

SUPREME COURT OF INDIA

Ram Prit Mahto

Vs.

State of Bihar

C.A.No.6377 of 2014

(J.S. Khehar and Rohinton Fali Nariman JJ.)

08.07.2014

ORDER

1. Leave granted. The Appellant before this Court was inducted in the employment of the Respondents as far back in 1974. He was initially required to discharge duties on an officiating basis as a Lower Division Clerk, against a leave vacancy. Thereafter, he was appointed as a site chowkidar, in the work charge establishment. His employment continued on different posts, as were available in the work charge establishment and muster roll staff, in different projects of the State Government. In 1976, the Appellant also had the occasion of discharging duties against the post of Telephone Assistant. Undisputedly, the post of Telephone Assistant is a Class-III post.

2. On 19.02.1981, the State Government issued a Circular to absorb work charge employees appointed prior to 21.08.1975. The aforesaid policy has been placed on the record of this case as Annexure P/2. The only requirement for absorption under the policy dated 19.02.1981 is, as expressed in paragraph 2(b), namely, that in case a vacancy against a regular post was available, and an employee fulfilling the qualifications and eligibility conditions prescribed therefor was available, he could be absorbed against the said post.

3. It is the case of the Appellant, that he fulfilled the conditions of eligibility, as also, the qualifications prescribed for the post of Clerk, and was accordingly absorbed against the post of Clerk vide an order dated 16.07.1981.

4. On 26.05.2004, after a lapse of about 23 years, a show cause notice was issued to the Appellant, seeking to recall the order of his absorption. He was required to respond to the same within a period of seven days. The Appellant filed his reply thereto on 31.05.2004. By an order dated 03.12.2004, the explanation tendered by the Appellant was rejected, and he was ordered to be reverted back to Class-IV service with retrospective effect.

5. The above order dated 03.12.2004 was assailed by the Appellant, by filing CWJC No. 2236 of 2005. The High Court of Patna (hereinafter referred to as the 'the High Court') accepted the prayer made by the Appellant, and set aside the reversion order on 21.06.2006. Dissatisfied with the order passed by the learned Single Judge on 21.06.2006, the Respondent State preferred a Letters Patent Appeal. A Division Bench of the High Court accepted the appeal preferred by the State on 23.12.2009. The High Court while accepting the above appeal, inter alia arrived at the conclusion, that the Appellant could not be absorbed against the post of Clerk, because he did not fulfill the educational qualifications prescribed for the said post. Paragraph 27 of the impugned order records the finding of the Letters Patent Bench. Relevant portion thereof is being extracted hereunder:

"Secondly, the Respondent was admittedly a matriculate which is not the minimum educational qualification for Class-III post. The contention advanced on behalf of the Respondent is, therefore, rejected. The remaining issues are governed by the order passed in L.P.A. No. 129 of 2007."

In addition to the above determination, the High Court was of the view, that the absorption of the Appellant was unjustified under the policy of the Government dated 19.02.1981.

6. Insofar as the possession of the prescribed qualification is concerned, it is now not a matter of dispute at the hands of the Learned Counsel for the Respondents, that the Appellant possessed the qualification of matriculation, which is indeed the prescribed qualification for the post against which he was absorbed. In the above view of the matter, we have no hesitation to set aside the finding of the Letters Patent Bench, in the impugned order dated 23.12.2009, that the Appellant did not possess the prescribed qualifications for the post against which he was absorbed.

7. Insofar as the validity of the absorption of the Appellant, under the Government policy dated 19.02.1981 is concerned, it is not necessary for us to adjudicate upon the instant aspect of the matter on merits. Suffice to record, that on similar issues in respect of persons similarly situated as the Appellant, various orders were passed by the High Court setting aside similar reversion orders. Reference in this behalf may be made to the decision rendered by the High Court in Mukhtar Singh v. State of Bihar and Ors. - CWJC No. 11319 of 2006 decided on 11.05.2011, and Janki Raman Trivedi v. The State of Bihar and Ors. - CWJC No. 7903 of 2007 decided on 13.02.2012, wherein on the same ground as was the basis for the High Court to find fault with the order of absorption of the Appellant, the High Court had set aside the order of reversion. The aforesaid determination rendered by the High Court was accepted by the State, and all the employees were reinstated against the posts on which they were originally absorbed. Accordingly, we are of the view that the State Government cannot be permitted to adopt a different stance, as it has taken qua other persons, similarly situated as the Appellant.

8. This brings us to the last contention advanced at the hands of the Learned Counsel for the Respondents, so as to dissuade us from setting aside the impugned order passed by the High Court. In this behalf, Learned Counsel for the Respondents has invited our attention to the decision rendered by the Full Bench of the High Court in Durganand Jha v. State of Bihar (and other connected matters) 2007(4) PLJR 259 decided on 28.09.2007.

