1985 and December, 1990. The three member committee submitted its report on 22-7-1993, the Committee found that the appointments made on ad-hoc/daily wages basis were illegal because the appointment process was not followed and reservation rules were violated. The Committee, however, observed that the sanctioned strength was 3033 while only 2268 employees were working in the bank. The bank thereafter, made representation to the State Government that in cases of some of the employees who were retrenched/ removed on basis of the report of the Committee the High Court had intervened and their services have been regularised, therefore, number of the persons similarly situated could not be

terminated. Before anything could be done CWJC No. 10673/1995 was filed by one Jai Prakash Rai and several others seeking a direction to the bank to make regular appointments against the sanctioned post, which were lying vacant or were occupied by daily wagers or so. The writ application was disposed of on 13-1 -1997 with a direction to the bank to take a final decision with regard to persons continuing as Class III and IV employees in the bank within two months. Thereafter, from the facts it appears the bank sought certain instructions from the State. The State Government in its turn took advise of the Advocate General who opined that notices be issued to such irregular appointees, they should be heard individually and only thereafter, necessary orders be passed. Thereafter, the bank issued show-cause notices to number of its employees. CWJC No. 8553/1997 and analogous cases were filed challenging the show- cause notices. The writ application were however, dismissed and the order was maintained in LPA 1231/1998 and other analogous cases decided on 15-3-2000. The petitioners thereafter, filed their show-cause and submitted before the authorities that their appointments were not void-ab-initio, the appointments were looking to the exigencies of work, the ban was not to be applied to their appointments, they were governed by their own rules and bye-laws and as their services had been regularised to defect could be found in their appointments. It was also contended that the appointments were made by the Board of Directors, which was otherwise entitled to make appointments. It was also submitted that the petitioners were treated as. regular, permanent and confirmed employees therefore, they could not be terminated. By the impugned orders referred to above the petitioners were terminated mainly on the ground that at the time of the appointment a ban order was enforced, therefore, the appointments could not be made and while making appointments the prescribed procedure of appointment viz. advertisement, reservation etc. were not followed. However, in some individual cases it was also observed that on the date of the appointment the appointee was either overage or underage.

5. Being aggrieved by the termination/removal orders the petitioners have filed various writ applications. The learned Single Judge issued notices to the other side who in their turn filed their counters and supported the orders of termination. The learned single Judge after meticulously marshalling the evidence available before him and taking into consideration the background in which the petitioners were appointed and further taking into consideration that the erstwhile bank had its own byelaws observed that the appointments were not void-ab-initio but were made by an authority or officer competent to appoint in an irregular manner and as the ban was later on lifted, the subsequent rules were not to apply to the case of the petitioners, observed that their termination were illegal. The learned Single Judge further observed that the termination almost after 20 years of appointment would be bad because by this time the appointees have settled in their life, some of them were on verge of retirement and the equity demanded that they should not now be uprooted because by this time it would not be possible for them to re-establish themselves.

6. Being aggrieved by the said judgments delivered on different dates the present bank successor of the erstwhile bank has come to this Court.

7. It has been contended by learned Counsel for the appellants that the appointments were void, those were in the teeth of the ban orders and the officiation or continuance of the incumbent under a void order would neither justify his continuance in office nor would convert the illegal order into a valid order. It was also contended that the rules/byelaws relating to appointment were already enforced, therefore, assuming 1989 rules which come in force subsequently were not applicable, then too, the appointments could be made only in accordance with 1970 byelaws after issuing proper notifications, advertisements etc.

8. To jettison the arguments of the learned Counsel for the applicants it was contended by the respondents that a perusal of the byelaws would make it clear that the Board of Directors/Board had the authority to appoint the employees on temporary/ daily/ad-/hoc basis. According to them the ban imposed in the year 1976 was not to restrict the operation of the byelaws adopted by the erstwhile bank and as the ban was lifted in the year 1981 and the rules/byelaws were operative the Bank/Board was justified in issuing the appointment orders. It is also contended that taking into consideration that the incumbents were continuing for five years or more if the bank thought that they were required to be regularised the regularisation order cannot be faulted with and unless regularisation order was set aside or quashed or annulled by the Board of Directors the petitioners could not be terminated, Learned Counsel for the petitioner so also the learned Counsel for the respondents in support of their respective contentions have cited certain judgments of the Supreme Court, which we shall consider at appropriate stage.

