

Mithilesh Kumar and Ors Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : May-09-2017

Appellant : Mithilesh Kumar and Ors

Respondent : State of Jharkhand and Ors

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI W.P.(S) No. 743 of 2008 ---
1.Mithilesh Kumar, son of Late Deonath Prasad, resident of Warden Line, RINPAS, Kanke Road, P.O. & P.S. Kanke, District-Ranchi 2.Prahlad Tiwari, son of late Yash Tiwari, resident of Warden Line, RINPAS, Kanke Road, P.O. & P.S. Kanke, District-Ranchi 3.Nirmal Kumar Choubey, son of Late Ganesh Choubey, resident of Warden Line, RINPAS, Kanke Road, P.O. & P.S.-Kanke, District-Ranchi Petitioners. --Versus-- 1.The State of Jharkhand 2.Ranchi Institute of Neuro Psychology Allied Sciences, Kanke, through the Director, Ranchi 3.Director of Ranchi Institute of Neuro Psychology Allied Sciences, Kanke,Ranchi 4.Santosh Sarkar, father's name not known to the petitioners. 5.Dinesh Mahto, father's name not known to the petitioners 6.Nirmal Kumar, father's name not known to the petitioners 7.Shanti Devi, husband's name not known to the petitioners 8.Bodra Munda, father's name not known to the petitioners. 9.Satywan Pera, father's name not known to the petitioners. Sl.No.4 to 9 at present working as Class-IV employees in different Section at RINPAS, Kanke and for the purpose of service, the notice has to be served Director of Ranchi Institute of Neuro Psychology Allied Sciences, Kanke,Ranchi. . Respondents --- CORAM : HONBLE MR. JUSTICE

SHREE CHANDRASHEKHAR --- For the Petitioners : Mr. Niraj Kishore, Advocate
Mr. Birendra Kumar, Advocate For the State : Mr. Rakesh Kumar Shahi, JC to
AAG For the RINPAS : Dr. Ashok Kumar Singh, Advocate --- 22/ 09.05.2017
Seeking a direction for regularization on Class-IV post, the petitioners have
approached this Court.

2. Heard.

3. Primary objection taken by the respondent-RINPAS to the prayer of the
petitioners is that previously they participated in the selection pursuant to
Advertisement No.04/08/04-05 dated 31.08.2004 and having failed in their attempt
to get themselves selected they cannot seek a direction for their regularization.
Another objection taken by the respondent-RINPAS is recorded, by hand, and
signed by the Director over Annexure-A1 at page 8 of the supplementary counter
affidavit dated 10.04.2017.

4. At the outset, it needs to be recorded that the aforesaid 2. objection recorded by
the Director asserting that there is no sanctioned post of daily-wages labourer,
would reflect deficiency of his knowledge how the daily-wages workers are
employed. It is mere mode and manner of payment which can be associated with
the expression daily-wages. Any employee can be engaged on daily-wages,
against a post or without a post, but there cannot be sanctioned post for daily-
wages. Remark of the Director is contrary to the affidavit filed by RINPAS.

5. Dr. Ashok Kumar Singh, the learned counsel for the respondent-RINPAS has
contended that in view of the judgment in Secretary, State of Karnataka vs
Umadevi (3) (2006) 4 SCC1 and State of Jammu & Kashmir & Ors. vs. District Bar
Association, Bandipora, reported in (2016) SCC online SC1435 the petitioners do
not fulfill the requirements for their regularization in service.

6. The petitioners have asserted that the petitioner no.1 was first engaged on
01.11.1983 and the other two on 23.12.1983. Subsequently, they were appointed
under the regular establishment on the vacant post of Ward Attendant
(Shramik/Kuli) in the pay scale of Rs.400-7-470-10-510/-. The letter of
appointment would disclose that they were temporarily adjusted under the regular

establishment. Terms of their appointment was that they shall be entitled for other allowances as approved by the Government of Bihar. Their letter of appointment has not been disputed by the respondent-RINPAS, however, it is stated that their appointment was cancelled on 09.10.1985. The reason for cancellation is said to be that Deputy- Commissioner did not find their appointment regular. No other reason is reflected in letter dated 09.10.1985. But, the petitioners have continued in service and their continuous service under the respondents is not challenged. In the supplementary counter affidavit dated 10.04.2017, the respondents have produced a chart of sanctioned as well as vacant posts under RINPAS. This chart would 3. reflect that against 226 sanctioned posts, only 86 persons are working. Petitioners' continuous employment under RINPAS would appear from the chart of employees appended to letter dated 13.12.1996 and their participation in selection in the year, 2004. The stand taken by the respondent-RINPAS that the petitioners are working on daily-wages would not wipe out their claim for regularisation. They, in view of vacant posts, shall be deemed to be continuing on a sanctioned vacant post. In the context of the plea that after having failed in their attempt to get selected in previous selection process the petitioners cannot seek regularisation, suffice would be to notice that the said advertisement was for appointment on various posts but not on the post of Ward Attendant. This may be a reason why the petitioners were not found suitable for appointment as Shramik/kuli. And, now it is over a decade thereafter, since the petitioners have been continued on daily-wages.

7. In *Nihal Singh vs State of Punjab*, reported in (2013) 14 SCC65 Supreme Court has observed as under :

37.Umadevi(3) judgment cannot become a licence for exploitation by the State and its instrumentalities.

8. The petitioners are not seeking a direction for their regularization in terms of the exception created in paragraph 53 of the decision in *Umadevi*. Admittedly, the respondent-RINPAS has not cared to obey the directions issued in *Umadevi* whereunder it was under a legal obligation to frame one-time scheme for regularization within six months from the date of decision. About a decade

thereafter, the respondents cannot contend that the petitioners do not fall under the category of irregular appointee. Practice prevalent at the time when the petitioners were appointed as Ward Attendant was not followed in their appointment is not the stand of the respondents. An inference on facts cannot be drawn that the petitioners were not appointed following the due processes. As their letter of appointment would disclose that 4. at the time of their appointment there were vacant posts and they have continued in service for more than 30 years. In Nihal Singh case at para 23, the Hon'ble Supreme Court has observed as under :

23. Even going by the principles laid down in Umadevi (3) case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

9. The respondent-RINPAS has not pleaded that the petitioners' work has not been found satisfactory. Objection taken by the respondents to the claim of regularization is that their initial appointment was after the cut-of date i.e., 01.08.1985. This is an imaginary cut-of date. May be, under a circular issued by the Government of Bihar for regularising daily-wages employees this was the cut-of date, but, certainly it was not a date fixed by RINPAS.

10. Following the discussions in the above paragraphs, the conclusion which arrives is, that the petitioners who have been continued purportedly on daily-wages are entitled for their regularisation in service. Accordingly, a direction is issued to the respondent-Director, RINPAS to initiate the process for verification of certificates for assessing educational qualification of the petitioners, which shall be the qualification at the time of appointment of the petitioners and on being satisfied that the petitioners fulfill other conditions, if any, at the time of their initial appointment, an order for their regularization shall be issued, within eight weeks.

11. The writ-petition stands allowed. (Shree Chandrashekhar, J.) SI/,.