
(2015) 11 PAT CK 0042

In the Patna High Court

Case No : Letters Patent Appeal No. 371 of 2015 in Civil Writ Jurisdiction Case No. 20957 of 2013

The State of Bihar and Others

APPELLANT

Vs

Bimlesh Kumar Pandey and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) LabIC 777

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Nirmal Kumar Sinha-3, Advocate, for the Appellant; Siyaram Shahi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—The State of Bihar, through the Principal Secretary, Department of Labour Resources, Government of Bihar, and other officials of Labour Resources Department, has preferred this appeal under Clause 10 of the Letters Patent of Patna High Court on being aggrieved by order, dated 17.06.2014, passed by a learned single Judge in CWJC No. 20957 of 2013, whereby the learned Single Judge has allowed the writ application and quashed the Advertisement No. INST/01/2013, dated 19.09.2013, issued by the Labour Resources Department inviting applications for appointment, on contractual basis, against 76 vacancies of English Instructors in Industrial Training Institutes (ITIs) under the Directorate of Employment and Training, Govt. of Bihar.

2. The writ petitioners, who are the respondents in the present appeal, were, at some point of time, admittedly, working on contractual basis, as English Instructors in the ITI and they had challenged the said Advertisement, dated 19.09.2013, inviting applications for appointment on contractual basis mainly on the principle that existing contractual appointments ought not be allowed to be substituted by another set of contractual appointments.

3. Sustaining the challenge to the advertisement, in question, dated 19.09.2013, learned Single Judge, by the order under appeal, has held that what was being done by the appellants was an attempt to replace one set of contractual appointees by another set of contractual appointees, which was not permissible for the State to do, which is not a private employer, the State being bound by the constitutional mandate.

4. The question, which has arisen in the present appeal, is as to whether the action of the appellants in inviting applications for appointment on contractual basis, through the advertisement, in question, can be said to be unjustified on the ground that in the present facts and circumstances of the case, it amounts to replacing one set of contractual appointees by another set of contractual appointees.

5. The facts, giving rise to the present appeal, are not much in dispute, which are as under:--

(i) Through Resolution No. 1458, dated 3.7.2009, a decision was taken by the Labour Resources Department, Govt. of Bihar, to introduce teaching of English language in the Industrial Training Institutes (ITIs) so that the students, coming out of the ITIs, do not lag behind, in job market, due to lack of proficiency in English language. Based on this resolution, 76 (seventy six) such posts of English Instructor were sanctioned for 38 ITIs in the State of Bihar.

(ii) From the Resolution, dated 3.7.2009, of the Department, which was brought on record by way of Annexure-1 to the writ application, it appears that B.A. (Honours) in English was laid down as the minimum educational qualification and Post Graduate qualification in English and knowledge of Computer as the desirable qualification.

(iii) The Labour Department, thereafter, came out with an Advertisement, dated 14.8.2009, inviting applications for the said posts. The respondents herein, being eligible for the said posts as per the Advertisement, applied and upon verification of their certificates, were finally selected for appointment on the post of English Instructor on contract basis.

(iv) It is not in dispute, as would be apparent from the letter, dated 22.04.2010, that the initial appointments, on contractual basis, were for a period of one year from the date of joining the service. The private respondents accordingly submitted their joining. After completion of the contractual period of one year, their tenure was extended for a further period of one year from 1.6.2011 to 31.5.2012 by an office order issued, in this regard, by the Director, Employment and Training, Bihar, Patna. It was clearly mentioned in the said office order, dated 30.05.2011, that their term was being extended, because of the administrative exigencies and because of scarcity of work force in ITIs. It was also mentioned therein that extension was being granted for one year or till receipt of recommendations from Staff Selection Commission, for appointment on regular basis, whichever happened earlier.

(v) This fact is not in dispute that the period of contractual appointment of the respondents herein, which came to an end on 31.05.2012, was subsequently extended up to 31.11.2012 by office order, dated 31.05.2012, and, thereafter, up to 31.03.2013 by a subsequent office order, dated 05.12.2013. From these office orders, it appears that there were altogether 31 English Instructors, whose contractual appointments were extended up to 31.03.2013.

