

Prem Ram and ors. Vs. State of Bihar and ors.

Prem Ram and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/128754

Court : Patna

Decided On : Dec-03-2004

Judge : V.N. Sinha, J.

Acts : Service Law

Appeal No. : CWJC No. 13671 of 2003

Appellant : Prem Ram and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : A.P. Jittu, S.C. to S.C. 2

Advocate for Pet/Ap. : Rajendra Prasad Singh, Sr. Adv., Niranjan Kumar, Rajeev Kumar Singh and Jay Shankar, Advs.

Disposition : Petition allowed

Judgement :

V.N. Sinha, J.

1. There are 13 petitioners, out of them, petitioner Nos. 1 to 3, 7 to 10, 12 and 13 were engaged in the Bihar Secretariat Canteen, Patna as Class IV daily rated wage earners before 1.8.1985 in August 1984, March 1983, April 1985, January 1985, June 1983, April 1982, January, 1985, January 1979. Petitioner Nos. 4 to 6

and 11 were engaged in the said canteen thereafter in between 1986-87 in January 1987, August 1986. May 1987 respectively, as would appear from the notice dated 21.5.1990 issued under the signature of Deputy Labour Commissioner, Bihar, Patna, as contained in Annexure-3. They assail the order, bearing Memo. No. 3095 dated 23.10.2003 and another office order bearing Memo. No. 3133 dated 29.10.2003, as contained in Annexures 1 and 2, whereunder Secretary/Deputy Secretary, Labour Employment and Training Department has held that the petitioner Nos. 2 to 7 are not entitled to any preference in the matter of regular appointment in the Bihar Secretariat Canteen in terms of the resolution of the State Government, bearing No. 5940 dated 18.6.1993, Annexure-12 as they had not completed 240 days of continuous employment in the Bihar Secretariat Canteen before 1.8.1985. In the said order, it has further been held that petitioner Nos. 1 and 8 to 13, even though have served the canteen prior to 1.8.1985, are not entitled to count their engagement for their regular employment in the said canteen, as before 1.8.1985 they were below 18 years of age and not qualified to be in Government employment. Under office order dated 29.10.2003, Annexure-2, the Deputy Secretary of the said Department has held that as the petitioners did not complete 240 days of engagement in the said canteen before 1.8.1985 as such, they are not entitled to any preference in terms of the resolution of the State Government No. 5940 dated 18.6.1993, Annexure-12. Besides assailing the aforesaid two orders, petitioners have also filed Interlocutory Application No. 4927 of 2004 on 27th September, 2004, whereunder they have challenged the subsequent order dated 24.9.2004, as contained in Annexure-15 series, whereunder the engagement of the petitioners as Class IV daily rated wage earners in the Secretariat Canteen, has been terminated in compliance of the instruction of the State Government, as contained in resolution No. 5940 dated 18.6.1993 and letter of the Chief Secretary, Bihar, Patna dated 9.8.2004, Annexure-12 and Annexure-B to the Supplementary affidavit with immediate effect.

2. Before I proceed to consider the grounds of challenge raised against the three impugned orders, contained in Annexures 1, 2 and 15 series, it is meet and proper to notice a few facts.

