

(2003) 07 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5342-5343 of 2003

Uma Kant Sinha and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2003) 4 JCR 72

Hon'ble Judges : M. B. Shah, J;C. A. Vaidyalingam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Being aggrieved and dissatisfied by the judgment and order dated 18.7.2001 passed in CWP No. 3503/98{R} etc., the appellants whose services were terminated by the State of Bihar filed the Letters Patent Appeals before the High Court of Jharkhand at Ranchi. Those appeals were also dismissed by the Division Bench of the High Court. Hence these appeals by special leave.

3. It is admitted by learned counsel for both the parties that the appellants were appointed through the Animal Husbandry Department in the State of Bihar on various clerical or semi- technical posts since 1988 requiring no technical qualification. Appointments were made on the basis of the orders issued by the State Government on 31.12.1987. Thereafter, Selection Committee was constituted for making appointments against the vacant posts and for promotion of the employees working in the Department. It is true that Annexure P-6 specifically states that Government had created 400 posts at the relevant time and for the said posts appointments were required to be made. It is the case of the appellants that Selection Committee considered the case of the appellants and they were appointed on various dates mainly in the year 1988/1989. However, the State Government considered that the appointment of the

appellants was irregular and therefore terminated their services by office order No. 5330, dated 23rd October, 1998.

4. Those orders were challenged by the appellants before the High Court by filing various writ petitions. The High Court arrived at the conclusion that the appointments made by the Regional Directors were not proper as Regional Directors were inter alia not empowered to make their appointments. The Court also considered the fact that the appellants were appointed on ad hoc basis without following necessary procedure. However, the High Court issued directions for taking into consideration the fact that appellants were working for about 10 years or above, the State Government shall give certain weightage to the appellants as and when the State Government fills up the posts of Technical Assistant on regular basis by giving appropriate age relaxation, if so required, or weightage over outsiders.

5. Mr. P.P. Rao and Mr. P.S. Mishra, learned senior counsel for the appellants vehemently relied upon the decisions of this Court in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, , and *Ashwani Kumar and Others Vs. State of Bihar and Others*, . In *Piara Singh's* case, the Court inter alia directed as under :--

"45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of ad-ministration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above process.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each State prepares a scheme, if one is not already vogue, for regularisation of such employee consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the same may be."

6. In Ashwini Kumar's case (*supra*) in similar set of circumstances, the Court has issued necessary directions for filling up the vacancies by constituting a Selection Committee as per the rules.

7. We make it clear that ad hoc appointees have no right to claim regularisation in the service but because of erroneous procedure adopted by the concerned authority in appointing such persons and thereafter continuing them for years together, on occasions, relief is required to be moulded in favour of such employees. In the present case, undisputedly, the appellants were appointed as early as in the year 1988-89 and have continued to work on the posts for years together. Further, considering the fact that appointments of the appellants were made on the basis of orders passed by the State Government and that too on recommendation by the Selection Board and after taking into consideration the requirement of the project, which is still continuing, we accept the submission made by the learned senior counsel for the appellants.

8. In this view of the matter, we direct the State of Jharkhand to consider at the earliest for recruiting Technical Assistant for the Semen Bank Project and to fill up the existing vacancies within a period of three months from today. For that purpose the respondent-State is directed to constitute a Selection Committee as per the existing Rules within a period of three months from today.

(ii) The appellant whose services are terminated may apply to the Secretary of the Animal Husbandry Department within a period of one month for being re-appointed or for regularisation of their services. The Committee shall consider the eligibility, suitability, past record as well as the educational qualifications of the appellants as per the rules as on today;

(iii) The Committee shall give relaxation of age and weightage over outsiders as directed by the High Court. However, if the appellants are found unsuitable for some reasons, it would be open to the Committee to reject their applications.

9. Appropriate authority shall issue orders for appointment after considering the roster and the merit list, on available vacancies.

10. The appeals stand disposed of accordingly. There shall be no order as to

costs. We, however, make it clear that this case shall not be treated as precedent as we have decided it purely on the fact and in the peculiar circumstances of this case.