

(2014) 12 JH CK 0027

Jharkhand High Court

Case No: W.P. (S) Nos. 5660 and 6497 of 2003

Devendra Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Dec. 11, 2014

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25(F)

Citation: (2015) 1 JLJR 411

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: A.K. Mehta, A.K. Das, Arbind Kumar, Indrajit Sinha and Arpan Mishra, Advocate for the Appellant; Chanchal Jain, J.C. to A.A.G. and M. Jalilur Rahman, J.C. to G.P. III, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard counsel for the parties.

2. Petitioners in both the writ petitions were engaged on daily wage basis between 1979 to 1985 in the Water Resources and Irrigation Department under the State of Bihar. As per their case, they were removed in the year 1994. They moved the Patna High Court with a prayer to reinstate them in C.W.J.C. No. 2286 of 1999(Patna). The learned Single Judge vide judgment dated 8.4.2002(Annexure-13 to W.P.S. No. 5660 of 2003) made an observation by giving liberty to the petitioners to bring the matter to the notice of the Secretary, Water Resources Department, Government of Jharkhand as also the order of the Hon'ble Supreme Court in the case of State of Bihar Vrs. Laghu Sichai Karmchari Sangh and others passed in S.L.P. (Civil) No. 18164 of 1999 (Annexure-12), whereupon the Secretary, Water Resources Department would consider the cases of the petitioners and determine as to whether their cases are governed by the decision of the Hon'ble Supreme Court and the resolution dated 18.6.1993 (Annexure-4) and whether their cases are required to be considered

along with those named, as has been called for vide letter No. 10/01 dated 9.10.2001 or not within a period of 6 months. It appears that the petitioners" removal from service was not interfered with earlier in the proceeding initiated before the Patna High Court as would appear from the reading of the judgment dated 8.4.2002. The Patna High Court in Civil Review No. 272 of 1997 appears to have observed that the removal will not affect in the matter of regularization of services of petitioners. In view of the judgment rendered by the Patna High Court dated 8.4.2002, the Secretary, Water Resources Department passed an order contained in letter No. 3262 dated 11.7.2003 which is impugned in both the writ petitions whereby the claim of the petitioners for regularization has been rejected on the ground that they are not covered by the judgment rendered by the Hon"ble Supreme Court in the case of Laghu Sichai Karmchari Sangh & others (Supra) as the services of the petitioners had been terminated long before. The respondent-Secretary, Water Resources Department held that the case of the petitioners could not be considered along with names of those who presently continued to work on daily wage basis.

3. Learned counsel for the petitioner has after referring to the scheme of regularization under resolution No. 5940 dated 18.6.1993 and the judgment rendered in the case of Laghu Sichai Karmchari Sangh & others (Supra) made a submission that the case of the petitioners have been wrongly rejected. They also fall under the category of daily wage who should have been considered for regularization in terms of the directions of the Hon"ble Supreme Court. These petitioners have remained on daily wages engagement for a considerable length of time before the cut off date of 1.8.1985 till their removal in 1994.

4. Contention of the petitioners has however been opposed by learned counsel for the respondent-State on the plea that the scheme under regularization dated 18.6.1993 do not cover their cases. These petitioners had been retrenched from services after compliance of the provision of Section 25(F) of the Industrial Dispute Act. They, therefore, do not fall within the scope of the directions passed by the Hon"ble Supreme Court in the case of Laghu Sichai Karmchari Sangh & others (supra). Therefore, the impugned order does not suffer from any error or illegality. It is submitted that after such a long period of the retrenchment of the petitioners in 1994, no regularization can be made. In this context, learned counsel for the respondent-State has also referred to the order dated 12.3.2014 bearing memo No. 341 issued by the Deputy Secretary, Water Resources Department, which again is to the effect that the cases of the petitioners cannot be considered for regularization also on account of the Constitution Bench judgment passed by the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others.

5. I have heard counsel for the parties and gone through the relevant materials on record. In the background of the factual context of the matter which have been submitted by the rival parties, it appears that the removal/retrenchment of these

petitioners in the year 1994 had not been interfered by the Patna High Court earlier, though it was left open that the petitioners" claim for regularization may be considered. In that context learned Single Judge of this Court in earlier round of litigation in C.W.J.C. No. 2286 of 1999(Patna) vide judgment dated 8.4.2002(Annexure-13), made an observation that the petitioners may bring the matter to the notice of the Secretary, Water Resources Department relying upon the judgment of the Hon"ble Supreme Court in the case of Laghu Sichai Karmchari Sangh & others(*supra*) as also the resolution dated 18.6.1993 which was the scheme for regularization for daily wage employees in the erstwhile State of Bihar. The claim of the petitioners for regularization however has been rejected on the ground that they are not covered under the scheme of 1993 and they do not fall within the scope of the order passed by the Hon"ble Supreme Court in case of Laghu Sichai Karmchari Sangh & others(*supra*).

6. However, since the passing of the impugned order in 2003 on the aforesaid grounds, the law on the subject of regularization has undergone a significant change in view of the Constitution Bench judgment rendered by the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others. By the said judgment the Hon"ble Supreme Court has overruled all those decision which was running counter to the settled principles in the said decision or in which directions running counter to what has been held therein. It was clarified that such decision will stand denuded of their status as precedents. The Constitution Bench of the Hon"ble Supreme Court at para 53 of the said judgment however also made an observation to the effect that the question of regularization of services of such employees who have continued for 10 years or more but without the intervention of the orders of the Court or of Tribunal may be considered as a one time measure by the Union of India, State Government or its instrumentality. From the reading of the aforesaid para, it therefore appears that such an observation was made in respect of the person who had continued in irregular appointment for 10 years or more. The facts of the present case, however do not leave any room or doubt that the observation made by the Hon"ble Supreme Court in para 53 in the case of Secretary, State of Karnataka & others Vrs. Uma Devi & others (*supra*) do not apply to the petitioners" case as they have already been removed/retrenched in the year 1994 itself.

7. Therefore, at this stage, in view of the statement of law enunciated by the Hon"ble Supreme Court in the case of Secretary, State of Karnataka & others Vrs. Uma Devi & others (*supra*), the prayer for regularization of the petitioners cannot be allowed. This Court upon consideration of the aforesaid facts and reasons therefore is not inclined to interfere with the impugned order by which claim for regularization of the petitioners have been rejected.

8. The writ petition is accordingly, dismissed.