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Court : Patna

Decided On : Jun-24-1999

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. No. 8201 of 1989

Appellant : Shila Devi

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Sri. Udit Narain Singh

Judgement :

S.N. Jha, J.

1. This writ petition has been filed seeking direction to the respondents not to terminate the services of the petitioner and a further direction to regularly pay her salary.

2. This writ petition was filed on 12.9.89. On 17.4.90, it was admitted for regular hearing. No interim order was passed. In view of the fact that the writ petition was filed in the wake of apprehended termination of service in the light of the letters of the Water Resources Department, I wanted to know from the Counsel whether any letter of termination has been issued during the pendency of the case. Counsel replied in the negative. This writ petition accordingly has been heard on the

assumption that the petitioner is still continuing in the service.

3. From the facts stated in the petition it appears that the petitioner was engaged as Sweeper by the Executive Engineer, Design Division No. 4, Patna, on a consolidated salary of Rs. 75/- per month on casual basis on 17.4.80. The said engagement came to an end on 30.4.80. On 8.5.81 a fresh order was issued by the Executive Engineer, Quality Control Division No. 2, Patna appointing the petitioner as a part time Sweeper on the consolidated salary of Rs. 75/- per month. On 24.6.82 she was appointed in the regular scale of Rs. 350-425 by the Chief Engineer, Design and Research, Irrigation Department, Patna, in the regular establishment of the Water Resources Department. The said order, however, was not given effect to and on 19.7.82 another order was issued by the Superintending Engineer, Water Science Circle, Patna, appointing her as part time Sweeper on consolidated salary of Rs. 60/- per month with effect from 1.7.82. However, a fresh order was issued by the Executive Engineer, Canal and Canal Construction Design Division No. 4, on 27.12.82 again appointing the petitioner on consolidated salary of Rs. 75/- per month. The petitioner has continued to work on the post uninterruptedly thereafter.

4. On 4.3.89 the Chief Engineer, Central Design, Water Resources Department, Patna, recommended the case of the petitioner to the Government for regularisation. The recommendation, however, did not find favour. While rejecting the proposal by order dated 17.4.89 the Additional Secretary, Water Resources Department, informed the Chief Engineer that the continuance of the petitioner on the daily wages basis was contrary to rules and, therefore, the same could not be regularised. On 12.5.89 the Chief Engineer made another recommendation. By letter dated 5.7.89 the Department made a query as to who was responsible for continuance of the petitioner beyond 240 days. After the said letter was issued, apprehending that her services might be terminated the petitioner came to this Court in writ petition.

5. Sri Udit Narain Singh, learned Counsel for the petitioner, submitted that except for minor breaks the petitioner has been working as Sweeper since 1980 i.e. for period of 19 years, therefore, it is a fit case in which the Court should direct that

her services should be regularised. In support of his contention he placed reliance on Bihar Fruit and Vegetable Development Corporation, Patna v. The State of Bihar and Ors. 1994 (1) PLJR 377 and Dina Nath Singh v. The State of Bihar and Ors. 1998 (2) PLJR 380.

6. No counter-affidavit has been filed on behalf of the respondents. At the time of hearing hardly any assistance was given by the State Counsel.

7. The only point for consideration is whether it is a fit case in which the petitioner is entitled to prayer for regularisation of her service. If I may say so, the manner in which the relief has been sought cannot be said to be appropriate. As observed by this Court in the case of Bihar Fruit and Vegetable Development Corporation (supra), itself, regularisation means 'to make regular' which implies that the action was irregular and the same is being cured. The words 'regular' or 'regularisation' are terms calculated to condone any procedural irregularities and are meant to cure defects. In the present case the appointment is not sought to be terminated on account of any irregularity in the process of appointment. Nevertheless, it is plain that the petitioner having worked for a considerable period of time she is entitled to have her case considered. (Assuming that she is continuing in service till date). The point, however, is whether a direction ought to be issued for outright regularisation. No doubt, the Supreme Court has passed orders and issued directions for regularisation in various cases but they have been issued under Article 142 of the Constitution. The Supreme Court has laid down that when 'persons' have worked on a post for a long period it is proper on the part of the Department to frame scheme and consider the persons working on daily wages/casual/temporary basis for regularisation within the frame-work of that scheme. It would not be out of place to mention here that when the hearing of the present case was taken up, Counsel for the petitioner himself stated that in the Water Resources Department steps are being taken to frame scheme for regularisation of the working daily wages/casual employees. He pointed out that many cases have been adjourned on the aforesaid ground. In my opinion, issuing direction individually in cases where person approached the Court for his/her regularisation without issuing any further and corresponding direction to consider the cases of others which may be similar, if not better, will not be in accordance

with Article 14 of the Constitution. I am, therefore, unable to issue any direction to regularise the services of the petitioner outright. I would direct the respondent-Secretary, Water Resources Department, instead, to frame scheme, which is already under-way, and when this is done, the case of the petitioner and others shall be considered within the framework of such scheme.

8. In the meantime, if the petitioner is continuing on the post of Sweeper, she will be entitled to salary at the minimum of the time scale pay. Counsel for the petitioner stated, in course of hearing on instructions, that presently the petitioner is getting Rs. 1,200/- as emoluments @ Rs. 40/- per day. If the minimum of the time scale of the pay admissible the post of Sweeper is less than the said amount she shall continue to get Rs. 1,200/- for the present. On the other hand, if the minimum of the time scale of pay is more than Rs. 1,200/- the same shall be paid to the petitioner until regularisation of her services.

9. This writ petition stands disposed of in terms of the aforementioned observations and directions. There will be no order as to cost.

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