
(2008) 04 PAT CK 0022

In the Patna High Court

Case No : Letter Patent Appeal No. 1225 of 2000

The State of Bihar and Others

APPELLANT

Vs

Balmiki Rajak and Others

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Citation : (2008) 04 PAT CK 0022

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Rekha Kumari, JJ.—Heard the parties.

2. This Letters Patent Appeal has been preferred by the State of Bihar and its Officials against the judgment and order dated 27.1.2000 passed by the writ Court in C.W.J.C. No. 8796 of 1998 whereby the claim of the 16 writ petitioners, who are respondents in this appeal, for regularization of their services, was allowed in part by ordering the concerned Chief Engineer to find out the vacancies in Class IV posts from all the Divisions/Circles under his jurisdiction and to consider the cases of the petitioners and other similarly situated persons appointed on daily wages prior to 1.8.1985 for their regular appointment against Class IV posts, on the basis of seniority and by giving them weightage over outsiders. A direction was also issued to relax the age required in case any of the petitioners had become over age. The process of selection and appointment was directed to be completed within a period of six months. The writ court granted an alternative relief to the petitioners by ordering that if services of any of the petitioners is not regularized/ not considered for appointment on regular basis for want of vacancy or other reasons, then they will be entitled to get wages in the minimum of the time scale of the post after a period of six months. Similar direction was also issued for payment of arrears of wages wherever found due.

3. Learned Counsel for the appellant State has submitted that similar matter from the same department of Minor Irrigation went to the Supreme Court by way of Special Leave to Appeal (Civil) No. 18154 of 1999 State of Bihar v. Laghu Sinchai Karamchari Sangh and Ors. and by judgment and order dated

30.10.2000 the Supreme Court held that the direction given by the learned Single Judge that pending regularization of the daily wage workers they shall get the minimum of the time scale of the post was fit to be set aside. However, the Supreme Court directed the state of Bihar to take steps to constitute necessary committee and to take expeditious steps to implement the scheme depending upon all the vacancies available from time to time. Learned Counsel for the appellant State has also produced before this Court a copy of another order of the Supreme Court dated 8.4.2002 passed in Special Leave to Appeal (Civil) No. 16781 - 16783 of 2000. That order shows that in similar matter the Supreme Court held that the order dated 30.10.2000 passed in S.L.P.(C) No. 18154 of 1999 is a general order and it shall be applicable to all similarly situated daily wage workers.

4. On the basis of the aforesaid judgments and orders of the Supreme Court in the matters of similarly situated employees of the same department, learned Counsel for the State has submitted that the direction given by the learned Single Judge for placing the daily wage workers in the minimum of time scale of pay must be set aside and this appeal should also be disposed of in terms of the general order of the Supreme Court dated 30.10.2000.

5. On the other hand, learned Counsel for the respondents has submitted that the cases of several daily wage workers were disposed of by a Division Bench of this Court by judgment and order dated 15.3.2007 passed in L.P.A. No. 694 of 2006 and 61 other analogous appeals by placing reliance upon the recent Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

6. A perusal of the aforesaid judgment of the Division Bench shows that while dealing with the batch of large number of cases, the facts of individual cases were not noticed in detail and after extracting paragraphs 45 and 53 of the judgment of the apex Court in the case of Uma Devi (Supra) the Division Bench found that the relevant questions are required to be investigated in regard to the facts of those cases to reach to the conclusion whether the appointments of the original writ petitioners are legal, regular or not. In that view of the matter, the Division Bench gave several directions including a direction to constitute a Committee of three Secretaries to find out whether the appointments were in consonance with the recruitment rules on regular posts and made irregularly or illegally.

7. In view of the aforesaid observations we find that the facts of these cases are quite clear and do not require any investigation by a committee as to whether the appointments were irregular or illegal in accordance with the recruitment rules or not. In these cases admittedly the petitioners were working on daily wage basis and there is no claim that they have been regularly appointed in accordance with the recruitment rules. The claim of the petitioners is only that they should also be considered for regularization in view of the direction given by the apex Court in the cases of other similarly situated employees as is evident

from the judgments and orders relied upon by the learned Counsel for the appellant State.

8. After considering the rival submissions, this Court finds that the directions given by the Apex Court that daily wage employees of this department cannot be placed under the minimum of the time scale of the pay has to be followed together with the direction that if there is a scheme for regularization of such daily wage employees and similarly situated daily wage employees are being considered for appointment on existing vacancies in a regular manner as per the provisions of the regularization scheme then the cases of the writ petitioners, respondents in this appeal, must also be considered in similar manner either in view of the direction of the Apex Court as pointed out by the learned Counsel for the State or in view of the observations in respect of the irregular appointments given in the judgment of the Apex Court in the case of Uma Devi (Supra).

9. As a result, this Letters Patent Appeal is allowed to the extent that the direction to grant minimum of time scale of the post to the writ petitioners is set aside. The other directions of the writ court are not being interfered with but those directions shall be carried out in terms of the order of the Supreme Court noticed above.

10. It is further made clear that although we have not remanded the case of the writ petitioners to the committee of three Secretaries constituted under the orders of a Division Bench of this Court but in case similarly situated employees are being considered for regularization, then the claim of the writ petitioners shall also be considered in like manner in accordance with law.