

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6163 of 1999

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Chandrachur Prasad Singh, Son of Late Chhotelal Singh, Resident of Vill.-Pokhrama, P.S.-Kajra, Distt.-Lakhisarai, Ex-Seed Production Assistant, Bihar Rajya Beej Nigam Ltd., R.C. Singh Path, Indira Bhawan, 2nd Floor, Patna-800001.

.... Petitioner

Versus

1. The State of Bihar.
2. Bihar Rajya Beej Nigam Ltd., a company registered u/s 617 of the Company's Act, 1956, having its registered office at Indira Bhawan, R.C. Singh Path, 2nd Floor, Patna-800001, through its Managing Director.
3. Managing Director, Bihar Rajya Beej Nigam Ltd., Indira Bhawan, 2nd Floor, R.C. Path, Patna-800001.
4. Secretary, Bihar Rajya Beej Nigam Ltd., Indira Bhawan, 2nd Floor, R.C. Path, Patna-800001.
5. Regional Manager, Bihar Rajya Beej Nigam Ltd., Gurhatta, Chowk, Town & District-Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner

:Mr. Umesh Pd. Singh, Sr. Adv.

Mr. Rajeeb Ranjan Prasad, Adv.

For the Respondents-Beej Nigam:Mr. Sourendra Pandey, Adv.

For the State

:Mr. Ranjan Kumar, AC to AAG-IV

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date: 29-10-2015



The petitioner, in the present application, under Article 226 of the Constitution of India, seeks quashing of an order, passed by the Managing Director, Bihar Rajya Beej Nigam Limited (***hereinafter referred to as the "Nigam"***), dated 29.05.1999, communicated to him by a subsequent letter, dated 08.06.1999, issued by the Regional Manager, Bhagalpur, of the said Nigam. He has also sought for a direction from this Court to the respondents to reinstate him, as Seed Production Assistant, and regularize his service on the said post, with full salary and benefits, attached to the said post.

2. From the order/communication impugned, in the present writ application, it would be evident that the petitioner was working on daily wage basis as Seed Production Assistant under the Nigam at Lakhisarai. Before issuance of the impugned order, discontinuing his engagement as daily wage employee, he was given opportunity of being heard, with the issuance of show-cause notice, which he had availed by filing explanation. His explanation was not found satisfactory by the Managing Director of the Nigam, as he found that his initial engagement, as daily wage employee itself, was illegal, made without following the procedure and in contravention



of an order, dated 11.06.1986, issued by the Government of Bihar. It is the case of the petitioner, on the other hand, that he was engaged as a daily wage employee, in the Nigam, after following due procedure by inviting applications through advertisement and adopting the process of selection. His further plea is that after having continued for more than 13 years, the respondents, instead of giving him permanent status under the Nigam, ought not to have disengaged him from his employment on daily wage basis. Various submissions have been advanced on behalf of the petitioner, challenging the order/communication impugned and for the purpose of direction to the respondents to regularize his appointment, which I shall take note of at appropriate stage. To begin with, it would be convenient to consider such pleadings made in the writ application, on the basis of which, it is being claimed that petitioner's initial engagement on daily wage basis was preceded by an advertisement and due process of selection.

3. The said Nigam is said to be a Government of Bihar undertaking, registered as a Company/Corporation, under Section 617 of the Companies Act, 1956. The Nigam came out with an advertisement (Annexure-1), inviting applications for appointment against various posts, including 20 posts of Seed Production/Marketing Assistant,



in the scale of Rs.880-1510. The minimum qualification, prescribed for the said post, was graduate in Agriculture, preferably with some experience of seed production. The applications were required to be submitted by 28.02.1983. The date of the advertisement has neither been mentioned in the pleadings nor can be deciphered from Annexure-1. The petitioner possessed the qualification of B.Sc. Agriculture and submitted his application, pursuant to the advertisement. It has been pleaded that besides petitioner, 388 applications of Agriculture graduates were received, pursuant to the said advertisement. The petitioner was called for an interview, held on 24.10.1983, whereafter, he was made to appear in a written test, to be held on 15.04.1984. As per the said advertisement, though appointments were to be made on regular basis, the respondents are said to have changed their decision to make regular appointment and instead decided to appoint "232 Agriculture graduates on daily wage basis as Seed Production Assistant/Marketing Assistant". It is the further case of the petitioner that after the respondents changed their decision to make regular appointment, the Nigam decided to call only such candidates/applicants for interview, who were not working even on temporary basis. By way of clarification, it has been pleaded that such



