

Manju Kumari and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-06-2008

Judge : Mridula Mishra, J.

Acts : [Constitution of India](#) - Article 309

Appeal No. : CWJC No. 6467 of 2007

Appellant : Manju Kumari and ors.

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Judgement :

Mridula Mishra, J.

1. This writ application was heard with C.W.J.C.No. 6263 of 2007 and analogous cases, but is being decided by a separate order as case of present petitioner is different from case of petitioners in C.W.J.C.No. 6263 of 2007 and analogous cases.

Petitioners have filed this application for consideration whether the Extension Officers (Industries and Commerce) and Statistical investigators who are admittedly government servant as per the resolution issued by the Rural Development Department under Memo No. 755 dated 20.1.1998 could have been

absorbed in the same Rural Development Department through Memo No. 2828 dated 29.3.2007 without satisfying that they will get the benefit of continuity in government service since the date of their initial appointment. Further prayer is for a direction to give the petitioners benefit of continuity in service with due increment with all consequential benefits which have been given to the recommendies and appointees of 16 types of service who had taken the same first and second graduate level competitive examination along with these petitioners. Petitioners case is that it was just a chance that the petitioners were selected for Rural Development Department and the Rural Development Department in its turn had posted them in different district under the District Rural Development Agency. The petitioners have been faced with the problem regarding their condition of service on account of the impugned orders dated 29.3.2007 and 4.5.2007 whereby the State of Bihar instead of determining their service condition at par with other recommendies has treated them as special type of appointees by not providing them any kind of consequential benefits. Further prayer of the petitioner is for quashing the Office order No. 2828 dated 29.3.2007 and 127 dated 4.5.2007, whereby their posts are being absorbed under various blocks under plan head and are being transferred in different Blocks all over Bihar.

2. The Bihar Subordinate Service Selection Board was constituted on the basis of resolution of the State Government dated 20.4.1981 and authorized for appointment of Class III posts. The Bihar Subordinate Service Selection Board on 7.7.1981 informed all departmental head for sending existing vacancies in Class III posts in their departments. Advertisement No. 6 of 1981 was published by the Board inviting applications for appointments against 16 types of posts on the basis of graduate level examination. Similar advertisement were published in the year 1984 and 1986. All the petitioners submitted their applications for appointments in response to advertisement through which 16 types of different posts were advertised considering the requirements of the different department. This advertisement did not include any posts for D.R.D.A. under Rural Development Department. Petitioners appeared in the first and second graduate level competitive examination respectively and their names were recommended by the board for appointment without specifying the vacancies in any particular department. The recommendees were appointed on 16 types of posts in different

departments. So far the petitioners are concerned they were recommended for the Rural Development Department and the Rural Development Department in their turn posted them on the post of statistical investigators and the Extension Officers in different districts under the District Rural Development Agency.

3. When 5th Pay Revision Committee deprived the Extension Officers and Investigators who were also recommendees of graduate competitive examination from the benefit of the pay revision the Extension Officers moved to the High Court for pay parity and ad interim relief by filing C.W.J.C.No. 8419 of 1992 which was allowed and following findings was recorded:

We do not find any reasonable nexus in fixing two revised scales of pay for the aforesaid 16 types of posts. It is true that the State Government could have made out a case that its decision is not arbitrary or discriminatory. It could have also come out with a case making reasonable classification in relation to the aforesaid 16 types of posts, but no such attempt has been made on behalf of the State, as would appear from the counter affidavit. In view of these facts, we are clearly of the view that persons who are working on 16 types of posts, enumerated in Annexure-1 are entitled to the Scale of Rs. 1600-2760, w.e.f. 1.1.1986 and as decided by State Government, while accepting recommendation of Fifth Pay Revision Committee.

4. Petitioners case is that they had never applied against any vacancy in D.R.D.A. They were selected by Bihar Subordinate Selection Board and recommended against requisition made by different department against existing vacancies. Their appointment was in response to the advertisement by the State Government department. It was just a chance that on that very time World Bank pumped d huge fund for execution of development work in Rural areas. Considering those vacancies the services of the petitioners were placed to the Rural Development Department and the Rural Development Department on the direction of the government posted the petitioner by way of deputation against posts of investigator Extension Officers and other posts under D.R.D.A.