3. Petitioner Nos. 1 to 13 were engaged as daily wage earners in August 1984, March 1983, April 1985, January 1987, August 1986, January 1987, January 1985, June 1983, April 1982, January 1985, May 1987, January 1979 and January 1979 respectively, as would appear from the averments made in the writ application as also from the notice issued by the Deputy Labour Commissioner himself dated 21.5.1990 as contained in Annexure-3 to carry out the Class IV duties in the Bihar Secretariat Canteen at Patna. After being engaged in the said canteen from the date of the engagement they began to discharge their duties of Class IV employees and they continued to serve the canteen to the satisfaction of the authorities in recognition of which fact authorities themselves issued notice dated 21.5.1990, Annexure-3, whereunder they indicated the total number of days for which the petitioners and others had continued to serve the canteen till the date of issue of notice dated 21.5.1990 and in recognition of that fact they proposed to regularize them in the service of-canteen and in that connection they sought objection from any other daily rated worker engaged in the canteen. It further appears from the letter dated 22nd December, 1993, Annexure-4 issued by the Manager of the Secretariat canteen that he called upon petitioner No. 1 to appear before the selection committee with his educational and other certificate so that he may be considered for regular employment in the said canteen. When the process, of regularisation which was initiated under notice dated 21.5.1990, Annexure-3, and letter dated 22.12.1993, Annexure-4 was not taken to its logical conclusion as the selection committee failed to take any decision in the matter pursuant to letter dated 22.12.1993, Annexure-4 then the petitioners alongwith others came to this Court and filed CWJC No. 12113 of 1996, praying, inter alia, that considering their long engagement with the canteen, this Court should direct the authorities to consider them for regularisation of their employment with the canteen as petitioners were serving in the canteen since long to the satisfaction of all concerned. In the said writ petition, the State authorities not only filed counter affidavit, but also filed supplementary counter affidavit, whereunder they did not make any serious objection to the prayer of the petitioners for their regularisation, rather they submitted that case of the petitioners for regularisation shall be considered in the light of the decision of the Economic Co-ordination Committee, which is awaited. In the supplementary counter affidavit, the State respondents

further indicated the number of vacant posts, which were available in the canteen as also the number of compassionate appointment from amongst the wards of the deceased employees of the canteen which was required to be made. This Court considered the submission of the petitioners as also the State respondents and disposed of the matter under order 13.8.1998, Annexure-8 with observations that granting compassionate appointment can hardly be a ground to refuse regularisation as there is no allegation against the petitioners, it is fit and proper that having regard to their past services of so many years, their cases for regularisation be considered at an early date directed the Secretary and Commissioner, Labour Employment and Training Department to consider the case of the petitioners for their regularisation and to, take such decision within a period of three months from the date of receipt of a copy of the said order dated 13.8.1998. When the authorities failed to take any decision in the light of the aforesaid order dated 13.8.1998, passed in CWJC No. 12113 of 1996 the petitioners were constrained to move this Court in contempt' application, bearing MJC No. 1062 of 1999, which was taken up by a Single Judge of this Court on 21.10.2003 and the order is contained in Annexure-11, perusal whereof indicates that the authorities appeared before this Court and undertook to pass appropriate orders in the light of the earlier directions of this Court dated 13.8.1998, Annexure-8 within ten days. Having undertaken before this Court that appropriate orders in the light of the earlier direction shall be passed within ten days, the authorities issued the impugned order dated 23.10.2003 and 29.10.2003, Annexures 1 and 2, whereunder they rejected the claim of the petitioners for grant of preference in terms of the resolution of the State Government No. 5940 dated 18.6.1993 as petitioner Nos. 1 and 8 to 13 were engaged in the canteen prior to 1.8.1985 when they were below 18 years of age and the services rendered by them in the said canteen, while they were child of less than 18 years of age, could not have been taken into account for giving them preference for employment in the Secretariat Canteen. In regard to petitioner Nos. 2 to 7, it was observed in the said order that they failed to complete 240 days of continuous employment prior to 1.8.1985, as such could not be considered for grant of any preference in terms of the resolution of the State Government No. 5940 dated 18.6.1993. The two orders dated 23.10.2003 and 29.10.2003, Annexures 1 and 2 have been challenged in this

application. By filing IA No. 4927 of 2004 they have also challenged order dated 24.9.2004, Annexure-15 series whereunder the engagement of the petitioners in the Secretariat canteen as daily rated employee itself has been terminated in compliance of Government resolution dated 18.6.1993 and the letter of the Chief Secretary dated 9.8.2004, which is subject to the result of MJC No. 796 of 2004 filed by the petitioners.

