

(2017) 01 JH CK 0254
In the Jharkhand High Court
Case No : 466 of 2015

Vivekanand Singh, & Antr.

APPELLANT

Vs

The State of Jharkhand, & Ors.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 01 JH CK 0254

Hon'ble Judges : Shree Chandrashekhar

Bench : SINGLE BENCH

Advocate : Jitendra S. Singh, Bhawesh Kumar, M.S. Anwar, Tejo Mistri

Judgement

1. This application has been filed for adding "one sentence" in paragraph no.5 that, "the members of petitionerassociation deserve regularization". Another prayer is for incorporating an additional prayer in the writ petition which reads as under: "Or in alternative, the respondents may be directed to absorb the members of the petitionerassociation under service in forest department." Way back, on 20.05.2015 the respondentState was permitted to file response to I.A. No.3009 of 2015, and thereafter this case appeared on as many as three occasions, however, no reply has been filed by the State. Moreover, the amendments sought by the petitionerassociation would not change the nature of relief originally sought in the writ petition.

Accordingly, I.A. No. 3009 of 2015 is allowed.

Heard.

2. This is yet another writ petition on behalf of the dailywages employees working on different classIV posts under the Department of Forest and Environment. In today's list itself this is the third writ petition of similar nature with similar prayers. Few writ petitions of the same nature have already been disposed of by this Court. Mr. Jitendra S. Singh, the learned counsel for the

petitioner tenders copies of orders passed in W.P.(S) No.2538 of 2015 and W.P.(S) No. 2404 of 2010.

3. The facts revealed in the present proceeding disclose that dailywages workers were employed on different classIV posts and they continued to work for more than 10 years, but no step for regularization of their services was taken. In the year 2014 when an advertisement was issued for appointment of forestguards, several writ petitions were filed seeking a direction upon the respondentState for granting age relaxation and relaxation in educational qualification. Alternatively, a prayer was made for regularization of dailywagers working under the Department of Forest and Environment in terms of "Jharkhand sarkar ke adhinasth aniyamit rup se niyukt karyrat karmiyon ke seva niyamatikaran niyamavali, 2015", which was notified by Resolution dated 13.02.2015. This is one such writ petition.

4. Insofar as prayer for age relaxation is concerned, the learned state counsel submits that the written test has already been conducted. Accordingly, this prayer has been rendered infructuous.

5. The learned counsel for the petitioner has tendered a list which gives detailed description of 20 dailywages workers who are members of the petitionerJharkhand Van Dainik Vetan Bhogi Karamchari Sangh.

6. Be tagged at its proper place.

7. This list of dailywagers discloses that these persons are working for the last 10 to 26 years; six of them for more than 21 years. They all had acquired minimum educational qualification for appointment on the posts on which they were appointed.

8. Referring to the list of members produced by the petitionerassociation, the learned counsel contends that the dailywagers who have completed ten years continuous service are entitled for regularization in terms of Regularization Rules, 2015. The learned state counsel, however, contends that for regularization also the dailywagers must satisfy the eligibility conditions which are necessary for direct recruitment on the post of forestguards. It is contended that the forest guards/dailywages workers employed on different classIV posts, but not on sanctioned vacant posts, cannot seek regularization. Moreover, those persons who did not render ten years continuous service cannot be considered for regularization in terms of Regularization Rules, 2015 .

9. Affidavits filed in W.P.(S) No. 5918 of 2014 and W.P.(S) No. 2551 of 2015 have been referred to by the learned counsel for the petitioner.

10. One thing that needs to be indicated, is that, opposition by the state to the prayer for consideration for regularization in terms of 2015 Rules appears to have been raised merely for the sake of opposing the prayer in the writ petition. This becomes apparent when the plea that the dailywagers must attain the minimum educational qualification in terms of 2015 Rules is examined in the

context of the general principle of regularization. It needs no reiteration that regularization is not a mode of recruitment. The regularization scheme under 2015 Rules is intended to regularize the service of irregularly appointed dailywagers. Now 1020 years after their engagement, if a condition is imposed that the dailywagers must obtain a qualification which is different from the qualification prescribed at the time when they were initially engaged, it would amount to frustrating the whole object of regularization. In the context of the plea taken by the respondentState that the dailywagers working on different posts are not covered under the onetime regularization scheme, least that can be said, is that, no such stipulation finds mention in 2015 Rules, which were notified vide Notification dated 13.02.2015. The judgment in Umadevi (3), in fact, refers to appointment on dailywages, casual basis, contract etc. The onetime scheme envisaged under para 53 of the judgment in Umadevi (3) covers the dailywagers who have been working for 10 or more years. Another plea taken by the State is that many of the dailywagers did not work continuously for 10 years. This plea has been raised by pleading that they were paid only for 26 days in each calender month. If that is so, long continuation of the dailywagers, that is, 10 years or more would lead to a conclusion that it was an artificial break engineered by the respondentauthorities to deny the benefits of continuous service to the dailywagers. There was a need for appointment on permanent basis and by pleading that since some of the dailywagers were engaged for 26 days in a calender month, the plea that they were engaged as per need of the work must also fail. In "Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd." reported in (2014) 11 SCC 85, deprecating introduction of artificial break in service, in paragraph no. 27 of the reported judgment the Hon"ble Supreme Court has observed thus, "27. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates "unfair labour practice" as defined under Section 2(ra) of the ID Act, which is not permissible in view of Sections 25T and 25U of the ID Act read with entry at Serial No. 10 in the Vth Schedule to the ID Act regarding unfair labour practices. Section 2(ra) reads thus: "2. (ra) "unfair labour practice" means any of the practices specified in the Fifth Schedule."

