
(2006) 03 PAT CK 0054
In the Patna High Court
Case No : LPA No. 670 of 2004

The State of Bihar and Others

APPELLANT

Vs

Usha Devi

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 2 PLJR 386

Hon'ble Judges : Navaniti Pd. Singh, J;Aftab Alam, J

Bench : Division Bench

Advocate : T.K. Jha and K.K. Jha, for the Appellant; K.K. Thakur and Rajesh Kumar Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. In the facts and circumstances of the case the delay in filing the appeals are condoned. All these six appeals by the State of Bihar arise from the judgments and orders passed by two Single Judges of this court by which the writ petitions filed by the respondents (in LPA No. 670 of 2004 by the deceased husband of the respondent) were allowed and the order(s) of their removal from service was/were quashed.

2. All the six cases are based on similar facts. First CWJC No. 6628 of 2002 was filed by one Rabindra Pratap Pandey challenging the order of his removal from service on the ground that his appointment was illegal. The writ petition was allowed by judgment and order, dated 2.9.2002 passed by S.K. Singh, J. The order passed in C.W.J.C. No. 6628 of 2002 gives rise to LPA No. 667/2004, one of the appeals in this batch. Later on, rest of the five writ petitions were listed together before another Hon'ble Judge C.K. Prasad, J. who allowed those writ petitions simply following the order earlier passed since the parties agreed that the matter was concluded by the earlier order of the court in CWJC No. 6628 of 2002. The other five appeals in the batch arise from those five orders of justice C.K. Prasad.

3. In order to put the matter in its proper perspective and to appreciate the grounds on which the writ court intervened in favour of the writ petitioners it would be necessary to go slightly back in time. Initially two people working as Bill Clerks in the same department where the present writ petitioners-respondents were working were removed from service on the ground that their initial appointments were illegal. Those two people came to this court in CWJC No. 328 of 1992 challenging their removal from service.

4. That writ petition was dismissed by a learned Single Judge on the finding that the two petitioners in that case were appointed without following the established norms for recruitment and in violation of the right to equality guaranteed under Art. 14 of the Constitution. This finding was held to be sufficient justification for their removal even though the two petitioners in CWJC No. 328 of 1992 had put in eight years and twelve years of service respectively before their removal.

5. The order passed by the writ court in CWJC No. 328 of 1992 was taken in appeal in LPA No. 1511/1995. The appeal too was dismissed by order, dated 27.6.1996. Before the appellate court one of the pleas taken by the writ petitioners-appellants was that they alone were picked up for removal though there were other people working in the department who were appointed in a similar way. On that plea the Division Bench observed that the department should look into that aspect of the matter and take suitable action against people similarly situated as the appellants in LPA No. 1511 of 1995.

6. The steps for removal of the present six writ petitioners-respondents were taken on the basis of the observation made by the Division Bench in LPA No. 1511 of 1995.

7. The concerned authorities, however, allowed the proceedings to linger on for an inordinate length of time and the removal order of the present writ petitioners-respondents was passed in 2002 after six years of the order passed in the earlier appeal.

8. When the matter came up before the court in the writ petition filed by Rabindra Pratap Pandey, there was not much to differentiate his case from the case of the writ petitioners in CWJC No. 328 of 1992 insofar as the manner of their appointment was concerned. But there was another aspect of the matter that seems to have weighed heavily with the writ court. When the removal order was passed against Rabindra Pratap Pandey he had already served for twenty eight years and he was at that time on the verge of retirement. From the order passed in CWJC No. 6628 of 2002 it appears that it was that fact alone that primarily weighed with the writ court in intervening in his favour and setting aside the order of his removal from service. We are informed that now Rabindra Pratap Pandey has even retired from service.

9. The position is the same in all the other five appeals. Janardan Mishra, petitioner in CWJC No. 6959 of 2002 (giving rise to LPA No. 668 of 2004), Shyam Prasad Singh, petitioner in CWJC No. 7182 of 2002 (giving rise to LPA No. 665 of

2004), Krishna Mohan Prasad Srivastava, petitioner in CWJC No. 8046 of 2002 (giving rise to LPA No. 675 of 2004) and Rambabu Singh, petitioner in CWJC No. 9770 of 2002 (giving rise to LPA No. 669 of 2004) and Rabindra Pratap Pandey, petitioner in CWJC No. 6628 of 2002 (giving rise to LPA No. 667 of 2004) were initially appointed on 13.1.1975, 3.7.1974, 18.11.1978, 1.2.1966 and 24.1.1979. CWJC No. 7324 of 2002 was filed by Laxmi Narain who was the concerned employee. He died before the filing of LPA No. 670 and consequently the appeal against the order of the writ court was filed impleading his widowed wife Usha Devi. The writ petitioners-respondents in other cases are also either retired or on the verge of retirement.

10. No exception can be taken to the proposition that an appointment made illegally is bad and invalid and in the facts and circumstances of the case the observation made by the Division Bench in LPA No. 1511 of 1995 was wholly appropriate, proper and correct but the difference in the cases lies in the delay caused by the concerned authorities in taking action on the basis of that observation. Under those circumstances the writ court exercised its discretion in favour of the terminated employees on the ground that they had already served for more than a quarter of a century and were on the verge of retirement. We cannot hold that the view taken by the writ court was so unwarranted or bad as to warrant an interference in an internal court appeal. We do not feel inclined to interfere with the order passed by the writ courts. All these appeals are consequently dismissed.