4. Sri. Rajendra Prasad Singh, learned Senior counsel appearing for the petitioners, has assailed the two orders dated 23.10.2003 and 29.10.2003, Annexures-1 and 2 on the ground that the same is violative of the resolution of the State Government No. 5940 dated 18.6.1993, Annexure-12, as. according to-him the petitioner Nos. 1 and 8 to 13 were engaged prior to 1.8.1985 and they having completed 240 days of employment on different dates as would appear from the notice itself issued by the authorities dated 21.5.1990, Annexure-3, the authorities were obliged to consider them for grant of preference over outsiders in the matter of appointment in the Secretariat canteen in terms of the resolution No. 5940 dated 18.6.1993. According to him, it hardly matters whether the petitioners served the canteen as child below 18 years or as grown up individual and when they have served the canteen, their engagement is required to be taken into account for granting them preference over outsiders in the matter of appointment in terms of the resolution, which is the resolution of the State and the resolution does not prohibit the child who is otherwise hungry to work as a Class IV employee in the canteen. He further submitted that in any case the authorities could not have terminated the engagement of the petitioner Nos. 1 to 3, 7 to 10, 12 and 13 vide orders dated 24.9.2004, Annexure-15 series, who were engaged before the cut off date i.e. 1.8.1985 as they were protected under Clause 12 of the resolution dated 18.6.1993, which clearly says that those, who have been engaged after 1.8.1985 should be terminated. He further submitted in regard to petitioner Nos. 4, 5, 6 and 11 that even though they were engaged after 1.8.1985 the cut off date yet their engagement could not have been terminated under orders dated 24.9.2004, Annexure-15 series as their Class IV engagement was continued for about 18 years from 1986-87 till the date of their termination. If the authorities had intention to terminate the engagement of the petitioner Nos. 4, 5, 6 and 11 as they were engaged after cut off date then action was required to have been taken against

them soon after the resolution No. 5940 dated 18.6.1993 was issued, as it says that engagement of daily rated employees engaged after 1.8.1985 should be terminated forthwith. Learned counsel for the petitioners at this stage brought to my notice the two circular letters of the Public Health Engineering Department of the State of Bihar, bearing Memo No. 689 and 723 dated 12.10.1996 and 17.6.1997 respectively whereunder cut off date to terminate the engagement of daily rate wage earners of the Public Health Engineering Department has been extended to 1.1.1988. Having seen the contents of the two circulars dated 12,10.1996 and 17.6.1997. I called upon the State counsel under orders dated 24.11.2004 to seek instructions in regard to the content of those circulars specially cut off date for terminating the engagement of daily rate wage earners of Public Health Engineering Department/Division.

5. He further submitted that when the authorities have chosen to ignore the instructions of the State Government for more than eleven years, they ought not to have terminated the engagement of the petitioners when they filed contempt application, bearing MJC No. 796 of 2004 alleging non-compliance of the orders of this Court, as after filing of the contempt application termination of the engagement of the petitioners appears to have been made only with a view to browbeat the petitioners in retaliation of their action-to approach this Court by filing contempt application.

6. In support of the aforementioned submission, learned Senior Counsel has relied on the judgment of Hon'ble Supreme Court in the case of C.A. Shankar Prasad and Ors. v. Karnataka State Adult Education Council and Ors., reported in 1994 SC 216, in the case of Union of India and Ors. v. Kishorilal Bablani, reported in 1999 (1) SCC 729 and also on a decision of this Court in the case of Awadhesh Kumar and Ors. v. The State of Bihar and Ors., reported in 2004 (3) PLJR 161.

7. Perusal of the judgment of C.A. Shankar Prasad (supra) would indicate that daily rated workers, under Rural Functional Literacy programme conducted by the State of Karnataka on Class II, III and IV jobs, continued to serve the State of Karnataka in the said programme for over a decade, but they were never made permanent and continued in the status of daily rated workers. They moved the

High Court for absorption/regularisation, which was rejected. Matter came to the Hon'ble Supreme Court and the Hon'ble Supreme Court having noticed that the daily rated employees have served in the adult education council for ever a decade, directed the State of Karnataka and Education Council to ascertain the total number of vacancies available and to consider them for appointment against those vacancies, as they had served for more than a decade. Perusal of the other judgment relied on by the counsel for the petitioners, namely, the case of Union of India and Ors. v. Kishorilal Bablani (supra) would indicate that thereunder the Hon'ble Supreme Court had the occasion to consider the period of time during which the irregularities in the process of selection and notification of vacancies could be allowed to be reopened and the Hon'ble Supreme Court, having considered the same, held that after more than ten years, the process of selection and notification for vacancies should be allowed to be reopened in the interest of the proper functioning and morale of the employees. Perusal of third judgment relied upon by the learned counsel for the petitioners, namely, Awadhesh Kumar and Ors. v. The State of Bihar and Ors. (Supra) indicates that a Division Bench of this Court issued direction for regularisation of the 14 daily rated jeep drivers, who served the office/department of the State Government in between 24 to 14 years.

