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Court : Jharkhand

Decided On : Feb-07-2001

Reported in : 2001(49)BLJR1612

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Articles 14 and 16

Appeal No. : CWJC No. 1099 of 2000 (R)

Appellant : Suresh Ram and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : S.C. 1

Advocate for Pet/Ap. : M.M. Pal and; M. Palit, Adv.

Disposition : Writ application dismissed

Judgement :

M.Y. Eqbal, J.

1. Heard learned counsel for the parties.

2. In this writ application the petitioners have prayed for regularisation of their services on the ground, inter alia, that they have been working since 1995 on

regular basis for sometime and thereafter on daily wages. The petitioner's case is that in 1993 they were initially appointed as daily wages class IV employees. In 1995 the petitioners said to have appointed on regular basis. However, the appointment of the petitioners was immediately cancelled in March, 1996. The petitioners claim to have been working on daily wages till date and, therefore, they are entitled for regularisation in the services and for payment of wages at par with the regular employees.

3. On the other hand, the respondents' case is that the respondents of the Director have no authority to make appointment even of Class IV employees. It is stated that the appointment of Class IV post are made by the District Magistrate at the district level and it is the District Magistrate who invites application and after preparing the selection list, send the names of the selected candidates to different department as per their requirements. The respondents' further case is that by mistake the appointment letter was issued to the petitioners in 1995 but the said appointment letter was also subject to the conditions that the services can be terminated at any time without giving any notice to the petitioners.

4. It can not be disputed that in all the Departments of Government of Bihar, appointment of Class IV employees are made from the district panel prepared by the District Magistrate/Deputy Commissioner at the district level. The respondents or its Director has no authority to make appointment in Class IV post. The appointment letter issued in favour of the petitioner was rightly cancelled immediately a few months after.

5. Now the only claim made by the petitioners is that they should be regularised in service for the reason that they have been working on daily wages basis and they should also be paid salary at par with the regular employees.

6. So far first part of the claim is concerned, I am of the opinion that merely because the petitioners have been working on daily wages for the last few years, that does not give right of regularisation. The question of regularisation of Class IV employees have been considered by the Government for the reason that persons working for last 20-25 years on daily wages basis claimed regularisation. The Government, therefore, fixed a cut off date i.e. 1.8.1985 and it was decided

that those daily wages employees who have been working on or before 1.8.1985 shall be regularised in service. The only question, therefore, falls for consideration is whether the petitioners are entitled to get the same wages, which the regular employees are getting.

7. Mrs. Pal, relied upon the decision of the Supreme Court in the case of V. Markendeya v. State of A.P., (1989) 3 SCC 191. In that case the question falls for consideration before the Apex Court was whether the differentiation can be made on the question of 'equal pay for equal work' based on educational qualification. Their Lordships held that two classes of employees, though performing similar duties but treated differently through out in the service on the basis of their educational qualification, then difference in pay between the two is not violative of Articles 14 and 16 of the [Constitution of India](#).

8. In the case of Bishundeo Choudhary v. State of Bihar, (1995) 1 PLJR Full Bench 123, a question falls for consideration before the Full Bench was whether in the matter of application of the principle of 'equal pay for equal work' persons appointed on regular cadre while part time appointees will be treated as the same. Their Lordships held that the persons appointed on regular cadre and the part time appointees cannot belong to the same class and, therefore, equal pay for equal work doctrine cannot be enforced.

9. Similarly in the case of State of W.B. v. Hari Narayan Bhowal, (1994) 4 SCC 78 the Apex Court held that in the matter of application of 'equal pay for equal work' the claimant must not only establish that the nature of work is identical but also establish that there is no reasonable basis to treat them separately.

10. In the instant case admittedly the petitioners have been working on daily wages and a maximum 26 days work in a month is being taken by the respondents as and when required. In such circumstances, I am of the opinion that the petitioners can not claim the wages and other benefits which the regular Class IV employees are getting from the respondents. At best the petitioners are entitled to the minimum wages prescribed under the law, which this Court believe that the petitioner must have been getting. However, I observe that if the petitioners are not getting minimum wages, then they are entitled to get the same, if the

respondents are taking work from them.

11. With the aforesaid observation, this writ application is dismissed.

12. Writ application dismissed.

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