(vi) This also is not in dispute that no further extension beyond 31.03.2013 was granted to the contractual appointments of the writ petitioner-respondents herein. It has, further, been the claim of the writ petitioners-respondents herein that they had kept on approaching the Department concerned for extension of their contractual appointments beyond 31.03.2013, but without any result.

(vii) In September, 2013, through Advertisement, dated 19.09.2013, the Department concerned issued a new advertisement inviting applications for filling up the same posts, which the petitioners were holding, on contractual basis. This led to filing of a writ application by the respondents herein giving rise to CWJC No. 20957 of 2013 seeking quashing of the Advertisement, dated 19.09.2013, and, further, for issuance of a direction to the appellants to extend the tenure of the service of the respondents herein as English Instructor, which had come to end on 31.03.2013.

(viii) When CWJC No. 20957 of 2013 was taken up on 25.10.2013, a learned Single Judge, considering the pleadings and submissions made on behalf of the respondents herein, made the following interim order:--

"In the meantime, let no contractual appointment be made on the post on which the petitioners are working till further order if the same has already not been done."

(ix) It is made clear here that there was no direction, by way of interim order, allowing the writ petitioners to continue on the said posts.

(x) A counter affidavit was filed, on behalf of the State of Bihar, in the writ proceedings and, placing specific reliance upon a government decision contained in Resolution, dated 20.12.2012, issued by General Administration Department, Govt. of Bihar, a plea was taken by the State of Bihar that in the light of the said decision not to make any appointment on contractual basis, extension of contractual appointment of the respondents herein was not granted. They also took a plea that it was decided at the level of the Government to fill up the said 76 vacancies of English Instructors on contractual basis after following the process of written test and interview through the Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as "the Board"), which is a reputed body, on the basis of competitive examination/interview and it was in this background that the Board had invited applications from eligible candidates through advertisement in the newspaper and many of the candidates, including some of the writ petitioners, participated in the written examination held on 27.10.2013. The State of Bihar took a specific plea, in their counter affidavit,

that the entire process of selection, through examination by the Board, had already been completed affording equal opportunity to all eligible candidates including the respondents herein.

(xi) By way of rejoinder to the counter affidavit, the writ petitioners-respondents herein brought on record the Resolution, dated 21.05.2013, in order to contend that there was no ban on appointments to be made on contractual basis and the plea, as taken in this regard by the State, was factually incorrect.

(xii) Learned Single Judge accepted the stand taken on behalf of the writ petitioners-respondents that one set of contractual appointees cannot be replaced by another set of contractual appointees and, accordingly, allowed the writ application by the order under appeal, dated 17.06.2014, with a direction that the respondents would be allowed to continue to perform their job on contractual basis, while giving the State of Bihar liberty to fill up the posts on substantive basis.

6. This is the background in which the present appeal under Clause 10 of the Letters Patent of Patna High Court has been preferred by the State of Bihar being aggrieved by the order of the learned Single Judge, dated 17.06.2014, under appeal.

7. Mr. Nirmal Kumar Sinha-3, learned counsel appearing on behalf of the appellants, has submitted that the respondents did not have any right to continue after the period of their contractual appointment came to end with effect from 31.03.2013. He has submitted that further period of contractual appointment of the respondents was not extended in the light of the policy decision of the State Government. He has further submitted that in order to enhance the quality of English teaching in ITIs, a decision was taken to make appointment on contractual basis, adopting more rigorous selection process through the Board and, in special facts and circumstances of the present case, the general principle, that one set of contractual appointees cannot be replaced by another set of contractual appointees, has no application.

8. Mr. Siyaram Shahi, learned counsel appearing on behalf of the writ petitioners-respondents, on the other hand, opposing the appeal, has placed relied upon the Supreme Court's decision, reported in State of Haryana and others Vs. Piara Singh and others etc. etc., , in support of his contention that a contractual appointment cannot be substituted by another contractual appointment. He has also placed reliance on a decision of this Court in the case, reported in 2010 (4) PLJR 509 (Prashikshit Mahila Berojgar Swasthya Karyakarta v. State of Bihar), wherein this Court directed the State of Bihar to fill up the vacant posts on regular basis instead of resorting to the mode of contractual engagements.

