
(1994) 03 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7645 of 1992

Yogendra Ram and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-03-1994

Acts Referred:

Citation : (1994) 03 PAT CK 0051

Final Decision : Dismissed

Judgement

S.B. Sinha and I.P. Singh, JJ.—The Petitioners in this application have prayed for issuance of a writ of or in the nature of mandamus directing the Respondents to pay them salary of regular scale of pay on the basis of doctrine of equal pay for equal work.

2. The Petitioners are said to be the workmen within the meaning of the provisions of Industrial Disputes Act, 1947. Petitioner No. 1 is said to have been appointed in the year 1980, Petitioner No. 2 in the year 1985 and Petitioner No. 3 in the year 1989, by reason of the offers of appointments as contained in Annexures 1, 2 and 3 to this writ application.

3. Mr. B.P. Verma, learned Counsel appearing on behalf of the Petitioners submitted that as the Petitioners have been working for a long time and thus they are not only entitled to the salary on the basis of doctrine of equal pay for equal work but also their services are liable to be regularised. Learned Counsel in support of this contention has relied upon the decisions reported in , The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.,

4. Mr. Giri, learned Counsel appearing on behalf of Rajendra Agricultural University, however, submitted that the services of the Petitioners had been terminated. It was further submitted that in the Statute of the Rajendra Agricultural University, there is no provision for appointment by way of regularisation. According to learned Counsel, as the said statute having the force

of law, provides for the manner and mode of appointment, no deviation or departure therefrom is permissible. In this case, it is not in dispute that the Petitioners have not been able to qualify themselves for appointment on regular basis, and as such they had not been selected therefore by the Selection Committee

5. It is well settled by various decisions of this Court as also the Supreme Court that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, cannot interfere with the manner of selection unless and until malafide, arbitrariness or violation of the provisions of any statute are alleged. No such allegation has been made in this application.

6. It is true that a person doing similar nature of work, may in terms of Article 39(d) read with Article 14 of the Constitution of India be entitled to invoke the doctrine of equal pay for equal work but in this case, the situation is completely different. The Petitioners were appointed purely on ad hoc basis. The University in order to give go bye to ad hocism intended to fill up the posts by way of regular appointment but the Petitioners did not succeed therein. In that view of the matter, in our opinion, it does not lie in the mouth of the Petitioners now to contend that their services should be regularised nor can they be absorbed in the permanent service of the University, as they have not been able to come out successful in the test with other candidates. They have failed to do so and in that view of the matter, now they cannot pray for regularisation of their services. Further, it is well known that when a mode of appointment is provided in the State itself, no other mode is permissible in law. This aspect of the matter has been considered by us in C.W.J.C. No. 11155/92, 11156/92 and 11157 of 1992.

7. In C.W.J.C. No. 7033 of 1992 disposed of on 14.2.1994, a Division Bench of this Court has clearly held that in absence of any provision in the statute, appointment by way of regularisation is not permissible. Similar view appears to have been taken by a Bench comprising of Hon"ble the Chief Justice and the Hon"ble Mr. Justice N.P. Singh (as his Lordship then was) in C.W.J.C. No. 5765/84.

8. Yet recently in a decision reported in 1993 (4) Scale 527 the Apex Court clearly held that any appointment made in violation of law is a nullity. Similar view has been taken by the Supreme Court in a decision reported in Ms. Sundaram Finance Ltd. Vs. Regional Transport Officer and another, , and by this Court reported in 1992 (2) PLJR 567 , Sitaram Thakur Vs. The State of Bihar and Others , Miss Prasanna Kumari Amma M.P. and Another Vs. Bihar State Financial Corporation and Others, and Nand Kumar Prasad and Others Vs. The State of Bihar and Others .

9. In view of the fact that the Petitioners have not been found to be entitled for appointment, the question of invoking the doctrine of equal pay for equal work does not arise.

10. So far the prayer for regularisation of their services is concerned, all the

decisions cited by learned Counsel have been taken into consideration in the later decision referred to hereinbefore and as such it is not necessary to reiterate the same once again.

11. In this view of the matter, there is no merit in this application. It is accordingly dismissed.