
(2010) 11 PAT CK 0095
In the Patna High Court
Case No : CWJC No. 2080 of 2008

Umesh Prasad Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0095

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners and learned Counsel for the State.

2. The Petitioners who are stated to be Revenue Clerks engaged on seasonal basis seek the relief for regularization.

3. It is submitted that they have all worked on sanctioned vacant posts, not under the orders of any Court for more than ten years and are therefore entitled to be considered for regularization in terms of paragraph-44 of the judgment of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, The next submission is that similar matters of regularization have been referred by this Court in more than one order to a Three Men Committee for examination of facts and therefore the claims of the Petitioners may also appropriately be referred to a Committee. The third submission is that a Government Policy Decision dated 30.1.1980 and 2.5.1992 stipulated regularization of seasonal employees who have worked for five years continuously or with intermittent breaks. The latter notification stipulates some further conditions with regard to efficient discharge of duties etc. which the Petitioners claim to fulfil.

4. Learned Counsel for the State has opposed the application to submit that the appointments were purely ad hoc for 3 to 4 months in a year and therefore the question of regularization does not arise. Their letters of appointment clearly stated that the appointment was provisional and could be terminated at any time. As seasonal employees they cannot be taken into regular Government service.

5. The Petitioners have enclosed their appointment letter at Annexure-1 series. It states in no uncertain terms that they were being appointed as seasonal collectors for a specified duration to end automatically on the date mentioned in their appointment letter. The fact that there may have been a scheme for annual appointment of seasonal workers shall not vest a claim in them for regularization. The nomenclature "seasonal" is itself indicative of the precarious nature of their appointment. It was an appointment accepted by them voluntarily fully aware of the limitations of the nature of their appointment which was not in Government service. If they accepted the appointment with a limitation before they could be inducted into Government service and absorbed, there has to be compliance with Article 14 of the Constitution of India. That would require an open advertisement and a competitive merit selection when some preference may be given to those who are working in seasonal capacity at the discretion of the employer. There could also be a case where there is an advertisement issued with regard to the class of persons defined as "seasonal" and then a competitive merit selection is held among themselves for purposes of induction into the Government service. It is not the case of the Petitioners that any such procedure has been followed presently.

6. On the own showing of the Petitioners, they are no more in service even in seasonal capacity ever since 1996. Even if a person is to be considered for regularization, it pre-supposes that the individual is still in service. If the Petitioners felt aggrieved by the refusal to regularize them and the circulars of 30.1.1980 and 2.5.1992 were already in vogue, they should have raised the issue while they were in service and not belatedly in the present manner done in January, 2008. Regularization is not a mode of appointment. It presupposes that certain procedures were followed in an appointment, but that there may have been certain procedural omissions not substantive in nature affecting the issue of substantial compliance with fairness in the selection process as required by Article 14 of the Constitution with due opportunity to one and all.

7. In the case of Uma Devi (supra) it has been noticed at paragraph-38 as follows:

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make

such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

8. Paragraph-44 of the judgment on which strong reliance has been placed on behalf of the Petitioners has created a lot of confusion leading to various kinds of orders which have necessitated clarifications by the Supreme Court in its judgment reported in *State of Karnataka and Others Vs. Ganapathi Chaya Nayak and Others*, and *Satya Prakash and Others Vs. State of Bihar and Others*, Paragraph-44 of the judgment of *Uma Devi (supra)* deals with irregular appointments as distinct from illegal appointments. It presupposes appointments made against vacant sanctioned posts following some procedure and in which background the direction to be considered for regularization was issued. If the appointment of the Petitioners was seasonal, limited in time as per their appointment letter and merely because they may have been engaged from a panel prepared annually will that confer upon them and bring them at par with persons appointed in regular Government service. In fact, in the judgment of *Uma Devi (supra)* itself it has been held at paragraph-36 as follows:

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned persons has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain--not at arms length-- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a

magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

9. The pronouncement in Uma Devi (supra) having no application to daily wagers/casual employees or seasonal employees stands explained by the Supreme Court earlier in State of Maharashtra and Another Vs. R.S. Bhonde and Others, The Respondents were engaged on seasonal basis. They moved the Industrial Court by filing a complaint that they have been working without any break in service as daily wagers. The nature of duties performed by them was of permanent nature. That this practice was being followed to deny them the benefits of a permanent workman. The Industrial Court directed them to be made permanent subject to approval of the State Government. This was questioned before the High Court which only directed consideration to be made subject to the prior approval of the State Government. The persons directed to be considered moved afresh for implementation of the order which so directed. The Supreme Court at paragraph-7 held as follows:

7. Additionally, as observed by this Court in Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union the status of permanency cannot be granted when there is no post. Again in Gram Sevak Prashikshan Kendra v. Workmen, it was held that mere continuance every year of seasonal work obviously during the period when the work was available does not constitute a permanent status unless there exists post and regularization is done.

10. Whether the nature of their appointment be seasonal in nature, precarious by its very nomenclature, or that the Petitioners are no more in service for long long years, the question of their regularization simply does not arise.

11. There is no occasion for the Court to consider the applicability of any circular dated 30.1.1980 or 2.5.1992 for the very simple reason that if the Petitioners were of the opinion that the circulars did create a right in them for consideration, it was for them to move for that relief in their seasonal tenure. To direct any consideration of their case today under those circulars as late as in the year-2008 when they are no more in service ever since 1996 shall essentially be amounting to a direction for appointment contrary to Article 14 of the Constitution of India.

12. There is no merit in this application. It is accordingly dismissed.