5. Petitioners claim is that from day one they were government employee and there is no logic behind the issuance of order dated 29.3.2007 and 4.5.2007

absorbing the services of the petitioners on government posts under various blocks under non plan head. On account of orders contained in these letters the petitioners have lost the continuity in service with due increment and all such consequential benefits which have been given to the recommendees and appointees of first and second graduate level examinees appointed against 16 types of posts advertised and working in other departments.;

6. Petitioners have further relied upon a judgment of this Court in L.P.A.No. 59 of 1994 (R) with L.P.A.No. 62 of 1994 (R). In this judgment considering the judgment in C.W.J.C.No. 8419 of 1992 it was held:

To our mind, the Division Bench in its judgment has specifically decided that if persons in the same transaction pursuant to a Combined Competitive Examination are appointed on the equivalent posts in the same pay scale then in case of enhancement in pay it should be one and the same, though the persons be appointed on different posts.

7. Relying on these judgments the petitioners case is that the impugned orders are illegal and arbitrary.

8. Counter affidavit has been filed on behalf of respondent No. 2. It has been stated that the Extension Officers (Industries and Commerce) as well as Investigators posted in different P.R.D.A. under Block Strengthening scheme were not government servant though they are demanding for their service condition at par with the government servant. One Siya Ram Singh Extension Officer (Commerce and Industries) filed C.W.J.C.No. 6543 of 1991 and Statistical Investigator Deepak Kumar Srivastava filed M.J.C.No. 294 of 2000 and 1839 of 2005 for service condition at par with the government servant. Rural Development Department in compliance with the direction in different writ application constituted a Departmental Committee and on the basis of the report of the committee issued resolution No. 8997 dated 13.11.2003, Resolution No. 554 dated 16.1.2006 for absorption of Extension Officers and Investigators working in D.R.D.A. as well as Lady Extension Officers working under Block Strengthening Scheme under D.R.D.A. For their adjustment posts were created under Rural Development Department after approval of the Finance Department and empowered committee

as well as Cabinet. 280 posts of Lady Extension Officers and 219, (166+53) posts of Extension officer (Industries and Commerce) and investigators were created in Non Plan Head 2315 under Block Establishment and a resolution was issued for their absorption against those posts vide Memo No. 1864 dated 22.2.2007. After decision of adjustment they became the government servant and now they have to work under Government Rules and Regulations. They also become entitled for availing facilities like Government Servant. They were also liable for transfer and posting as per government rules. The current rules governing transfer and posting of government servants are laid down in Government Resolution No. 434 dated 1.3.2007 whereby the government officials (other than the district cadre) is not to be posted in their home district. Those who have completed three years in the present place of posting are liable to be transferred. In compliance of government resolution all 219 Extension Officers (Industries and Commerce) as well as Investigators after adjustment were placed under the District Magistrate for posting in different blocks vide Memo No. 3863 dated 4.5.2007. The impugned transfer order was passed against them and there is no illegality in the order. It has also been stated that adjustment of the petitioners in permanent posts have been done in compliance of the order passed on different dates in M.J.C. application as such the petitioners have to comply the order of their transfer and given joining at their transferred place. In case they have any grievance against posting they should have filed representation in the concerned department and it should have been shorted out in accordance with the government resolution dated 1.3.2007.

9. What I find that the facts which have been stated in paragraph 4-14 of the writ application have neither been controverted nor denied. It has also not been stated that the petitioners were not allowed the benefit of recommendation of pay revision committee. It has also not been denied that in S.L.P. (Civil) C.C.1550 and 1551 of 1997 this statement was made by the present respondents as appellant that the petitioners were employees of the District Rural Development Agency, but the same was not accepted by the Apex Court. Time was allowed for bringing documents in support of this statement. Since it was not done S.L.P. was dismissed. In spite of all these facts the respondents have made statement that by the impugned orders the petitioners have been absorbed on government posts but it has not been stated that on account of this absorption what will be the service

condition of the petitioners. Whether their service will be similar to the recommendees of graduate level examinees posted on 16 categories posts advertised. It has not been controverted that the petitioners were appointed pursuant to the advertisement of the Bihar Public Service Commission/Subordinate Service Selection Board and are serving in the Rural Development Department for the 1st 15-20 years.

10. Counsel for the petitioner has rightly submitted that on account of the impugned orders/resolutions they will be deprived of the benefit of continuity in Government service, length of their service and all consequential benefits. In the garb of the absorption they have been placed in a situation where petitioners have to re-start their service career on account of absorption against a dying post having no cadre, as well as no promotional avenues. In the counter affidavit it has not been stated that what will be the promotional avenues for the petitioner or they will be entitled for pension and other consequential benefits. The pay scale which has been allowed to the petitioners against posts they are going to be absorbed is the initial pay scale. The respondents have unilaterally changed the service conditions of the petitioners.

