

(2010) 08 PAT CK 0088
In the Patna High Court

The State of Bihar

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 08 PAT CK 0088

Hon'ble Judges : Shiva Kirti Singh, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Hemant Kumar Srivastava, JJ.—Heard learned Counsel for the appellants and learned Counsel for the sole respondent.

2. Some daily wage workers working in a Plant belonging to Industry Department of the State of Bihar preferred a writ petition bearing CWJC No. 7249 of 1991 raising a grievance that they had been working on daily wages in the Central Processing Plant at Biharsharif since years 1969, 1970 and up to 1984 respectively and therefore they should be treated as permanent employees and the State was at fault in continuing them as daily wage workers. That writ petition was allowed on 16th October 1996 in spite of objection by the State that there was no sanctioned post for permanent absorption of the concerned employees. A direction was issued to frame a scheme so that if necessary required number of posts may be created for absorption of those writ petitioners. Admittedly, Letters Patent Appeal preferred by State against that judgment and order was dismissed on the ground of limitation and the Apex Court also refused to interfere. After the order passed by the Apex Court in 1998, 21 daily wage employees who were petitioners in CWJC No. 7249 of 1991 were made permanent as per direction of the writ Court.

3. Respondent herein chose to remain aloof from the entire controversy and only in 2004 he preferred two successive writ petitions and the later one has been

allowed by the order under appeal on the ground that State was under obligation to treat the writ petitioner on similar footing as the 21 daily wage employees who were petitioners in the writ petition filed in the year 1991.

4. Learned Counsel for the appellants has advanced three grounds to assail the order under appeal. Firstly, it has been submitted that there was inordinate delay because, even if the respondent herein is accepted to be similarly situated in the year 1991, he chose not to join the earlier litigation and even after his alleged juniors were absorbed in 1998 after the order of the Supreme Court, he preferred writ petition only in the year 2004 when admittedly the Plant in question had remained closed since 1997. According to learned Counsel for the appellants the writ Court should have dismissed the writ petition on the ground of delay and laches by a person who only claims to be a daily wage employee and not a regular employee of the State of Bihar so as to claim similarity of treatment under Service Rules.

5. Secondly, it has been submitted that in the matters of absorption of daily wage employees the concept of seniority is misconceived unless, when the scheme of regularization was prepared, the persons working at that time advanced their claims so as to be included in the list of eligible employees. Merely because some daily wage workers might have been engaged in the remote past in the year 1977 or even in 1960's that would not make them alive employees and senior so as to claim priority in absorption. Lastly, it was submitted that in absence of any post as pleaded before the writ Court and when the Plant itself was closed since 1977, the writ Court should not have allowed the writ petition directing for granting permanent status to the respondent as an employee of the State attached to the Plant in question.

6. On behalf of the respondent only one plea is raised, as before the writ Court, that his claim is similar to that of other 21 daily wage employees who had moved this Court through a writ petition in the year 1991 and got permanent status in or around 1998 on the basis of order of the writ Court.

7. Having considered the rival submissions and the broad features of the case, it is found that a daily wage employee cannot claim seniority merely because initially he was engaged long back in the year 1977. Several factors such as continuous engagement and minimum working in a year may be relevant criteria for formulating a scheme for absorption as was directed by the writ Court in 1996. Further, there was apparent delay and laches in lodging the writ petition in question in the year 2004. This was done after 13 years of others moving this Court through writ petition in the year 1991. Even if the writ petitioner had waited for those cases to be concluded so as to get benefit of those orders on the ground of Article 14 and 16 of the Constitution of India, his cause of action arose long back in and around 1998 when other daily wage employees, the so-called juniors to the writ petitioner got permanent status. Even thereafter he waited for several years and there is no satisfactory explanation for such long delay.

8. In respect of last submission, it can be safely held on the basis of recent Constitution Bench Judgment of the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi reported in 2006 (2) PLJR 363 SC that in absence of availability of a post and when the entry into service was without any regard to Article 14 & 16 of the Constitution of India, this Court should not issue any mandamus for granting status of permanent employee to a daily wage worker.

9. In view of the aforesaid discussions and findings, we are constrained to set aside the order under appeal and dismiss the writ petition. There shall be no order as to costs.