

Chandra Bilash Singh and ors. Vs. State and ors.

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Court : Patna

Decided On : Jan-17-2005

Judge : V.N. Sinha, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 8152 of 1999

Appellant : Chandra Bilash Singh and ors.

Respondent : State and ors.

Judgement :

V.N. Sinha, J.

1. Heard Shri Y.V. Giri, Senior Advocate for the petitioner and Sri Sudhir Kumar, JC to GP IV for the State.

2. The petitioners have filed this writ application for a direction to the State respondents to grant them minimum of the scale of pay prescribed for the post on which they were engaged during the period between 1980-1984 and have continued to serve on those post for the last 20-24 years since the date of their initial engagement till date. In support of the aforesaid prayer it has been asserted in the writ application that the petitioners were engaged to serve as Roller Driver, Khalasi and Chawkidar in the REO Division, Jehanabad, during the period

between 1980 to 1984. They continued to serve the said division on their respective post from the initial date of engagement till the filing of the writ application and they are serving the division even today. Their grievance is that having served the division as Roller Driver, Khalasi and Chawkidar for about 20-24 years they are still being paid wages in terms of the notification of the labour department and not the salary of the post on which they are working for the last 20-24 years. For self same relief petitioners had earlier filed CWJC No. 9906 of 1997 in which the respondent authorities filed a counter-affidavit clearly stating that daily wagers engaged prior to the cut off date 1.8.1985 shall be considered for absorption and in consideration of those statement the writ application was disposed of under order dated 22.9.1998, annexure 13, expecting the State Government and the authorities will take final decision in the matter without any undue delay. Even after the disposal of the writ application under order dated 22.9.1998 the State-respondents did not take any decision in the matter and continued to engage the petitioners on daily wage basis which led to the filing of the present writ application on 21.8.1999. During the pendency of this writ application also State-respondents have not taken any decision but have filed counter-affidavit which has been duly affirmed by Shri Chandeshwari Prasad Yadav, Executive Engineer Rural Engineering Organisation Works Division, Jehanabad on 26.6.2000. Perusal of the said counter-affidavit indicates that the authorities in para 6 have taken the stand that petitioners having not been engaged against sanctioned post are not entitled to be paid the minimum of the scale of pay of the post on which they are engaged and working. The present counter-affidavit, however, does not dispute the fact that the petitioners have continued in their engagement for 20-24 years,

3. Learned counsel appearing in support of the application submitted that the averments made in para 6 of the counter- affidavit affirmed on 26.6.2000 have been made contrary to the averments made in the earlier counter-affidavit filed in CWJC No. 9906/1997, Annexure 12, in paras 14 and 16 whereof it was categorically stated that daily wagers who have completed 240 days before 1.8.1985 will be considered for absorption on regular sanctioned post. With reference to the aforesaid statement made in the earlier counter-affidavit learned counsel for the petitioners asserted that in the light of the earlier order dated

22.9.1998 passed in CWJC No. 9906/1997, Annexure 13, State- respondents should have considered the case of the petitioners for absorption against the regular sanctioned post as was undertaken by them before this Court and since the State- respondents have not considered the case of the petitioners for absorption against sanctioned post even when the petitioners continued in their engagement for 20-24 years and are being paid daily wages as per the notification of the State Government issued under the Minimum Wages Act direction should be issued by this Court to pay the salary of the post against which petitioners are working applying the principle of equal pay for equal work. In support of aforesaid contention learned counsel for the petitioners has relied on the order dated 6.12.2004 passed by a Bench of this Court in CWJC No. 12469/2000 (Rajendra Kumar and Ors. v. State of Bihar and Ors., whereunder this Court having noticed the failure of the respondent State authorities to proceed with the absorption/appointment of the petitioners of that case applied the principle of equal pay for equal work and directed the State-respondents to make payment of the regular salary of the post on which petitioners of that case were working with effect from the date of the counter-affidavit filed in the said case.

4. Having heard the counsel for the parties and having perused the pleadings filed by them including the order dated 6.12.2004 passed in the case of Rajendra Kumar (supra), I am of the view that it is not possible for this Court to pass similar order as was passed in the case of Rajendra Kumar, (supra) as the directions to pay the minimum salary of the post on which a daily wager is working with retrospective effect is contrary to the observations of the Hon'ble Supreme Court in the case of AIR 1996 SC 708 (State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Anr.). The Hon'ble Supreme Court in the said case set aside the direction of the Allahabad High Court to pay the salary of the post on which a daily wager was working for the last 15 years pending his absorption. Following the observation of the Hon'ble Supreme Court in the case of State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Anr., I respectfully beg to differ from the orders and directions passed in the case of Rajendra Kumar, (supra). The respondent- State of Bihar and its functionaries are however directed to consider the case of petitioners for regularisation/absorption against the post on which they are working for more than 20-24 years as they are

entitled to grant of preference over an outsider in terms of the resolution of the State Government bearing No. 5940 dated 18.6.1993. Consideration in terms of this order should be made within a period of three months from the date of receipt/production of a copy of this order.

5. This application is, accordingly disposed of. No cost.

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