

(2003) 12 PAT CK 0087

Patna High Court

Case No: Letters Patent Appeal No. 109 of 1997

Mohammad Mahmud Alam and
Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 10, 2003

Acts Referred:

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

Citation: (2004) 2 PLJR 115

Hon'ble Judges: Ravi S. Dhavan, C.J; Shashank Kumar Singh, J

Bench: Division Bench

Advocate: Subro Sanyal, for the Appellant; V.N. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Shashank Kumar Singh, J.

The present appeal has been preferred against the order dated 20th December, 1996 passed in C.W.J.C. No. 2325 of 1996, by which the Writ Court in view of the fact that the Appellants were engaged on daily wages only and as in view of the fact that their works were no more required, their engagement has been dispensed with after complying with the provisions of Section 25(f) of the Industrial Disputes Act, as such, there was no question for issuance of a direction for regularising their services or directing the Respondents to pay the same pay scale to the Appellants which was being paid to the regular employees also did not interfere with the order of their retrenchment.

2. From perusal of the order of the Writ Court it transpires that the Appellants were engaged on daily wages and they were terminated vide letter dated 31.3.1995. The same was the subject matter of C.W.J.C. No. 2649 of 1995. The aforesaid writ application was disposed of on 5.9.1995 with observation that the State Government

would prepare a Scheme in accordance with Article 14 of the Constitution of India for absorption of the suitable hands. It further envisages that, if any, person has been removed without following the policy, of last come first go then he should file a representation before the Secretary, Irrigation Department for proper adjudication or may, if so advised, invoke and seek relief under the Industrial Disputes Act. Further relief which was granted in the aforesaid writ application was to the extent that if the Petitioners-Appellants were not discharging the same duty as that of the regular employee, appropriate order for payment of same emolument was also directed to be made.

3. From perusal of the order of the learned Writ Court it further transpires that a detailed order had been passed by the Secretary on 30.1.1996, Irrigation Department, which has been appended as Annexure-1 to the writ application. By a detailed order, the Secretary found that the Appellants, who were working on daily wages were neither performing the same work nor had the same qualification or responsibility as that of the regular employees. The order of the Secretary of the Irrigation Department further goes to show that the Appellants were engaged only on daily wages, if and when required and for the said engagement, wages as per the Minimum Wages Act were being paid to them. As they were not the regular employees, who had entered the service after facing an advertisement, selection process and due appointment, as such, they could not be under any stretch of imagination be treated, as equal to the regular employee of the department.

4. As far as other relief is concerned, the Writ Court in view of the fact that the services of the Appellants were terminated after following the provisions of Section 25(f) of the Industrial Disputes Act, as the work was no more required in the Department and due to paucity of fund also and as no allegation was there that persons subsequently engaged on daily wages were allowed to continue did not interfere in the order passed by the Secretary, Irrigation Department, as contained in Annexure-1 to the writ application.

5. Learned Counsel for the Appellants has relied upon several judgments to the effect that if a person is allowed to continue temporarily for a long period, his case is required to be considered for regularizations. An argument has also been advanced to show that if a person was discharging the same Work as the other employee then with regard to wages he cannot be discriminated, rather the same pay was to be made for the same/similar work.

6. As already discussed above, the Appellants have been found to be working as daily wage employees, whose services were utilised if and when the requirement was there and as there was no further requirement for their further engagement and as there was paucity of fund, as they not being regular employees had no right to continue in service and have been disengaged after following the provisions of Section 25(f) of the Industrial Disputes Act. It could also not be shown that anyone subsequently engaged were allowed to continue.

7. This Court in view of the facts as stated above is of the considered view that the learned Writ Court did not err in not granting any relief to the Appellants. As the order of the learned Writ Court does not suffer from any error, this Court is not inclined to interfere with the same.

8. The letters patent appeal fails and is, accordingly, dismissed. No order as to costs.