9. The termination orders have been challenged mainly on the ground that the bank being a registered Co-operative society having its own byelaws was not bound by rules of appointment brought in force subsequently and reservation policy issued by the State Government.

10. It is submitted by the respondents that the initial appointments were in accordance with the Rule 14 of the Rules (8th June, 1970) and as the appointments were by an authority competent to issue order of appointment nothing wrong can be found with the original appointment orders. In accordance with the byelaws of the bank the State Reservation Policy was not applicable. The petitioners' services were regularised in 1986 and as there was no real ban against the appellant bank to make appointment on adhoc/dailywages/temporary basis the orders of termination were bad. The bank has submitted that the initial appointments were patently illegal and void-ab-initio because the same were made on face of the ban order issued by competent Government, the appointments were bad because those were in teeth of the Constitutional provisions and even otherwise the byelaws were not observed because the applications for appointment etc. were not invited and the provisions for

reservation were not followed. Learned Counsel for the bank had also submitted that if the appointments were in violation of Articles 14 and 16 of the Constitution of India the same would be deemed to be void-ab-initio and any regularisation would not cure the initial illegality because the regularisation can be done in a matter where something irregular was done and not in a case where the basic action was void or bad.

11. We are in agreement with the learned Single Judge on the issue of the initial appointments made by the Bank on ad- hoc/daily wages/temporary basis. The learned Single Judge was certainly right in observing that such appointments were permissible under Rule 14 of the Recruitment Rules approved for the Bank by the Registrar, Cooperative Societies. The learned Single Judge was also right in observing that the ban was lifted pursuant to the request of the bank and even if the initial appointments were not good, the fresh appointments/extension after 29-9-1981 would be deemed to be valid and would not be in the teeth of the alleged ban. The learned Single Judge, in our opinion was also justified in observing that Rule 14 permitted filling up of vacancies in ministerial cadre and lower post on temporary basis looking to the exigencies of the work. For such appointments the advertisements were not required to be issued. True it is that the bank could issue advertisements inviting candidature of persons for their temporary appointments but if Rule 14 gives blanket powers to Board of Directors/Board to fill up the vacancies temporarily then the appointment orders would not be illegal or void unless it is held that conferral of such power on the Board of Directors/Board was contrary to the spirit of the Act or was for ulterior purpose. Neither the bank nor the State Government has submitted before us that conferral of such powers upon the bank/Board of Directors/Board was bad, illegal or contrary to law. Assuming for a minute that for the regular appointments the rules required an advertisement to be made or written examinations to be held, the question still would be the that for temporary appointments whether such procedure was required to be adopted. We have already held that for making temporary appointments advertisements were not required to be issued. The question only would be that what would be the status of such temporary/daily/ad-hoc wages basis employees? Such persons, could or could not be regularised would be a question dependent upon the fact that whether their initial appointments were bad/void or irregular. The learned Single Judge has observed that as their appointments were irregular and were not in violation of Article 14 and 16 of the Constitution of India or the byelaws their services could be regularised. In our opinion the learned Single Judge was justified in making such observations. It would also be necessary to see that the equity at this stage would play a great role in the matter because such appointees are settled in the life. They have decided their future course and if after 20 years of the services they are removed they would stand nowhere in the life. The equity would certainly bridge the gap. The bridge of regularisation would give them a way from coming from one bank of irregularisation to another bank of regularisation and confirmation. The equity in such case would certainly play a

great role.