8. Learned Counsel for the petitioners on the strength of the aforesaid three case law relied on by him submitted that the petitioners of the present case also served as daily rated class IV canteen, workers for about 25 to 17 years and as such, they should be considered for grant of preference over outsiders in the matter of appointment in the Secretariat canteen of the State of Bihar.

9. On the other hand, learned State Counsel, Sri. A.P. Jittu has contended that the petitioners were engaged as daily rated earners in the Secretariat canteen without undergoing any selection process and as such their entry as canteen employee itself was void ab initio and violative of Articles 14 and 16 of the Constitution and any length of engagement rendered by them shall not entitle them to claim preference in appointment/regularisation. In support of the aforesaid submission, learned counsel for the State has placed reliance on the decisions reported in 1987 PLJR 1074, 1992 (1) PLJR 137, 1993 (1) PLJR 99, 1994 (1) PLJR 366, 1995 (2) PLJR 309, 1996 (2) PLJR 840, 1997 (2) PLJR 38 SC, 1999 (3) PLJR 984, 1999

(3) BLJ 692, 2000 (1) PLJR 990, 2000 (2) PLJR 112, 2000 (4) PLJR, 507 and 2003 (2) PLJR 27, 482 and 808.

10. He further contended that the termination order dated 24.9.2004, as contained in Annexure-15 series also should not be set aside as the same has been passed in compliance of the resolution of the State Government No. 5940 dated 18.6.1993 and the instructions of the Chief Secretary, Bihar, as contained in letter No. 6642 dated 9th August, 2004, Annexure-B to the supplementary counter affidavit. In response to the order dated 24.11.2004, passed in this case, directing him to seek instruction in regard to the instructions of the State Government in the Public Health Engineering Department, bearing Memo, No. 689 dated 12.10.1996 and Memo. No. 723 dated 17.6.1997, whereunder cut off date for termination of the daily rated earners of the Public Health Engineering Department has been extended to 1.1.1988, he submitted that those instructions have been issued ignoring Rule 55 of the Rules of Executive Business framed under Article 166 of the Constitution, which authorizes the Personnel Department to frame Rules for appointment/regularisation of an Government employee and as the two instructions dated 12.10.1996 and 17.6.1997 have been issued by the Public Health and Engineering Department without consulting the Personnel Department the two instructions are fit to be ignored and the cut off date for terminating Class IV daily rated employee should be 1.8.1985 and not 1.1.1988.

11. Now coming to the first case law relied on by the learned counsel for the State, namely, the case of Awadhesh Kumar Choudhary and Ors. v. The State of Bihar and Ors., reported in 1987 PUR 1074 Full Bench it appears that petitioners of that case and others were included in a waiting list in 1981 wherefrom appointments were made in due course which were later cancelled hereafter the employees moved this Court in writ jurisdiction and this Court posed the following question for answer by the full Bench:

'Whether the termination of the services of the petitioners is bad for being violative of the principle of natural justice on the ground that they were not given an opportunity to show cause against termination before the termination orders were issued?'

The said question has been answered in negative in paragraph 17 of the judgment. In my considered view the question posed and answered by the Full Bench is not involved in the present case and as such case of Awadhesh Kumar Choudhary and others (supra) has no application to the facts of the present case.

