

Arjun Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-16-2003

Judge : Nagendra Rai and R.S. Garg, JJ.

Acts : Service Law

Appeal No. : L.P.A. No. 735 of 2002

Appellant : Arjun Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Ashok Kumar Singh, Standing Counsel No. 3

Advocate for Pet/Ap. : Narendra Prasad, Senior Adv. and Alok Kumar Singh, Adv.

Disposition : Appeal dismissed

Prior history : Nagendra Rai and R.S. Garg, JJ. 1. This appeal is directed against the order dated 14-5-2002 passed by the learned Single Judge dismissing the writ application filed by the appellant challenging the order dated 13-4-2002, by which he was been disengaged from the post of Nalkup Khalasi (Muster Roll). 2. The case of the appellant is that the appellant was appointed on 14-12-1985 as a Muster Roll employee by the Executive Engineer against a sanctioned vacant post and was posted at Chapra. His

Judgement :

Nagendra Rai and R.S. Garg, JJ.

1. This appeal is directed against the order dated 14-5-2002 passed by the learned Single Judge dismissing the writ application filed by the appellant challenging the order dated 13-4-2002, by which he was been disengaged from the post of Nalkup Khalasi (Muster Roll).

2. The case of the appellant is that the appellant was appointed on 14-12-1985 as a Muster Roll employee by the Executive Engineer against a sanctioned vacant post and was posted at Chapra. His further case is that his services were regularised in the work charged establishment against a regular scale in the year 1990, but the same was stayed. Thereafter, he filed a writ application being C. W. J.C. No. 4033 of 1993 for a direction to regularise his services and also to pay time scale of pay applicable to Nalkup Khalasi of the department. The said writ application was disposed of by a Division Bench of this Court on 21-1-1994 directing to pay to the appellant the minimum of the scale payable to Nalkup Khalasi of the department with effect from January, 1994. This Court further directed that his case for regularisation should be considered in the light of the decision taken by the State Government. When the said order was not complied with, he filed a contempt application being M.J.C. No. 1127 of 1994, which was disposed of on 8-2-1996 and this Court did not proceed with the contempt case. However, it was directed that the appellant should be paid the minimum scale provided for Nalkup Khalasi. Thereafter, by order dated 2-2-1994 pursuant to the order passed by this Court in the aforesaid writ application, the services of the appellant were regularised in the work charged establishment on temporary basis. Thereafter, while the appellant was continuing on the said post, the impugned order dated 13-4-2002 was issued disengaging him from the service.

3. The learned Single Judge did not ask the State to file a counter-affidavit and at the admission stage dismissed the writ application on the ground that the engagement of the appellant itself on the daily wages was after cut off date fixed therefore and, therefore, his disengagement was justified.

4. We directed the respondent-State to file counter-affidavit bringing on record

its policy with regard to engagement on daily wages and in the work charge establishment as well as the grounds which led to the disengagement of the appellant.

5. The State filed a counter-affidavit, wherein its stand is that the power to make appointment in the work charged establishment, the temporary establishment as well as on muster rolls is Governed by Rules 57, 58, 59, 60, 61, 62, 241, 242 and 243 of the Bihar P.W.D. Code Volume-1. Rule 5 of the Bihar Service Code stipulates that all powers conferred through any rules are exercisable only in consonance with the instructions of the Finance Department issued from time to time and Rule 1 of the Bihar P.W.D. Code makes the Code subject to the provisions of the Bihar Financial Rules and the Bihar Service Code. The Rules of Executive Business issued under Article 166(3) of the Constitution provides, inter-alia, that no department will incur any expenditure on matters in which it is not authorised by delegation, without previous consultations with the Finance Department. It further stipulates that no such proposal shall proceed which requires the concurrence of the Finance Department, when such concurrence has not been obtained unless such a decision has been taken by the Council of Ministers. The power with regard to laying down policy in matters of personnel vests in the Department of Personnel and Administrative Reforms according to the Rules of Executive Business. Thus, the appointment either in the work charged establishment or on daily wages has to be made in the light of the instructions issued by the Finance Department and the Personnel Department, Government of Bihar.

6. The Government noticed large scale bungling in the appointment in the work charged establishment and on daily wages. By memo No. 8954 of the Finance Department dated 23-7-1975, it took away the power vested in the officers to create posts in the work charged establishment. By another resolution No. 3058 dated 22-10-1984, the Government made a provision that those employees, who were appointed in the work charged establishment up to 21-10-1979 and had continued working satisfactorily for five years continuously, should be absorbed.