12. The statutory rules came into being for the first time vide Notification No. 926 dated 9-2-1989. The said rules were prescribed u/s 66(b) of the Act. The rules provided detailed procedure of appointments etc. If the rules were not in existence prior to 9-2-1989, the byelaws governing the appointments would certainly hold the field and if because of some misunderstanding certain irregular appointments were made, after coming into force of the statutory rules the irregular appointments would not become void and bad. In the present case what is to be seen is that much before coming into force of the statutory rules the appointments were regularised. It is also to be seen that CWJC No. 10673 of 1995 was filed by Jai Prakash Rai and seven others seeking a direction against the bank to make regular appointments against the sanctioned post, which were lying vacant or were occupied by persons engaged on daily wages/ad-hoc basis. In the said writ application the appointments/ regularisation of the appointments made in favour of the petitioners were not challenged. The regularisation took place in the year 1986. The CWJC No. 10673 of 1995 was filed almost after nine years of the regularisation and even at that time neither the State, nor the bank, nor the Co-operative Department, nor the petitioners of the said case challenged the regularisation orders. This Court disposed of the said writ application vide order dated 13-1-1997 with the direction to take a final decision with regard to persons continuing as Class III and IV employees in irregular manner. On 13-1-1997 when this Court has issued the directions to the bank to take a final decision, the petitioners were not holding their post/office in irregular manner or as daily wages/ad-hoc basis. Their appointments were regularised and services were confirmed in the year 1986. If that was so and in the year 1997 while disposing of CWJC No. 10673 of 1995 this Court did not issue any directions against such regularisation at least some foundation is to be found in favour of the present writ petitioners.

13. It is to be seen that the two Committees reported that the appointments of different persons between 1976 to 1980, 1980 to 1985 and 1985 onwards were irregular. There were certain observations that those were in teeth of the ban order issued by the State Government. The question basically is that if the ban order issued by the State Government was lifted and subsequent to that an order already issued in favour of an employee is renewed or the earlier order is extended, would the subsequent order merge into the initial order and of the initial order is found to be bad then any subsequent valid order would merge in the initial bad order. In the service jurisprudence it is not uncommon that looking to the exigency certain appointment orders are issued from time to time, certain persons are appointed on temporary/daily/ad-hoc wages basis, their appointments are controlled under the orders issued at time to time. If the initial" order is not renewed or extended the appointment would come to an end. If a fresh order in continuance of the initial order is issued then the fresh order in fact would be a new order though it extends the benefits already conferred upon the employee. Such orders are the requirement of the day and looking to the

exigency of the work or continuance of such employee. If such orders are issued then the subsequent orders every time would be deemed to be initial orders and and any illegality in the first order would not contaminate or adversely affect the new order.

14. In the present matter undisputedly after the ban was lifted fresh orders were issued. The incumbents continued and in a meeting of the Board of Directors, in accordance with the byelaws, the Board of Directors directed that their services be regularised. In the present matter the said regularisation was not of a void act. In fact the regularisation was of an order which was issued irregularly. It was issued by an officer or authority which was otherwise competent to pass an order directing appointment of a particular person. We are unable to hold that the learned Single Judge was unjustified in making observations in favour of the employees.

15. Learned Counsel for the appellant referring to the approved byelaws submitted that the mode of recruitment was a written examinations and as in the present matter the said mode was not applied the initial appointments were void. In our opinion after a lapse of 22 years this argument should not be allowed to be raised in view of Rule 4 which clearly provides that in the interest of work, the Managing Director shall fill up vacancies in ministerial cadre and lower post on purely temporary basis for a period not exceeding six months subject to approval of the Chairman. At this stage it would also be necessary to see that the State Government had already put a ban on the appointments, the temporary appointments in the interest of the work could only be for a period of six months. If after six months the appointments were not to be renewed and every temporary employee was required to go then it was to create an impossible situation. Hundreds of the employees could not be continued and the bank was to suffer a standstill. Rule 14 in its true appreciation would give discretion to the Managing Director to fill up the post for six months and on expiry of six months, looking to the exigencies and the interest of the work, he could issue another order. If such another order was to lapse then he could again issue another order. In the present matter the same thing happened. The first order lapsed by lapse of time and after the ban was lifted another order was issued.

