

A

ARUN KUMAR ROUT AND ORS.

v.

STATE OF BIHAR AND ORS.

NOVEMBER 20, 1997

B

[G.N. RAY AND S.P. BHARUCHA, JJ.]

*Service Law—Appointment on daily wages—Regularisation—Subsequent termination of services—Validity of—Government of Bihar—Health Department—Appointment of appellants on daily wages—Appointment regularised subsequently—Thereafter services of the appellants terminated—Ground that appointments were made without following due procedure—Writ preferred by appellants dismissed by High Court—Hence appeal before this Court—Held, the appellants had not been appointed by following the due procedure and therefore they cannot claim regularisation as a matter of course—But considering the fact that (i) they had satisfactorily served the department even without getting any salary for a long; (ii) they were not guilty of any fraud or sharp practice; (iii) they did not lack in requisite qualification and (iv) they had been appointed against sanctioned posts, the appellants deserve sympathetic consideration—Direction that 50 per cent of the sanctioned posts which were held by these appellants should be filled from amongst the appellants on the basis of their inter se merit position by taking into account their academic qualifications by waiving question of age bar if any and usual procedures for such appointment—The remaining 50 per cent of the said sanctioned posts, will be filled up on regular basis by throwing it open to the members of the public and following the procedure prescribed for such appointment—The remaining appellants who will not be absorbed against 50 per cent of the said sanctioned posts will be entitled to compete for appointment along with other eligible candidates but they will not be treated unsuitable on account of age bar—They will be given a credit of 25 per cent marks for the experience they have gained—This order being confined to the special facts of this case is not to be treated as a precedent.*

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No.8336 of 1997.

From the Judgment and Order dated 23.9.94 of the Patna High Court in C.W.J.C. No. 13043 of 1993.

H

Shanti Bhushan, Jayant Bhushan and (M.C. Dhingra) for the Appellants.

B.B. Singh for the Respondents. A

The following Order of the Court was delivered :

Leave granted.

Heard learned counsel for the parties. This appeal is directed against the order dated 23.9.1994 passed by the Patna High Court in CWJC No. 13043 of 1993. The writ petition filed by the appellants, 20 in number, claiming regularisation in the Health Department of the Government of Bihar was dismissed by the impugned judgment. All the said 20 appellants were appointed on 1st of January 1980 by the Civil Surgeon, Dumka in Class III and Class IV posts as daily wager. On 30th March 1989 the appointments of the appellants were regularised on the recommendation of the Appointment Committee. On 25.8.1993 the District Level Establishment Committee issued show cause notices to the appellants asking them to show cause why their appointments should not be cancelled in view of the fact that they got irregular appointments. Ultimately on 14.10.93 the services of the appellants were terminated. It has been found as a matter of fact that at the time of initial appointment, no advertisement had been given and the names of these appellants were also not sponsored by the Employment Exchange. There is, however, no dispute that they are not lacking in requisite qualifications for appointment to the respective posts in Class III or Class IV. There is also nothing on record to suggest that in obtaining the said appointments the appellants were guilty of any fraud or privy to any irregularity. Although in the matter of getting appointment in the Government service, the procedure required to be followed for such appointment cannot be by-passed and if the initial appointment was illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following due procedure cannot claim as a matter of right to be regularised. This Court however has looked with sympathy when question of regularisation came for consideration in cases of temporary or adhoc appointments, even made improperly if the incumbents had been allowed to continue for a long time because of the human problem involved in such continued service. In the instant case, all the appellants after getting appointments continued for more than five years and it also appears from the records of the case that they got salary initially for a few months and thereafter continued in service without getting any salary whatsoever from 1989 up to some period of 1992. Thereafter the salary had been paid to them until the services were terminated. It may be stated that there is nothing on record to suggest that the service rendered by the appellants was otherwise unsatisfactory. It may also be stated that such

- A salaries had been paid to these appellants after a departmental inquiry indicating that even though there were irregularities in the appointment but the appellants had requisite qualifications for the respective post to which they were appointed. Although the appellants had not been appointed by following the due procedure and therefore, they cannot claim regularisation as a matter of course but considering the fact that they had satisfactorily served the department even without getting any salary for a long time and they were not guilty of any fraud or sharp practice and also did not lack in requisite qualification and they had been appointed against sanctioned post, we feel that the appellants deserve sympathetic consideration in getting appointment against such sanctioned posts on humane consideration. Considering the
- C special facts of this appeal it appears to us that it will be just and proper consistent with ends of justice to direct that 50 per cent of the sanctioned posts which were held by these appellants should be filled from amongst the appellants on the basis of their *inter se* merit position by taking into account their academic qualifications by waiving question of age bar if any and usual procedures for such appointment. The remaining 50 per cent of the said
- D sanctioned posts, will be filled up on regular basis by throwing it open to the members of the public and following the procedure prescribed for such appointment in the State of Bihar. The remaining appellants who will not be absorbed against 50 per cent of the said sanctioned posts will be entitled to compete for appointment in the balance 50 per cent posts along with other
- E eligible candidates but they will not be treated unsuitable on account of age bar. On the contrary, in the matter of assessment of merit they will be given a credit of 25 per cent marks for the experience they have gained for services rendered by them for the said long period of 5 years or more. These directions are given on consideration of the special facts of this case and this order being confined to the special facts of this case is not to be treated as a
- F precedent. The appeal is accordingly disposed of without any order as to costs. We reasonably expect that the concerned authorities will make the exercise as early as practicable for filling up the vacant sanctioned posts preferably within a period of six months from today.

T.N.A.

Appeal disposed of.