9. There is no dispute over the general principle of law as enunciated and expounded by the Supreme Court and reiterated by other Courts including this Court that ordinarily, one set of contractual appointments should not be replaced by another set of contractual appointments unless there is a justifiable reason to

do so. In the present case, we find that pursuant to the earlier Advertisement, dated 14.08.2009, applications were invited for appointment on contractual basis against 76 English Instructors in ITIs for limited period of 12 months. The respondents were selected and appointed upon verification of their certificates and there is no averment in the writ petition that they had to undergo any written examination or interview for the purpose of assessing, on objective basis, their respective merits for appointment on contractual basis. Though the minimum eligibility criteria for appointment on contractual basis fixed in the subsequent Advertisement, dated 19.09.2013, of having passed B.A.(Hons.) examination in English with Post Graduate in English and knowledge of Computer as desirable qualification, remained unaltered, this time the selection was decided to be made through the Board by holding written test and interview. This was done apparently to select more able teachers to enhance the standard of English teaching in ITIs.

10. In other words, it was decided by the appellants to make contractual appointment on the basis of a more rigorous test, whereas the respondents were earlier selected on the basis of mere verification of their certificates. The matter would have been entirely different, had the Department decided to fill up the posts on contractual basis by following the same process of selection and on the basis of same requisite qualification.

11. In the present case, we find that the parameters of recruitment for appointment on contractual basis were substantially changed inasmuch as an expert body, i.e. the Board, was assigned the work of selection through written examination and interview.

12. Indisputably, some of the persons, who were working earlier on contractual basis along with the writ petitioners, did participate in the impugned process of selection pursuant to the subsequent Advertisement, dated 19.09.2013, and some of them have, in fact, been selected.

13. In our considered view, therefore, there was justifiable reason for making appointment by fresh advertisement on contractual basis by adopting well-structured process of selection through the Board against the posts, which were earlier held by the respondents herein on contractual basis.

14. Discussed thus, we hold that though it is true that ordinarily, one set of contractual appointees should not be replaced by another set of contractual appointees, this general principle is subject to the expression that the State, for justifiable reason, would remain to adopt more stringent recruitment process by changing the parameters of recruitment and make appointment on contractual basis afresh. The State Government can do so in the larger public interest of selecting better candidates by adopting a fair process of selection than to continue with those, who were appointed on contractual basis without following rigorous selection process. The Single Bench decision of this Court, in case of *Shikshit Mahila Berojgar Swasthya Karyakarta (ANM)* (supra), relied upon by

learned Single Judge in the order under appeal, was not applicable to the facts and circumstances of the present case.

15. We are not convinced with the submissions made on behalf of the respondents that their case is covered by the Supreme Court's decision in case of Piara Singh (supra) as the ratio, laid down therein, is not applicable to the peculiar facts and circumstances of the present case.

16. In the present case, admittedly as on the date of advertisement, i.e., on 19.09.2013, the respondents herein were not in contractual appointment, which had come to end six months back in the month of March, 2013, itself. Secondly, through the said Advertisement, dated 19.09.2013, the appellants decided to introduce a more rigorous method of selection through the Board with the avowed object of selecting better candidates for enhancing standard teaching of English in ITIs. The reason for not taking the services of the petitioners, who were working on contractual basis till March, 2013, and instead going for fresh selection for appointment, though on contractual basis, cannot, in the present case, be said to be wholly unjustified, mala fide and/or so arbitrary as to warrant interference by this Court in exercise of its power under Article 226 of the Constitution of India. We hasten to add that it is well accepted principle that where the appointment is contractual in nature and it comes to an end by efflux of time, no right remains in such appointees to continue in the post. In such circumstances, no writ in the nature of mandamus, could have been issued requiring the appellants to allow the respondents to continue on contractual basis.

17. We find merit in the present appeal as we are of the considered view that for the reasons discussed above, the order passed by learned Single Judge, dated 17.06.2014, in CWJC No. 20957 of 2013, requires interference.

18. This appeal is accordingly allowed. The order, dated 17.06.2014, passed in CWJC No. 20957 of 2013, is set aside. CWJC No. 20957 of 2013 stands dismissed.

19. Before we part with the appeal, we must observe that the appellants must make endeavour to fill up the sanctioned posts of English Instructors in Industrial Training Institutes (ITIs) on regular basis by adopting a fair and definite procedure of selection if, according to them, there is permanent requirement of the posts, which are so far being filled up on contractual basis.

I.A. Ansari, Actg. C.J.

I agree.