candidates/applicants, who were already in employment, even on temporary basis, were not called for interview and only 69 candidates/applicants, who were unemployed and Agriculture graduates, appeared in the interview. It is his case that a merit list was prepared, on the basis of said interview and written test, in which his name figured at serial No.21. The candidates, whose names figured between serial Nos.1 to 20, were issued letters of appointment for their engagement on daily wage basis, out of whom, only 7 candidates had reported. It is petitioner's further case that his initial engagement on daily wage basis was for a fixed period, which was extended from time to time, through letters, dated 20.06.1986, 25.11.1986, 29.02.1988 till 30.06.1988. It has been pleaded that the petitioner continued to work as Seed Production/Marketing Assistant continuously at least, with effect from 01.03.1988, without any break. However, none of these letters, engaging him on daily wage basis or renewing his engagement, have been brought on record by way of Annexures.

4. It is his further case that there were several employees, working on daily wage basis in the Nigam, some of whom were engaged before 01.08.1985 and some after 01.08.1985. The petitioner was apparently engaged after



01.08.1985. The Agriculture Department is the controlling department of the Nigam, which had decided to discontinue with the engagement of such daily wagers, who were appointed after 01.08.1985 since such appointment were illegal. Through notice, dated 25.08.1988, issued by the Managing Director of the Nigam, the petitioner was asked to explain as to why his engagement on daily wage basis be not terminated. The petitioner submitted his detailed reply to the show-cause notice, through his representation, dated 17.09.1988. The petitioner's explanation did not find favour with the Managing Director of the Nigam, who by the impugned decision, dated 29.05.1999, dispensed with the engagement of the petitioner, on daily wage basis.

5. A counter affidavit has been filed on behalf of the Nigam stating therein that the Chairman Bureau of Public Enterprises vide letter, dated 21.09.1985, had instructed all the Nigams (Corporations) of the State Government, not to make any appointment, even on daily wage basis. It has also been stated that the Personnel and Administrative Reforms Department, Government of Bihar, had issued specific directions not to make appointment on daily wage basis and appointments and engagements made after 01.08.1985 be cancelled. The Agriculture Department had constituted a Committee to look into irregularities in



the appointments of daily wage workers in the Nigam. The Committee, in its report, dated 28.04.1987, finding irregularities in the manner of engagements on daily wage basis, recommended for termination of services of all such daily wage workers, who were appointed after 01.08.1985. The said report was placed before the Bureau of Public Enterprises, which concurred with the recommendations made and, accordingly, the matter was placed before the Board of Directors of the Nigam. Upon seeking show-cause from the petitioner and considering his explanation pursuant thereto, the order impugned was issued.

6. So far as the petitioner's claim of his engagement on daily wage basis after following due procedure of selection, on the basis of open advertisement, as pleaded in the writ application, is concerned, as per his own showing, for the purpose of interview, only such candidates were called, who were not engaged elsewhere, even on temporary basis. What mechanism did the Nigam adopt for filtering out such persons from the process of selection is a mystery, if the Nigam at all did so. It has been stated in the counter affidavit that the petitioner had submitted a representation to the Managing Director of the Nigam, which was recommended by a Member of Legislative Council, on whose recommendation, the



Managing Director ordered for his engagement on 09.06.1986. It is the case of the respondents that the said engagement was made only for a period of one month and the engagement of the petitioner came to an end on 28.08.1986. This statement, made in Paragraph 16 of the counter affidavit, has been replied by the petitioner and in Paragraph 21 of the said reply, it has been contended that the petitioner's engagement was not terminated rather it was not renewed for some time, but from 01.03.1988, he was allowed to continue on daily wage basis.

