

Rajpati Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-15-2002

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 11787 of 2000

Appellant : Rajpati Devi

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

Aftab Alam, J.

1. One should have though that Begaar is a thing of the past; or at least it would be impossible to find Begaar taking place in an organisation or institution of the Government. But, the facts of this case seem to prove one wrong.

2. The undeniable facts of the case are as follows. The mother of the petitioner used to work as sweeper in the Government Girls Middle School, Gopalganj. In 1982, when she was no longer able to work due to old age and illness, in her place her daughter, the present petitioner was engaged to work as sweeper in the school on the unbelievably low wages of Rs. 15 per month. The engagement was not on the basis of any verbal direction by the headmistress of the school but the

arrangement. can be witnessed in black and white. It appears that the headmistress of the school wrote letter No. 72, dated 10.7.1982 to the District Inspectress of Schools, Saran seeking her approval for the petitioner's engagement. The District Inspectress of Schools gave her approval to the engagement of the petitioner in place of her mother as sweeper on the wage of Rs. 15 per month by her letter No. 303, dated 18.9.1982 (copy at Annexure 2). From September, 1982, the petitioner is working in the school as sweeper. During the past twenty years, she made a number of representations for her regularisation in service pointing out the impossibility to maintain a family on the absurdly low wages being paid to her. From time to time, the District Inspectress of Schools, Gopalganj made recommendations before the School Inspectress-cum-Deputy Director of Education, Bihar, Patna for regularisation of the petitioner's service against a Class IV post. No order was passed on the petitioner's representations and the matter was resting at that stage when the petitioner came to this Court in this writ petition seeking a direction for regularization of her service.

3. Initially, a counter-affidavit was filed on behalf of District Inspectress of Schools, Gopalganj. In para 4 of the counter-affidavit, it was admitted that petitioner was allowed to work as sweeper at the remuneration of Rs. 15 per month in place of her mother who was unable to work, therefore, the petitioner was allowed to work and since then the petitioner is regularly working.

(Emphasis added)

It was, however, stated that the petitioner was not regularly appointed on a sanctioned permanent post and, therefore, there was no question of her regularisation in service.

4. The District Inspectress of Schools, Gopalganj then filed a supplementary counter-affidavit in para 2 of which it was stated as follows:

That the Head Mistress vide Memo No. 22-24 dated 18.4.2001 has reported that petitioner has already been paid her wages at the rate of Rs. 15 per month from July 1995 to February 2001 total coming to the tune of Rs. 1020.00. Apart from that petitioner is being also paid Rs. 50.00 per month since July, 1993.

5. It was, thus, plainly admitted that though the petitioner's appointment was not regular and though there was no sanctioned permanent post against which she was appointed, in reality she was working as sweeper in the Government Girls' Middle 'School, Gopalganj from September 1981 on Rs. 15 per month and from July 1993 on Rs. 65 per month.

6. Quite shocked by the facts coming to light, this Court on 19.12.2001 passed the following order:

From the counter-affidavit filed in this case, it appears an admitted position that the petitioner was engaged to work as sweeper at the princely remuneration of Rs. 15 per month in place of her mother who was unable to work. At the rate of Rs. 15 per month, the petitioner admittedly worked from July 1995 to February 2001, there is a statement in one of the counter-affidavits that apart from the aforesaid sum the petitioner was also paid Rs. 50/- per month from July 1993. In other words, from July 1993, the petitioner is getting Rs. 65 per month. The matter appears quite incomprehensible to this Court and it appears that the evil of Begaar, prohibited by Article 23 of the Constitution continues to be very much in existence.

The Director, Secondary Education is directed to look into this matter without any further loss of time. He will submit a detailed report on this matter and will suggest remedial measures to the Court, including measures to regularise the services of the petitioner in the school.