Second case relied on by the learned State counsel is the case of M.L. Gupta and Ors. v. Instrumentation Ltd., reported in 1992 (1) PLJR 137. Perusal of the said judgment indicates that 87 employees of Instrumentation Ltd. had approached this Court for a direction to command the Instrumentation Ltd., which is State within the meaning of Article 12 of the Constitution, for regularisation of their services and in that context, this Court in paragraphs 98 and 99 of the said judgment observed that the requirement of permanent employees will have to be judged by the Govt. company and prayer for regularisation could be considered by making a reference to the Labour Court under the provisions of the Industrial Disputes Act.

Third case relied on by the counsel is the case of Vijay Kumar v. The State of Bihar and Ors., reported in 1993 (1) PLJR 99, whereunder while refusing to set aside the termination order made after three years, this Court observed that principles of natural justice cannot be invoked by a person whose engagement/ appointment itself was contrary to the provisions contained in Article 16 of the Constitution of India.

Fourth case relied on is the case of Miss Prasanna Kumari Amma M.P. and Anr. v. Bihar State Financial Corporation and Ors., reported in 1994 (1) PLJR 366, perusal whereof indicates that this Court having noticed the fact that Bihar State Financial Corporation on account of paucity of fund and non-availability of posts had refused regularisation of the petitioners in the Corporation upheld the same as the corporation itself had allowed the petitioners to continue as daily rated workers until other avenues are found by them.

Fifth case relied on is the case of Lalan Kumar Singh and Ors. v. The State of Bihar and Ors., reported in 1995 (2) PLJR 309, whereunder this Court having noticed the irregularities/illegalities committed by Dr. A.A. Mullick, while making appointments of Class III/IV employees in the Health Directorate, refused to issue any direction to regularise the services.

Sixth case relied on by the learned State Counsel is the case of Chandrashekhar Prasad and Ors. v. The State of Bihar and Ors., reported in 1996 (2) PLJR 840, whereunder daily rated employees appointed in the Sherghati Division of the Magadh Circle of the Rural Engineering organisation in the Rural Development Department had challenged their termination on the ground of paucity of work and in that context this Court said that their engagement being contrary to Article 16 of the Constitution, as advertisement was issued on the notice board, direction for regularisation cannot be issued.

Seventh case relied on by the learned State counsel is the case of State of Bihar and Ors. v. Himanshu Kumar Vidyar, reported in 1997 (2) PLJR 38 SC, whereunder the question which was considered was as to whether the employees of the Co-operative Training Institute, Deoghar can be worker within the meaning of Section 25 of the Industrial Disputes Act and the Hon'ble Court held that employees of the Co-operative Training Institute cannot claim the benefit under the Industrial Disputes Act.

Eight case relied on by the State Counsel is the case of Amerendra Singh and Ors. v. State of Bihar and Ors., reported in 1999 (3) PLJR 984, whereunder the employees of the Bihar Vidhan Sabha, who were engaged on Class III/IV posts without any advertisement and were terminated within seven years of their appointment, had questioned their termination and this Court in that context held that appointment being violative of Article 16 of the Constitution, termination could not be set aside.

Ninth case relied on by the learned State Counsel is the case of Jagananath Prasad and Anr. v. The State of Bihar and Ors., reported in 1999 (3) BLJ 692. Perusal of the said judgment indicates that an employee of the Raxaul Municipality, who was appointed for a fixed period of 15th December, 1987 upto 31st March 1988 and beyond that period there was no extension and when he was terminated, approached this Court for regularisation and in that context, this Court observed that appointment made for few months, which was neither extended nor the employee was paid salary for the extended period as such no direction to reinstate/regularise can be issued.

Counsel for the State, thereafter also relied on the case of Ram Chandra Sah and Ors. v. State of Bihar and Ors., reported in 2000 (1) PLJR 990, whereunder the petitioners who were daily rated workers and their engagement was terminated on account of paucity of work, questioned their termination and this Court relying on the Circular of the State Government dated 18.6.1993, Annexure-12 observed that the engagement made after the cut off date is contrary to the policy decision of the State suffers from no legal infirmity and did not interfere with the termination order made in compliance of the policy decision within a reasonable period of time.

