

(2001) 04 PAT CK 0090

Patna High Court

Case No: C.W.J.C. No. 7756 of 1996

Shankar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: April 19, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Industrial Disputes Act, 1947 - Section 25F

Citation: (2001) 2 PLJR 669

Hon'ble Judges: Shiva Kirti Singh, J

Bench: Single Bench

Advocate: Manu Shankar Mishra, for the Appellant; Ritesh Kumar for State and Mr. Nadim Siraj for the Corporation, for the Respondent

Final Decision: Allowed

Judgement

Shiva Kirti Singh, J.

In this writ application the petitioner has prayed for quashing of order dated 28th April, 1996 as contained in Annexure-1 by which his service as daily wager has been terminated by the Executive Engineer of Bihar State Scheduled Caste Co-operative Development Corporation Ltd. (hereinafter referred to as the Corporation"). Learned counsel for the petitioner submitted that as would appear from the last two lines of the impugned order the service of the petitioner who was engaged on daily wages since 1.9.1987 has been terminated in view of order no. 71 contained in memo no. 702 dated 11.4.1996 issued by the head office of the Corporation. Further submission of learned counsel for the petitioner is that the aforesaid order no. 71 dated 11.4.1996 was challenged by a set of similarly situated daily wage employees of the Corporation through a writ application bearing CWJC No. 9376 of 1996 (Nirmal Kumar & Ors. vs. The State of Bihar & Ors) which has been allowed by judgment and order dated 16.2.2001 and as a result similarly situated persons have been ordered to be reinstated in the employment of the Corporation on daily

wages. On strength of aforesaid submission alone, according to learned counsel for the petitioner this writ application deserves to be allowed because petitioner must be treated in similar fashion as required by Articles 14 and 16 of the Constitution of India.

2. Learned counsel for the respondent-Corporation and its officials did not dispute the fact that CWJC No. 9376/1996 has been allowed by this court on 16.2.2001 and as a consequence of order passed in that case, the petitioners therein have been reinstated by the Corporation. However, he sought to point out certain distinctions between the case of this petitioner and the case of petitioners in CWJC No. 9376/1996 on the ground that in that case the petitioners had challenged the validity of office order no. 71 dated 11.4.1996 whereas in the present case the challenge is to actual order of termination pursuant to said order dated 11.4.1996. He further pointed out by referring to paragraph 12 of the judgment in CWJC No. 9376 of 1996 that in that case the court rejected the submission on behalf of the Corporation that termination was being made on the ground of financial crisis by observing that such a case was not pleaded. On the other hand, according to him, in the present case financial hardship is mentioned in the impugned order contained in Annexure-1 itself. To verify the factual position this court had called for the records of CWJC No. 9376/1996 and Annexure-14 of that writ application contains an identical order of termination dated 22.4.1996 with regard to one of the petitioners in that case, as has been issued against the petitioner of this case vide Annexure-1. Annexure-14 to that writ application contains termination order in exactly identical terms and contains a passing reference to availability of fund as one of the reasons for termination. Same is the situation in the present case. It further appears from the judgment in CWJC No. 9376/1996 that this court did not accept that termination had been made on that ground i.e. on the ground of financial crisis prevailing in the corporation.

3. It is well settled in law that an employee engaged on daily wage has no right to continue in service if his services are not required by the employer. However, retrenchment of daily wagers must be made in accordance with statutory provisions contained in the Industrial Disputes Act such as section 25F and the equality clause as contained in Articles 14 and 16 of the Constitution of India. In this case, it appears from the impugned order, as was case of petitioners in CWJC No. 9376 of 1996, the provisions of section 25F of the Industrial Disputes Act had been complied with before passing the termination order but from the materials on record and also from the fact that similarly situated employees have been reinstated in service pursuant to judgment of this court in CWJC No. 9376 of 1996, it is clear that the respondent-Corporation is not paying any heed to the requirements of Articles 14 and 16 of the Constitution of India in the matter of retrenchment of daily wage employees. Admittedly, no appeal has been preferred against the judgment and order passed in CWJC No. 9376/1996 although the time for preferring LPA is 30 days only.

4. In such circumstances, this court is left with no option but to quash the impugned order contained in Annexure-1 only on the ground that keeping the petitioner under continued retrenchment when other similarly situated have been reinstated in service as daily wagers would be violative of Articles 14 and 16 of the Constitution of India. This writ application is allowed to the extent indicated above and the respondents are directed to reinstate the petitioner in service as a daily wage employee within two weeks from the date of production/communication of a copy of this order. Since the petitioner was employed on daily wage basis hence, he will not be entitled for any backwages. This was ordered in the other writ application i.e. CWJC No. 9376/1996 on the basis of the principle "no work no pay". Before parting with this judgment this court would like to clarify that in case the respondent-Corporation, after careful analysis of its job requirement for daily wagers and after examining its financial position comes to a fresh decision that it is not possible or desirable to continue the daily wagers in service then it may resort to retrenchment in accordance with law keeping in mind the well established principle of "last come first go" so that such retrenchment may not be in teeth of Articles 14 and 16 of the Constitution of India. in the facts and circumstances of the case, there shall be no order as to costs.