7. After the above order was passed a counter-affidavit has come from Respondent No. 8, the Director, Secondary Education. This Court feels quite disappointed with the counter-affidavit filed by the Director and it is not what the Court had called for and expected from the Government. Instead of suggesting remedial measures to the Court, as directed in the order, dated 1942-2001 the counter-affidavit makes an attempt to disown responsibility and to resist the petitioner's claim by raising technical issues. In the Director's counter-affidavit, it is stated that the petitioner was not appointed in the school on a regular basis against any sanctioned post; that there was no sanctioned post of sweeper in the school in question and, therefore, the question of regularisation/absorption of her service on regular basis in the school would not arise. It is further stated that the

petitioner was neither a whole time worker in the school nor she was appointed on daily wage basis and as she was not appointed on daily wage basis, she was not entitled to wages even at daily rates. It is lastly stated that the petitioner was not forced to work and hence, 'the petitioner was not engaged in the school as a bonded labour.

8. This Court would only like to observe that the expression 'forced labour' in Article 23 of the Constitution does not only mean physical force as the Director seems to understand the expression. But, the Article also take into its sweep economic and financial compulsions which may prove to be far more coercive than physical force. In *Peoples' Union for Democratic Rights v. Union of India* : (1982)IILLJ454SC Mr. Justice P.N. Bhagwati speaking for the Supreme Court elucidated the point in his inimitable way as follows:

Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may, therefore, be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force' it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to

fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a State of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered, to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so, he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour and service provided by him would be clearly 'forced labour'. There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable document in history for ushering in new socio economic order and the Constitution which they have forged for us as a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exerts much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must, therefore, be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are, therefore, of the view that where a person

provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that labour or service provided by him cease to be 'forced labour' and the breach of Article 23 is remedied. It is, therefore, clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractor, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.

9. On summing up the facts of this case in the light of the Supreme Court decision the position that emerges may be stated as follows. Work was taken from the petitioner (who is a female belonging to the most backward caste 'Mehtar') as sweeper in a Government school continuously for 18 years. She was given wages at the rate of Rs. 15 per month and then Rs. 65 per month. She worked under the direction and control of the Headmistress of the school who is an employee of the Government and she was paid her wages from the Government fund. It is also undeniable that the whole matter was fully within the knowledge of the Government functionaries, namely, the successive Headmistresses of the school, the successive District Inspectresses of Schools, Saran and Gopalganj and the School Inspectress-cum-Deputy Director of Education, Bihar, Patna in whose office the petitioner's requests for regularisation, supported by the recommendation of the District Inspectress of Schools, Saran were repeatedly sent.

10. In these facts, I have no hesitation in holding that the petitioner was subjected to a highly exploitative arrangement in gross violation of the mandate under Article 23 of the Constitution.

11. In the special facts and circumstances of this case, I am unable to entertain the technical plea raised on behalf of the Government that the petitioner's appointment was not regular and it was not against the sanctioned permanent post. I feel that in the facts of this case the Government cannot escape its liability

for the arrangement under which the petitioner was made to do Begaar for 18 years in a school owned, administered and run by the Government.

12. In appropriate cases, where some one has continued to work for a long time this Court gives directions for regularisation in service. But, apart from that the facts of this case make the Government liable for payment of compensation to the petitioner for subjecting her to an arrangement in total violation of Article 23 of the Constitution. One way in which She petitioner may be partly compensated is to provide her with regular employment in the Government. I understand that there is no Class IV post in Government middle schools. The alternative, therefore, is to appoint the petitioner on a Class IV post in a Government High School or a nationalised High High School. In case there is no vacant Class IV post in a school in Sitamarhi, then the Government must find a vacancy for her in the Collectorate or any of the district offices; failing which a supernumerary post must be created for the petitioner's appointment till a vacancy may arise against which the petitioner may be adjusted.

13. The State Government through the Chief Secretary and the Secretary, Secondary Education are directed to take steps in the light of this order so that the process of appointment of the petitioner is completed within two months from the date of receipt/production of a copy of this order in the office of, the Secretary, Secondary Education.

14. In the result, this writ petition is allowed but with no order as to costs.

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