11. Considering the uncontroverted pleadings of the petitioners and submission of the parties, it is apparent that the petitioners were employees of the State Government from the date of their initial appointments and are entitled to get all consequential benefits from the date of their initial appointment in similar manner as made available to the other recommendees and appointees whose names were also recommended by the Bihar Public Service Commission/Subordinate Service Selection Board for appointment in the government service. It has not been disputed that in the advertisement inviting applications for appointment in government service through graduate level competitive examination there was no indication that the successful candidates may be appointed in the district Rural Development agency, rather advertisement was for inviting applications for appointment in government service and in response to that the petitioners had applied for their appointment simply because the petitioners were deputed to work under District Rural Development Agency from the State level, they cannot be treated as employee of the D.R.D.A. I further find that the statements made in the

counter affidavit that the impugned resolution as well as the orders have been passed in compliance of the direction of the High Court in different writ applications as well as contempt applications is also not correct. The direction was to frame the service conditions rules of the petitioners and to give them facilities/benefits at par with the recommendees of the graduate level examinees along with whom petitioners name were also recommended for appointment by the B.P.S.C./Subordinate Service Selection Board. The impugned orders is not compliance of direction of High Court's order. Petitioners have not been put in the similar situation in which other recommendees are working and availing facilities attached to their posts. Apprehension of the petitioners that on account of the impugned orders they will be deprived from cadrement, promotion and other benefits available to a government servant has force. Specially when in the counter affidavit there is no whisper that besides being absorbed against a dying posts all the benefits will be made available to the petitioner except that they will be treated as government servant.

12. In the counter affidavit it has been stated that the petitioners have been transferred in terms of the government resolution as no government servant (except of district cadre) can remain posted in his home district and they cannot remain at one place on completion of three years. This statement is contradictory to the own stand of the Respondents. Admittedly till date no rules have been framed deciding service conditions of the petitioners. In the facts and circumstances of the case it cannot be said that whether petitioners belong to district cadre or the State cadre. Secondly it is respondent's own statement that prior to petitioners absorption on the post they were employed in D.R.D.A. If that is correct then petitioners became government servant from the date of issuance of the impugned orders. In that case there is no reason for coming to this conclusion that petitioners have remained posted at one place for more than three years. If it is not so there was no reason for their immediate transfer to any other place.

13. Counsel for the petitioner has also submitted that through the impugned transfer orders all Extension officers (Industries and Commerce) as well as Investigators have been transferred. This is a case of transfer of cent percent employees of a cadre which is not permissible under the government rules. At a

time cent percent employees of a cadre cannot be transferred on this ground also the impugned order is bad. This has neither been replied nor denied by the respondents.

14. In the supplementary counter affidavit filed by the respondents it has been stated that since the petitioners salary has been fixed in the pay scale of Rs. 5000-8000/- this being the scale of State cadre as such petitioners will be deemed to be the employee of the State cadre and the posts of State cadre are transferable through out the State. This statement is not satisfactory considering the fact that the Additional Advocate General Mr. S.K. Ghosh has fairly conceded that till date the cadre of the petitioners have not been decided and their service conditions rules are yet to be framed.

15. Another thing which I find that by the impugned orders and resolutions the entire service conditions of the petitioners have been changed. Service condition of any government employee can be changed by framing a rule in exercise of constitutional power under Article 309 of the [Constitution of India](#). The service conditions uliterally cannot be changed by way of resolution. In the present case merely on the basis of the resolution petitioners service conditions have been changed. Such action of the respondents cannot be held to be in accordance with law. The respondents have passed the impugned orders, resolution in arbitrary exercise of their powers as such this also makes the orders/resolution liable to be quashed.

16. Accordingly the impugned orders are quashed. So far the petitioners are concerned, they should be treated at par with the Government employees who are recommended for appointment with the petitioners. Petitioners have not been given similar treatment. Respondents, now by issuing impugned orders/resolution can not absorb them as government servant. This act on the part of the respondents also cannot be held to be in accordance with law. The respondents are directed to treat the petitioners at par with the recommendees of the graduate level examinees who were appointed against 16 categories of posts specially for the reason that on earlier occasions also by the High Court as well as the Supreme Court it has been held that the petitioners are similar to the other

recommendees along with whom petitioners names were also recommended for appointment by the B.P.S.C.

17. Accordingly the impugned orders issued by the Rurala Development Department under Memo No. 2828 dated 29.3.2007 and 127 dated 4.5.2007 are quashed.

18. In the given circumstances, the respondents are directed to frame the service conditions rules of the petitioners within six months giving them all benefits for which they are entitled being at par with the other recommendees of the graduate level examinees.

19. This application is allowed.

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