7. From careful reading of the statement made in Paragraph 11 of the writ application, Paragraph 16 of the Counter affidavit, filed on behalf of the Nigam, and Paragraph 21 of the petitioner's reply to the counter affidavit, it becomes manifestly clear that the petitioner has made a false statement that his daily wage engagement was renewed from time to time through various letters, as mentioned on Paragraph 11 of the writ application. In order to take a chance to obtain a favourable order from this Court in a proceeding, under Article 226 of the Constitution of India, the petitioner thus cleverly suppressed his documents, described as engagement/renewal of engagement letters, as referred to in Paragraph 11 of the writ application.



8. The advertisement notice, as brought on record by way of Annexure-1, was certainly not the basis for his engagement on daily wage basis, through office order, dated 12.06.1986. The advertisement, if at all was issued; it was meant for filling up the post/s on regular basis in regular pay-scale. The petitioner's entry into service and his continuance can thus safely be said to be back door, there being no denial of the fact that his initial engagement was on the basis of recommendation made by an M.L.C. and not on the basis of any definite process of selection, as claimed by the petitioner.

9. Mr. Umesh Pd. Singh, learned senior counsel, appearing on behalf of the petitioner, has placed reliance upon a Supreme Court decision, in case of "***Bharat Sanchar Nigam Limited Vs. Bhurumal***", reported in **2014 (7) SCC 177**, in support of his contention that the petitioner's termination, after his thirteen years of continuous service on daily wage basis is wholly arbitrary and illegal. The said decision of the Supreme Court has no application in the facts and circumstances of the present case, as the said case had arisen out of an industrial dispute, where the Industrial Tribunal had held, on the basis of evidence, that termination of service without complying with the requirements of Section 25 (F) of the



Industrial Disputes Act, 1947, was bad and had directed for reinstatement of the workman. The writ petition and the intra-Court appeal, preferred by the Bharat Sanchar Nigam Limited, against the order of the Tribunal were dismissed. The Supreme Court, upholding the view taken by the Tribunal in the facts and circumstances of that case, had directed for retrenchment compensation in lieu of reinstatement with back wages. Learned senior counsel, appearing on behalf of the petitioner, has placed reliance upon the decisions of Supreme Court, in cases of "**Tata Memorial Hospital Workers Union Vs. Tata Memorial Centre and Another**", reported in **(2010) 8 SCC 480**, and "**Secretary, State of Karnataka and Others Vs. Uma Devi (3) and Others**", reported in **(2006) 4 SCC 1**. Various other decisions have also been relied upon by the learned senior counsel, including **AIR 1952 SC 16 [Commissioner of Police, Bombay Vs. Gordhandas Bhanji]**, **AIR 1985 SC 941 [Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others]**, **(1998) 9 SCC 104 [State of Bihar Vs. Kaushal Kishore Singh and Others]**, **2006(3) PLJR 376 [Chief Engineer, Ranjit Sagar Dam & Anr. Vs. Sham Lal]** and **1997(1) PLJR 664 [Mankant Pathak & Ors. Vs. Bhupendra Jha & Ors.]**. He has also submitted that



though the petitioner had the alternative remedy under the Industrial Disputes Act, 1947; it should not come in the way of maintainability of the present writ application since it has been heard on merit by this Court. He has further placed reliance upon Supreme Court decision, in case of **"The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changannacherry"**, reported in **AIR 1971 SC 82 and other decisions**. I am not discussing the decisions cited by Mr. Umesh Pd. Singh, learned senior counsel, on the issue of maintainability on the ground of availability of alternative remedy, in the present facts and circumstances of the case.

10. I have heard the matter at length on merits. This is not in dispute that the petitioner was engaged on daily-wage basis, in the Nigam, on the recommendation of an M.L.C., despite the directives issued by the Bureau of Public Enterprises, Bihar, not to make such engagement. His initial engagement cannot be said to be based on the advertisement, as referred to by the petitioner. His claim that the appointments were made after following due procedure is not at all sustainable, since as per his own showing, only such candidates were said to have been allowed to participate in the interview, who were

not engaged elsewhere, even on temporary basis. This was in complete violation of Articles 14 and 16 of the Constitution of India. This fact supports the finding of the Committee, constituted by the Agriculture Department, to inquire into the irregularities committed in appointments in the Nigam.

