

State of Bihar and ors. Vs. Vijay Kumar Jha and ors.

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Court : Patna

Decided On : Apr-12-2001

Judge : Nagendra Rai and S.K. Katriar, JJ.

Appeal No. : L.P.A. No. 1514 of 2000

Appellant : State of Bihar and ors.

Respondent : Vijay Kumar Jha and ors.

Disposition : Appeal Allowed

Prior history : 1. The appeal under Clause 10 of the Letters Patent of the Patna High Court has been preferred against the order dated 28-6-2000, passed by a learned Single Judge of this Court in CWJC No. 4563 of 1998 (Vijay Kumar Jha v. State of Bihar), whereby the appellant (the State of Bihar) has been directed to consider the claim of the three petitioners for regularisation against sanctioned posts. 2. The three petitioners claim to be working on daily wages as class IV employees in the Revenue and Land

Judgement :

1. The appeal under Clause 10 of the Letters Patent of the Patna High Court has been preferred against the order dated 28-6-2000, passed by a learned Single Judge of this Court in CWJC No. 4563 of 1998 (Vijay Kumar Jha v. State of Bihar), whereby the appellant (the State of Bihar) has been directed to consider the claim of the three petitioners for regularisation against sanctioned posts.

2. The three petitioners claim to be working on daily wages as class IV employees in the Revenue and Land Reforms Department, Government of Bihar, since 1983, and pray that the State Government may be directed to regularise their services against sanctioned class IV posts. They had earlier moved this Court for the same relief by preferring CWJC No. 10791 of 1994 (Vijay Kumar Jha v. State of Bihar) and the analogous writ petitions. The case of the petitioners was that a panel was prepared for appointment against class IV posts after advertisement and following the selection process. The stand of the State Government was that there was no advertisement for appointment of peons, and the panel was prepared on the basis of the names forwarded by the Employment Exchange, Patna, which was named as Ummidwar Peons, so that persons may be engaged when need arose on daily wage basis, and the names of the petitioners were included therein. CWJC No. 10791 of 1994 was disposed of by a learned Single Judge of this Court by his order dated 1-11-95 (Annexure 10 to the writ petition), whereby the respondents were directed to take a final decision within three months from the date of receipt of a copy of this order. Following is the operative part of the order:..... The petitioners are not in a position to produce before this Court a copy of advertisement which according to them was issued for the appointment of regular Peons. In the absence of relevant materials, it would not be safe for me - to record any finding on the question. However, since the matter is under consideration of the Government and the Government has before it all necessary materials. I direct the respondents to take a final decision in the matter within a period of three months from the date on which a copy of this order is produced before respondent

These writ petitions are disposed of accordingly.

3. The State Government took the decision on 21-2-1997 (Annexure 12 to the writ petition), whereby, it has been decided that the petitioners shall be considered against vacancies in regularly sanctioned posts as arid when they occur, Keeping in view the provisions laid down in the Government Circular No. 5940, dated 18-6-93, and also keeping in view the policy of reservation laid down by the Government. According to the petitioners, the services of the petitioners have not been regularised in spite of the said decision of the State Government. Hence the

present CWJC No. 4563 of 1998. As stated above, the same has been allowed by a learned Single Judge of this Court by his order dated 28-6-2000, whereby the concerned respondents have been directed to consider the claim of the petitioners for regularisation against vacancies in sanctioned posts notwithstanding the Circular dated 10-4-86 (Annexure A to the counter affidavit of the State of Bihar in the writ petition), within a period of three months. The State Government has appealed.

4. While pressing this appeal, learned Counsel for the appellants submits that the Government circular dated 10-4-1986 (Annexure A to the counter affidavit) creates a bar to the regularisation of peons. There is paucity of sanctioned vacancies. Furthermore, the State Government has taken the decision on 12-8-99 that out of 93 regular posts of peons, only 51 shall for the time being be filled up. He also submitted that after bifurcation of the State with effect from 15-11-2000, the requirement of the State shall have to be reviewed. In view of the financial constraints of the State Government which are almost acute, the Government is very circumspect in regularising the services of its daily wage employees and is equally circumspect in filling up the sanctioned posts. Therefore, the State Government has not framed any scheme envisaged by the Supreme Court in its judgment reported in : (1993)11LLJ937SC (State of Haryana v. Piara Singh).