The other case relied on is the case of Raj Kumar Ram v. The State of Bihar and Ors., reported in 2000 (2) PLJR 112, who worked as Chaukidar, as daily rated worker for two years and was thereafter terminated the claimed regularisation and this Court directed the District Magistrate, Bhojpur to consider his case even when he was terminated after two years of engagement for giving him preference, weightage over outsiders for appointment against Class IV post.

The other case relied on is the case of Ranjeet Kumar Singh and Ors. v. The State of Bihar and Ors., reported in 2004 (4) PLJR 567, whereunder this Court refused regularisation of the petitioners, who according to them, worked for about 22 years without being paid any salary for 22 years and a Division Bench of this Court having noticed the said fact lucidly observed that it is difficult to believe that petitioners continued to work continuously for 22 years without any salary refused direction for regularisation.

Besides, the learned State counsel has relied on the three recent judgments of the Division Bench of this Court in the case of the State of Bihar and Ors. v. Prashant Kr. Sharma and Ors., Arjun Singh v. The State of Bihar and Ors. and The State of Bihar and Ors. v. Md. Ashif and Ors., reported in 2003 (2) PLJR 27, 2003 (2) PLJR 482 and 2003 (2) PLJR 808 respectively. Perusal of the first case i.e. State of Bihar and Ors. v. Prashant Kr. Sharma and Ors. would indicate that thereunder Division Bench of this Court held that fraudulent and illegal appointments made and continued for 10,15 and 20 years would not become legal in course of time proceeded to set aside the order passed by the learned Single Judge, setting aside the termination order. The other case relied on is the case of Arjun Singh v.

The State of Bihar and Ors., whereunder employees working in the work charge establishment engaged contrary to the provisions of PWD Code and terminated on account of paucity of work, this Court refused to set aside the termination only on the ground that they had served for 17 long years as there was neither budgetary provisions nor funds available for payment of wages/salary. Last case relied on is the case of The State of Bihar and Ors. v. Md. Ashif and Ors. which also proceeds on the footing that back door entry cannot be regularised in service.

12. Having heard the counsel for the two sides and having considered the case law relied by them, I am of the view that the petitioners, who were engaged as class IV employees in the Bihar Secretariat canteen 25 to 17 years ago and for their regularisation notice dated 21.5.1990, Annexure-3 was issued and thereafter further steps in terms of letter No. 1067 dated 22nd December, 1993, Annexure-4 was also initiated and when those efforts could not succeed, the petitioners and others approached this Court by filing CWJC No. 12113 of 1996 for a direction to the Respondents to regularise them in the Secretariat Canteen in which case the State authorities took the objection that the posts have to be kept vacant for appointment of the wards of regular employees on compassionate ground and the said objection was overruled by this Court under order dated 13.8.1998, Annexure-8, directing the authorities to consider the case of the petitioners for regularisation then it was absolutely erroneous on the part of the Secretary/Deputy Secretary, Labour Employment and Training Department under impugned orders dated 23.10.2003 and 29.10.2003, Annexures 1 and 2 to refuse them preference in the matter of appointment over outsiders on the twin grounds that the petitioners 2 to 7 did not complete 240 days before 1.8.1985 and petitioners 1 and 8 to 13, although completed the required number of days in employment, but they were below 18 years of age when they were first engaged, engagement rendered while they remained below 18 years of age could not be taken into account for giving' them preference, is wholly arbitrary, as the authorities of the Labour Training and Employment Department, having allowed the two set of petitioners to be engaged in the Secretariat canteen and when they have rendered 25-17 years of engagement can not be allowed to take the ground that when petitioners 1, 8, 9, 10, 11, 12 and 13 offered themselves for engagement in the canteen, they were child, having engaged and utilised their engagement, the authorities cannot be