Further, Entry 10 of the Vth Schedule reads as under:

"5. To discharge or dismiss workmen-

* * *

10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

11. The Constitution Bench judgment in "Secretary, State of Karnataka Vrs. Umadevi" [(2006) 4 SCC 1] gave liberty to the state governments to frame rules

for regularization of "irregular appointees". It has been held that where the appointments are made of the persons who possessed the prescribed qualifications but were selected without undergoing the process of selection, such appointments are irregular. In "State of Karnataka & Ors. Vrs. M.L. Kesari & Ors.", reported in (2010) 9 SCC 247, the Supreme Court held that "one exception to the general principle against regularization enunciated in Umadevi (3) is that the employee has worked for ten years or more in duly sanctioned post without the benefit or protection of the interim order of any court or any tribunal. In other words, the state government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years".

12. In the counteraffidavit, the respondentState has produced copies of letters/orders dated 11.06.2015, 07.09.2015, 16.09.2015 and 04.05.2016 to plead that the department has taken necessary steps for regularization of the dailywagers in terms of the Regularization Rules, 2015. Letter dated 16.09.2015 indicates that the Principle Chief Conservator of Forest, Jharkhand has held that the persons working on dailywages do not fall under the category of irregularly appointed employees. A similar communication has been sent by the Chief Conservator of Forest, Personnel (NonGazetted) vide its letter dated 04.05.2016. Stand taken by the respondentState is that these persons were not appointed against sanctioned vacant post. Interestingly, against total sanctioned 1053 classIV posts there are as many as 456 vacancies. The vacancyposition of forestguards as on 31.03.2016 reveals a more disturbing figure. It is stated that there are 3371 sanctioned posts of forestguard on which only 392 regularly appointed persons are working. It is stated that the last recruitment exercise for appointment of forestguards was conducted in the year 1981. Even after creation of the State of Jharkhand, for long 14 years regular appointment on the post of forestguards and classIV employees has not been made. Most of the forestguards, who were appointed in 1981 or before that, have either retired or are on the verge of the retirement. The actual vacancy position, yearwise, however, has not been disclosed.

13. Without justifying its inaction in not initiating the recruitment exercise for regular appointment, can the State take a stand that these dailywages workers and other similarly situated dailywagers were not appointed against the sanctioned vacant posts. In the counteraffidavit, the respondentState has not taken a stand that the dailywages employees either working as forest guard or on different classIV posts were not eligible; either on account of educational qualification or for any other procedural reason, for appointment on the posts on which they were initially engaged. It is also not the case pleaded by the State that they were illegally appointed. Without disclosing the breakup of the sanctioned posts when the individual worker was engaged, a common ground has been taken in all the writ petitions that the dailywagers were not appointed against the sanctioned vacant post.

14. Now, in view of the facts disclosed in the counteraffidavit it must be concluded that when the dailywagers were engaged there were sanctioned vacant posts. If these persons were not appointed against sanctioned vacant posts though, the posts were available at that time, in the first place it was not a fault on the part of the dailywagers. It was only a ministerial work by which the expression "appointed on sanctioned vacant post" was to be incorporated in their letters of appointment. Except pleading that no regular appointment has been made in the last 34 years, no reason has been disclosed why such an exercise was not undertaken by the State. The dailywagers who were duly eligible for appointment on the post of forest guard or on different classIV posts have been denied the benefits of regular appointment for no fault of theirs and now contrary to the records, a plea has been taken that these persons were not appointed on sanctioned vacant posts. The Department appears to be in a complete mess. Adhocism descended the department decades ago and it has continued thereafter. To say that the work under the department particularly, the field work has not suffered on account of failure to make regular appointments would be turning a blind eye to the reality. All along, the State remained a mute spectator and to some extent a party to the cumulative injustice done to the dailywagers. It has completely failed to uphold the constitutional vows of equality and social justice. The question is, what is the course open to the Court; to remain chained in technicality or to remind itself what has been observed in "Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Turst & Ors. Vs. V.R. Rudani & Ors." (1989)2 SCC 691; "the judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226." I feel, I am duty bound to follow the aforesaid observation of the Supreme Court.

15. The Jharkhand Staff Selection Commission has issued Advertisement No. 03/2014 for appointment of forest guards. The number of posts advertised was about 2200, however, the total number of vacancies is about 3000. The process of regularization in terms of 2015 Rules has already been initiated, as would appear from various communications by the Principal Chief Conservator of Forest, Jharkhand and other authorities. There are about 456 vacant class IV posts. The total number of vacant sanctioned posts of forest guard and for classIV employees is far more greater than the number of dailywagers and the forest guards working on dailywages. In view of the vacancy position disclosed by the State, I am of the opinion that claim of an individual dailywager for regularization cannot be declined only on the ground that he was not appointed on sanctioned vacant post.

16. Having carefully considered the complex problem presented in these cases I am of the opinion that to avoid delay in appointment/regularization and also further potential litigations, certain directions are required to be issued.

17. In the light of the aforesaid discussions, following directions are issued : (i) All such dailywagers who have worked for 26 days or more in a calender month shall be treated as working continuously and if they have worked for 10 years they shall be treated as if they have worked for 10 continuous years.

(ii) All those persons who have worked for 10 years shall not be excluded from consideration for regularization in terms of 2015 Rules, only on the ground that they were not appointed on sanctioned vacant post.

(iii) The educational qualification shall be what was at the time when they were appointed initially.

(iv) There shall not be no age bar except, the age of superannuation.

(v) Weightage, if any, ordered by this Court, shall be extended accordingly.

18. The directions issued in this case shall be in continuation to the directions issued by this Court in W.P.(S) No. 2404 of 2010, W.P.(S) No. 2538 of 2015 and other cases.

19. The writ petition stands allowed, in the aforesaid terms.