11. This is an admitted fact that the report of the said Committee of the Agriculture Department was considered by the Bureau of Public Enterprises and upon the concurrence recorded by the Bureau; the Nigam took a decision to end the petitioner's engagement. No dispute has been raised over the jurisdiction of the Bureau of control over the concerned Nigam. The role of the Bureau has been considered in a Division Bench decision of this Court, in case of **Managing Director, B.S.T.B. Publishing corporation Ltd. & Anr. Vs. Md. Sahabuddin & Ors.**", reported in **2001(4) PLJR 335**, Paragraphs 18 and 19 of which are relevant and are being extracted hereinbelow:-

"18. The Governor of Bihar, in exercise of power conferred under Article 166(3) of the Constitution of India made Rules of Executive Business (for short 'the Rules'). Rule 5 of the Rules provides that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between those departments as laid



down therein. Rule 12(1) provides, inter-alia, that no department shall without previous consultation with the Finance Department authorise any orders (other than orders, pursuant to any general or special delegation made by the Finance Department) with regard to the matter involved therein. Clause (b) of the said Rule relates to the number of grading or cadre of posts or the emoluments or other conditions or service of posts. In the First Schedule, the Secondary, Primary and Adult Education Department is at Item no. 39. The control of the corporation is under the aforesaid Department. The Finance Department is at Item no. 6. It vide resolution no. 2124 dated 1.3.1976 created a Bureau (respondent no. 4) and it is shown as one of the departments of the Finance Department under Item no. 6 (41) of the First Schedule of the Rules. One of the power and functions of the Bureau is to advise and co-ordinate about the salary and service conditions of the Public Sector undertakings. A copy of the said resolution has been appended as Annexure 4/A of the counter-affidavit filed on behalf of respondents no. 3 and 4 in the appeal.

19. The Government of Bihar, Finance (Public Enterprises Bureau) Department, vide notification dated 1.3.1985, has put several public undertakings and corporations, including the corporation in question under the control/purview of the



Bureau. The Corporation has been described in the aforesaid notification at Category (Kha) (Services Oriented Corporations). Thus, according to the decision taken by the State Government, the Corporation is under the control/purview of the Bureau and one of the powers and functions of the Bureau, as stated above, is to advise and co-ordinate about the salary and service conditions of the Public Sector Undertakings, which include the Corporation."

12. Further, admittedly, the petitioner was working as a daily wager and he did not have any right to hold the post. In my opinion, the manner in which he came to be engaged as daily wage employee, as is evident from the facts discussed above; he is not entitled for consideration of his case for regularization of his service in terms of Supreme Court decision, in case of ***Uma Devi*** (*supra*).

13. Last, but not the least, the conduct of the petitioner in deliberately suppressing the facts and making misleading and inaccurate statements in the writ application, as discussed above, disentitles him of any relief, in a proceeding under Article 226 of the Constitution of India. It was well known to the petitioner that his initial engagement had come to an end on 28.08.1986, vide letter No. 3109, as is evident from Paragraph 16 of the counter

affidavit. This statement has not been denied in the reply filed by the petitioner. On the one hand, he has taken a plea in the writ application that his engagement on daily wage basis was renewed from time to time, after this fact having been controverted in the counter affidavit, in his reply he has stated that it was not renewed after 1986. To seek remedy, under Article 226 of the Constitution of India, a person must approach this Court with clean hands and it has been consistent approach of the superior Courts that petitions containing misleading and inaccurate statements must be dismissed. As has been laid down by Supreme Court, in case of **"The Chancellor and Another Vs. Dr. Bijayananda Kar and Others"**, reported in **AIR 1994 SC 579**, suppression of material facts made when the petitioner has knowledge of the same, is fatal for maintaining a writ application.

14. In the facts and circumstances of the case, as discussed above, I am not inclined to entertain this writ application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

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