allowed to take the same ground as in my opinion, it will tantamount to depriving the petitioners 1, 8, 9, 10, 11, 12 and 13 of not only their childhood and adolescence, but also of the engagement which they have rendered as a child. The ground taken against the petitioners 2 to 7 that they have not completed the required 240 days before 1.8.1985 is also meaningless in view of the fact that they completed much-more than the required number of days when notice dated 21.5.1990, Annexure-3 for their regularisation was issued and appreciating the aforesaid two aspects, this Court under order dated 13.8.1998, Annexure-8 directed the authorities to consider the case of the petitioners and others for regularisation. In view of my aforesaid findings, the two orders dated 23.10.2003 and 29.10.2003, Annexures-1 and 2 are quashed with a direction to the authorities to consider the case of the petitioners for appointment/regularisation over Class IV posts in the Bihar Secretariat canteen giving them preference over the outsiders. Having passed the aforesaid order, I further proceed to quash the order dated 24.9.2004, Annexure-15 series on the ground that the same proceeds on the footing that petitioners Nos. 1, 2, 3, 7, 8, 9, 10, 12 and 13 were engaged in the Bihar Secretariat canteen on Class IV posts after 1.8.1985 and their engagement is required to be terminated in compliance of the resolution of the State Government, bearing No. 5940 dated 18.6.1993, Annexure-12 and Letter of the Chief Secretary, Bihar, bearing No. 6642 dated 9th August, 2004, Annexure-B to the Supplementary counter affidavit, as they were engaged as daily rated earners to carry out class IV duties after 1.8.1985 is wholly contrary to the facts and record as they were engaged before that date as would appear from perusal of notice dated 21.5.1990, Annexure-3 issued by the Respondents authorities. Order dated 24.9.2004, Annexure-15 series, as regards petitioner Nos. 4, 5, 6 and 11 who were engaged in the Secretariat Canteen in January 1987, August 1986 and May 1987 after the cut off date 1.1.1985 is also quashed as they have been allowed to continue as daily wagers for about 18 years ignoring the resolution dated 18.6.1993, Annexure-12. After issue of resolution dated 18.6.1993 if the authorities so desired they ought to have terminated the engagement of petitioner Nos. 4, 5, 6, and 11 on the ground that they were engaged after 1.8.1985, but having allowed those petitioners to continue as Class IV daily rated workers for about 11 years even after issue of resolution dated 18.6.1993, respondents authorities

should not terminate their engagement, rather they should consider them for granting preference over outsiders in the matter of appointment in Class IV post in the Secretariat Canteen. In this connection I may refer to unreported judgment of a Division Bench of this Court in the case of Ram Chandra Ram and Ors. v. The State of Bihar and Ors., passed in CWJC No. 7971 of 1991, allowed under orders dated 10th April 2003 directing the respondents Secretary, Building, Construction and Housing Department to consider the case of the petitioners of that case against the vacant post for appointment/regularisation in accordance with law as they continued for over 12 years even though they were engaged after 1.8.1985. Besides in my opinion all the departments of the State of Bihar should have one uniform cut off date for terminating the engagement of daily rated employees of every department of the State of Bihar. I regret my inability to accept the submission of the learned State Counsel as regards the two circular letters of the Public Health Engineering Department, bearing Nos. 689 and 723 dated 12.10.1996 and 17.6.1997, whereunder Public Health Engineering Department has extended the cut off date to terminate the engagement of the daily rated wage earners engaged in the different divisions of that Department to 1.1.1988 as in my opinion, the State of Bihar being the legal entity should have one cut off date for terminating the engagement of daily rated workers in all of its departments. If two cut off dates for two different departments are provided then that shall be contrary to Article 14 of the Constitution. The extended cut off date 1.1.1988 should be applied to the case of the petitioners 4 to 6 and 11.

13. Having recorded my findings above, I am further of the view that the case law relied on by the learned State Counsel also has no application to the facts and circumstances of the present case as all the cases which the learned State Counsel placed before me relate to termination of the daily rated, work charge employees of the different works division on account of paucity of work, termination on the ground that appointment was vitiated by fraud and engagement/appointment itself was doubtful. In the instant case none of the aforesaid ground is raised against the engagement of the petitioners in the Secretariat canteen as their engagement is never doubted which was made for providing meals and refreshment to the officers and employees of the Secretariat on every working day, as such, it is difficult to visualise that the secretariat canteen

has no work to continue with the engagement of petitioners for discharging Class IV duties and in this view of the matter the 13 case law placed before me by the learned State Counsel has no application to the facts of this case.

14. This writ application, is accordingly, allowed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com