9. It is not necessary for us, to engage ourselves on the instant submission advanced at the hands of the Learned Counsel for the Respondents because the issue with which the Full Bench was engaged in the above judgment, pertained to promotion and regularisation, whereas, the instant policy of the State Government dated 19.02.1981, pertains to absorption of work charge staff, against regular posts. In fact, in one of the Letters Patent Appeals, which was allowed by the High Court, setting aside the orders of reversion, of persons similarly situated as the Appellant, the judgment rendered by the Full Bench was justifiably distinguished by observing as under:

"We may at the outset note that before the Full Bench neither the aforesaid Circular dated 19th February 1981 nor the clarification dated 2nd April

1983 was the subject matter of interpretation. The above referred Circular dated 19th February 1981 is placed on record in the counter affidavit filed by the State Government. The said Circular was issued specifically in respect of the work charge employees in the Irrigation Department. The preamble suggests that appointment on work charge establishment was made indiscriminately pursuant to the Government Order dated 22nd March 1970. Further appointment on work charge establishment was banned under the Government circular dated 21st July 1975. Nevertheless, the appointment on work charge establishment was far in excess of the sanctioned strength. The absorption of such excess work charge employees on the sanctioned post would take a long time. It was, therefore, decided that the maximum number of work charge employees appointed prior to 21st July 1975 be absorbed on the regular vacant posts according to their qualification.

The said circular was later explained under circular dated 2nd April 1983. Under the said explanation it was clarified that under the circular dated 19th February 1981 the State Government did not intend to grant promotion to any of the work charge employee and that in no circumstances a Class-IV employee be absorbed in Class-III service.

It is indisputable that the Appellants were the beneficiaries of the aforesaid circular dated 19th February 1981. Both of them were appointed in work charge establishment prior to 21st July 1975. Keeping in view their educational qualification they were absorbed in Class-III service under order dated 16th July 1981 and 29th August 1981. Even after the aforesaid explanation/clarification dated 2nd April 1983 the Appellants were continued in Class-IU service until the reversion orders were made in 2004.

In above view of the matter, we hold that the absorption of the Appellants in Class-III service pursuant to the Government circular dated 19th February 1981 was legal and valid. Their induction in regular Class-DI service cannot be said to be void ab initio. If at all there were any confusion in respect of interpretation of the circular dated 19th February 1981, the Respondents

were required to take appropriate action soon after the clarification dated 2nd April 1983. Evidently, that was not done.

We are of the view that if the induction of the Appellant in Class-III service was legal and valid and they were allowed to continue as such for more than 20 years they could not have been legitimately reverted on 11th February 2004 or on any other date. The entire foundation that the Appellants' absorption in Class-III service was illegal and void ab initio is erroneous. The impugned order made against the Appellants on such premise, therefore, calls for interference.

It may be noted that though the learned single Judge has taken note of the circular dated 19th February 1981 and the clarification dated 2nd April 1983, he has failed to note that the Appellants' absorption on regular establishment having been done under the Government circular cannot be held to be illegal or void ab initio. As to the aforesaid Full Bench judgment, we must note that this Court has laid down a general principle with which there cannot be any dispute. However, before the Full Bench the cases were that of casual workers whose appointments were not in accordance with the relevant rules. That being not the case before us, the decision of the Full Bench shall not apply to the facts of the present case."

10. We hereby endorse the above determination.

11. For the reasons recorded hereinabove, we are satisfied that the impugned order passed by the Letters Patent Bench of the High Court, deserves to be set aside, and the order passed by the Learned Single Judge deserves to be restored. Ordered accordingly. CIVIL APPEAL No. 6378 of 2014 (@ SLP(C) No. 10861/2008), CIVIL APPEAL Nos. 6379-6380 of 2014 (@ SLP(C) Nos. 23976-23977/2008), CIVIL APPEAL No. 6381 of 2014 (@ SLP(C) No. 16072/2010), CIVIL APPEAL No. 6382 of 2014 (@ SLP(C) No. 16721/2010), CIVIL APPEAL No. 6383 of 2014 (@ SLP(C) No. 18905/2010), CIVIL APPEAL No. 6384 of 2014 (@ SLP(C) No. 18907/2010), CIVIL APPEAL Nos. 6386-6387 of 2014 (@ SLP(C) Nos. 19928-19929/2010), CIVIL APPEAL No. 6388 of 2014 (@ SLP(C) No. 24476/2010), CIVIL APPEAL No. 6389 of 2014 (@ SLP(C) No. 1949/2011),

CIVIL APPEAL No. 6390 of 2014 (@ SLP(C) No. 6279/2011) and CIVIL APPEAL No. 6391 of 2014 (@ SLP(C) No. 35129/2011).

12. Delay condoned.

13. Leave granted.

14. The application for deletion of the name of Respondent is allowed. Learned Counsel for the parties are agreed, that the controversy raised in the instant civil appeals, is identical to the one adjudicated upon by this Court in Ram Prit Mahto v. State of Bihar and Ors. (Civil Appeal No. 6377 of 2014 @ SLP (C) No. 18483 of 2010, on 08.07.2014. For the same reasons as have been indicated by us in CIVIL APPEAL No. 6377 of 2014 @ SLP(C) No. 18483 of 2010, the instant appeals are also allowed.