5. The three writ petitioners who are the respondents herein have submitted in opposition that the Government is in a dominant position and, therefore, can take any decision that it likes, but the Government should not permit the writ petitioners to be treated in the manner as is being done by the State Government. They are working on daily wages since 1983 in the hope; that their services shall be regularised. It was further submitted that the Circular of 1986 (Annexure-A to the counter affidavit in the writ petition) is being applied by the State Government for the first time since the same was issued. It was then submitted that the question of financial constraints does not arise in the present case, because the present writ petition relates to three persons only. He has also relied on the judgment of the Supreme Court reported in AIR 2000(1) SC 706 (Gujarat Agricultural University v. Rathore Labhu Bechar).

6. Having considered the rival submissions, we with respect disagree with the order of the learned single Judge. In view of the facts and circumstances attendant on this writ petition and for the reasons indicated hereinbelow, it is not possible for this Court to issue a mandamus to the State Government to regularise the services of the three writ petitioners. The Supreme Court in its judgment reported in the State of Haryanav. Piara Singh (supra), has observed that where Government orders for regularisation from time to time are issued on conditions which are not unreasonable, arbitrary or discretionary, Court should be cautious in issuing directions to the Government substituting its own conditions. Creation and abolition of posts and the discretion to fill up a regular post is the prerogative of the Government. The Court must while giving direction for regularisation, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventuality that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer, but also has the effect of increasing the cadre strength of a particular service, class or category. The normal rule is regular recruitment through the prescribed agency, but exigency of administration may sometime call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such ad hoc or 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 candidates. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad/hoc/temporary employee. Person's continuing in service over a number of years have a right to claim regularisation and the authorities are under obligation to consider their case for regularisation in a fair manner, provided he is eligible and qualified according to the Rules, and service record is satisfactory, and his appointment does not run counter to the reservation policy of the State. The proper course would be that the-authorities prepare a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy. Furthermore, the Supreme Court as well as this Court has on a number of occasions held that in case such a scheme is prepared, then the daily

wage or ad hoc employees shall compete with the outsiders and age bar shall not come in the way of the former. It has further been held by the Supreme Court as well as this Court that employment opportunity in this country is a national wealth, and every citizen should have unrestricted access to the same. Any appointment without advertisement and wide publicity and inconsistent with the Rules is violative of the constitutional mandate.

7. It is in the aforesaid background that we read the aforesaid Circular dated 10-4-86 (Annexure A), from which it appears that the State Government had made an effort to reduce the man power employed by the State Government. The provision for attaching peons with the functionaries of the State Government was reviewed which has led to reduction in the number of such peons needed by the State Government. It was, therefore, decided that there shall be no fresh appointment of peons in near future. It is obvious from a plain reading of this order that the number of permanent posts/sanctioned posts of peons have drastically reduced, services of permanent employees who have become surplus shall not be dispensed with and shall be adjusted against future vacancies caused by retirement and other facts. It is thus inherent in the situation that there is no question of regularisation of daily wage, class IV employees at present. On the contrary, perhaps, a case has been made out for dispensing with their services. The aforesaid order dated 10-4-86 extends protection, and preserves the services, only of the permanent employees. Learned Government Counsel has also produced before us the original file maintained by the State Government in this behalf. He has particularly invited our attention to the decision taken at the meeting held on 12-8-99 under the Chairmanship of the Chief Secretary of the Government in the presence of the Gommissioner-cum-Secretary, Revenue, Finance Commissioner, Personnel Secretary, and the Law Secretary, to the effect that there are 93 sanctioned posts of peons in the Department of Revenue and Land Reforms, which has been educed to 51 posts, yet there are 11 surplus persons. Furthermore, it is common knowledge that the Bihar Government is over-weight, and there is need for drastic reduction of its work force. We also take judicial notice of the fact that the State Government is passing through a critical, financial phase which has accentuated after the bifurcation of the State. The State Government is not able to pay salary to its existing employees and is taking

loans/over-drafts to meet this obligation. The Supreme Court in its judgment in the case of Gujarat Agricultural University v. R.L. Bechar (supra) (Para 22), has clearly stated that financial constraints are to be kept in mind when any scheme is prepared for regularisation at a particular time. In such circumstances, this Court finds it nearly impossible to issue a mandamus to the State Government to regularise the services of the three writ petitioners. Circumstances permitting, the State Government may formulate a scheme as and when it deems fit for regularisation of the services of its employees of the category of the writ petitioners, in which case the three writ petitioners shall be entitled to compete along with the persons from the open market in response to the advertisement and age bar shall not come in their way.

8. In the result, this appeal is allowed in the aforesaid manner. Order of the learned Single Judge dated 28-6-2000, passed in CWJC No. 4563 of 1998, is hereby set aside.

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