Some of the departments faced difficulties in implementing the subsequent resolution dated 22-10-1984 in the faces of the earlier resolution dated 23-7-1975. The Government, thereafter, clarified the matter relaxing the resolution dated 23-7-1975 with a view to implement the resolution dated 22-10-1984. However, some officers illegally, under the mistaken impression that general relaxation has been given for engaging persons in work charged establishment, made certain appointments. Thereafter, the Government issued another resolution dated 20-9-1990 that the question of absorption of the employees working in the work charged establishment will only arise in those cases where such employees have completed five years satisfactorily in the work charged establishment as on 22-10-1984 i.e. who have been appointed on or prior to 23-10-1979 in terms of the resolution dated 22-10-1984. Copies of the said resolutions have been appended as Annexures 'A', 'B' & 'C', respectively, to the counter-affidavit. The Department of Personnel came out with an instruction bearing No. 5940 dated 1-8-1985, providing that no person working on daily wages, who has not been continuously engaged for 240 days prior to 1-8-1985 should be continued to be engaged. All persons appointed on daily wages after 1-8-1985 were deemed to have been illegally appointed and the Departments were directed to disengage those persons.

7. Thus, the stand of the State is that only such persons, who were engaged in work charged establishment up to 21-10-1979, were to be absorbed and the persons who were continuously engaged for 240 days prior to 1-8-1985 were continued to be engaged. There was complete ban on engagement in work charged establishment and on daily wages from the aforesaid date. As the appellant was engaged admittedly after 1-8-1985, his engagement itself was contrary to the rule and, accordingly, he was rightly disengaged.

8. Learned Counsel for the appellant assailed the judgment of the learned Single Judge on three grounds. Firstly, he submitted that the appellant was working in work charged establishment and according to the revised condition of service of work charged establishment as contained in memo No. 1344 dated 4-2-1949, a person employed in work charged establishment, having one year's approved

service will be included amongst permanent Government employees. As the appellant has continued for more than one year in the work charged establishment, he should have been included amongst permanent Government employees instead of disengaging him from service. Secondly, he submitted that the appellant was absorbed in the work charged establishment in pursuance of an order passed by this Court in a writ application and as such he should not have been disengaged or removed from service-Thirdly, he submitted that the appellant has continued for seventeen years in service and at this stage he should not be removed from employment.

9. Learned Counsel for the State, on the other hand, submitted that the appellant was admittedly appointed on daily wages for a period of six months vide Annexure-2 of the appeal on 14-12-1985, which is beyond the cut off date fixed by the resolution of the State Government and as such his engagement on daily wages itself was impermissible and, accordingly, he was rightly disengaged. He further submitted that as a large number of employees were illegally engaged on daily wages or in work charged establishment against the resolution of the State Government and the State at present having no work, the decision was taken to disengage them. The fact that they remained in service for a long period will not be a ground to interfere with the order when the engagement of the appellant itself was against the law.

10. As stated above, the State Government took a policy decision to put a ban on engagement of any person on daily wages and, admittedly, the appellant has been engaged after that cut off date. In that view of the matter, his engagement on daily wages was illegal and unauthorised. He cannot be given benefit of an order temporarily absorbing him in the work charged establishment as there was a direction for absorption of only those work charged employees engaged in the work charged establishment, who were appointed up to 23-10-1979 vide resolution of the Government dated 22-10-1984. No doubt, the revised resolution dated 4-3-1949 of the P.W.D. Code provides that if a person has remained in work charged establishment with one year's approved service then he may be made permanent but that question does not arise in the case of the appellant as his initial engagement itself was contrary to the policy decision of the State Government.

11. The second submission advanced on behalf of the appellant that he was absorbed in work charged establishment pursuant to an order passed by this Court in a writ petition is also not correct. The appellant had come earlier to this Court for regularisation of his services and this Court ordered the State Government to consider his case for regularisation in the light of the principle evolved by it for regularisation of the employees. In terms of the policy decision of the State Government, as stated above, the appellant should not have been regularised in the work charged establishment as his engagement itself was after the cut off date. No doubt, the appellant has continued in service for about 17 years, but the fact is that this is not an individual case. From the counter-affidavit, it appears that about 2700 and odd persons have been appointed illegally against the policy decision of the State Government. The State Government has no work for them. No budgetary provision has been made for payment of their salary/wages. In such a situation, no direction can be given to continue the appellant in service on the ground that he has remained in service for about 17 years.

12. The Apex Court in the case of *State of M.P. v. Dharam Vir*, reported in (1998) G SCC 165, held that the Court should not be swayed by emotional appeals in dispensing the justice to the litigating parties and while doing justice the Court should

go to the merit of the cases and balance the equities so as to do complete justice between them. Similarly, in the case of *Subedar Singh v. District Judge, Mirzapur*, reported in (2001) 1 SCC 37, the Apex Court held that in case of illegal appointment, no question of regularisation arises.

13. In this case, the engagement of the appellant itself is contrary to the Government resolution aforementioned and as such there is no question of allowing the appellant to continue in service on the ground of his having remained in service for about 17 years.

14. In the result, we find no merit in this appeal and it is, accordingly, dismissed.

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