16. The learned Single Judge was certainly justified in observing that the initial entry of the appointees like the petitioners was not unauthorised and their initial appointments were not void-ab-initio. The learned Single Judge was also justified in observing that their entry into service was in accordance with the provisions of the rules but was some what irregular.

17. Learned Counsel for the appellant has relied upon following judgments of the Supreme Court:(i) AIR, 1996, SC 2775 Surinder Singh Jamwal v. State of J &K;

(ii) Ashwani Kumar and Others Vs. State of Bihar and Others, .

(iii) M.C. Mehta Vs. Union of India and Others, ,

(iv) Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, ; and

(v) State of Madhya Pradesh and Another Vs. Dharam Bir, .

18. While on the other hand learned Counsel for the respondents have relied upon the following judgments of the Supreme Court and this Court:

(i) Roshni Devi and Others Vs. State of Haryana and Others, ;

(ii) Union of India and Others Vs. Kishorilal Bablani, ;

(iii) AIR 1992 SC 1624 V.M. Chandra v. Union of India;

(iv) State of Haryana and others Vs. Piara Singh and others etc. etc., ;

(v) 1994 (2) BLJ 499 --Ashok Kumar v. The State of Bihar, and

(vi) 2000 (1) PUR 642 --Tarkeshwar Singh v. The State of Bihar.

19. We have gone through the said judgments. It would be necessary for us to note at this stage that these are off quoted judgments in cases of regular, irregular, void, voidable or illegal appointments. In different matters on strength of the factual foundation this Court so also the Supreme Court had made observations time and again. The last of the order of the of Supreme Court is that in case the appointment is void-ab- initio, the appointment cannot be regularised, In the matter of Ashwani Kumar and Others Vs. State of Bihar and Others, the Supreme Court observed thatwhen the appointments are in total disregard of the settled norms and known methods of appointments and without caring for existence of post or vacancies such appointments would be void, void-ab-initio and such appointments cannot be regularised. In the said matter the apex Court further observed that the question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate was appointed in an irregular manner or on ad-hoc basis against the available vacancy already sanctioned. It follows from this judgment that if the initial entry was authorised but irregular then the appointee on ad- hoc basis against the available vacancy may be validly considered for regularisation. It is also to be seen that at the time of appointment the sanctioned strength was 3033, while in all 2268 posts were filled. Present are not the cases of appointment against no vacancy. In some of the matters the Supreme Court had observed that void appointments do not confer any right in favour of the incumbent. In the mater of Ashwani Kumar Supreme Court had observed that, that if a competent authority appoints somebody on ad hoc basis or dailywages basis against clear vacancy and such persons continue from time to time for a long period and their services are otherwise required by the institution, such appointments are not bad and can be regularised. In these appeals it is not the case of the appellant Bank that the services of the writ petitioners are not required.

20. The Supreme Court further observed that the initial entry if is against a available vacancy but it suffered from some flaw in procedural exercise though

the appointing authority is competent to appoint and had otherwise followed the due procedure then in such a case the procedural flaw may be waived and the incumbent's services may be regularised.

21. From the facts which are floating on the surface of the record it would clearly appear that the bank had its own byelaws looking to the exigencies of the work and facing an emergency as it was opening the branches it had made certain appointments on temporary/daily/ad-hoc wages basis, made a request to the State Government to lift the ban, was lifted and thereafter, the initial orders were extended or fresh orders were issued. The facts would show that the Board of Directors in its meeting in which the State representative also participated directed that their services be regularised. These facts in our opinion are sufficient to show that the regularisation orders which are seeing the light of the day for long many years need not be distributed at this stage.

22. The learned Single Judge was certainly justified in granting the petitions and setting aside the termination orders.

23. All these letters patent appeals are dismissed. However, there shall be no orders as to costs.