
(2006) 12 JH CK 0007
In the Jharkhand High Court

Anand Kishore Shah and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Citation : (2007) 2 JCR 328

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—By the Court.—In this writ application the petitioners have prayed for quashing the part of the letter contained in Memo No. 1441 dated 8.9.2003 (Annexure-9) issued under the signature of the Civil Surgeon-cum-Chief Medical Officer, Pakur whereby the petitioners' salary along with several other persons were kept in abeyance and also for quashing the orders contained in Memo Nos. 221, 259, 261 dated 6.8.2004 and 11.8.2004 (Annexures-12-14) issued under the signature of Incharge Medical Officer by which it has been communicated that the petitioners have been removed from their services and no work will be taken from them. The petitioners have further prayed for their reinstatement in the service with consequential benefits. The petitioners have also prayed for a direction to the respondents to pay the arrears of salary from July 2003 till date and also pay the arrears of salary to the petitioner No. 1 for the period from February 1999 to December 1999 and January to February 2000, for payment of arrears of salary to the petitioner Nos. 2 and 3 for the months of January to February 1999, November to December 1999 and January to February 2000.

2. According to the petitioners, they were working on temporary basis since 1974-75 and were doing the work of spraying D.D.T. in the Health Department and there was no break in their service. In 1978 the petitioners were appointed against the vacant post temporarily on the basis of their past experience. In the year 1980, the Chief Malaria Officer, Bihar, Patna had called all the names of the daily wagers and temporary employees in order to absorb them on regular basis

against the vacancies. Thereafter, on the basis of their continuous service the petitioner Nos. 1 & 2 were appointed on 1.5.1980 and joined on 12.5.1980, on the post of Nigrani Karyakarta. The petitioner No. 3 was also similarly appointed by letter contained in Memo No. 2022 dated 17.5.1980. After giving his joining, the petitioner No. 1 was working in the Office of the District Malaria Officer, Dumka w.e.f. 17.6.1980 and thereafter, he was sent to Primary Health Centre Littipara, Pakur. The petitioner No. 2 was transferred and posted to Primary Health Centre Kathikiund, Dumka. In August 1982, he was transferred to Primary Health Centre Pakuria. He was again transferred to Primary Health Centre, Maheshpur in 1998. He was ultimately transferred to Amrapara in 2002 and he has been working there since then. The petitioner No. 3 was transferred and posted to the Primary Health Centre, Amrapara, Pakur in 1983 and he has been working at that place since then. The petitioners have been thus working continuously to the satisfaction of all the concerned/authorities and they were transferred from one place to another. The petitioners were also given time bound promotion. It has been submitted that there was a preliminary enquiry doubting the mode of employment of about 78 persons and show-cause notices were issued to the said persons (including the petitioners) in the year 1991/01. Thereafter, the petitioners filed their replies to the show-cause stating all the necessary details. After submission of their replies, the respondents were satisfied and no enquiry, thereafter, was made. Suddenly the petitioners were surprised to receive a letter issued under Memo No. 1441 dated 8.9.2003 under the signature of the Civil Surgeon-cum-Chief Medical Officer, Pakur by which the petitioners were informed that as per the direction of the Deputy Commissioner, Pakur, the salary of the petitioners along with some other persons will be kept in abeyance until further orders. Thereafter, the petitioners filled this writ application assailing the said order and alleging the same as arbitrary and illegal. During the pendency of the writ application the petitioners were served with individual letters contained in Memo Nos. 221, 259 and 261 dated 6.8.2004 and 11.8.2004 issued under the signature of the In-Charge Medical Officer, Additional Primary Health Centre, Amrapara by which the petitioners have been removed from the services pursuant to the letter contained in Memo No. 619 (5) dated 7.7.2004. The petitioners prayed for addition and amendment in the writ application in view of the subsequent event which was allowed in I.A. No. 361/05. It was stated that the said* impugned orders are wholly illegal and arbitrary as no notice was served on the petitioners giving them any opportunity of hearing before passing the said orders. It has been stated that the respondents have arbitrarily snatched away the livelihood of the petitioners without informing the reasons thereof which is wholly unjustified and violative of the principles of natural justice.

3. Counter affidavit has been filed by the State-respondents stating, inter alia, that the petitioners' appointments along with other persons have been found illegal and as such the order was earlier passed for keeping their services in abeyance pending enquiry. Subsequently, there was an enquiry and the

appointments of 32 persons in all were found illegal and the decision has been rightly taken for their removal. It has been stated that the petitioners' appointments were not legal and as such the order of confirmation and other orders have no legal value and that there is no arbitrariness or any violation of principle of natural justice.

4. Learned Counsel appearing on behalf of the petitioner submitted that the petitioners have been working against the vacant, sanctioned post and their services were regularized long ago. Their services were also confirmed by Annexure-17. The petitioners were transferred from one place to another and they were also given time bound promotion. The petitioners were earlier given show-cause notice which was replied. Having been satisfied with the reply to the show cause, no further action was taken against the petitioners. Suddenly, the impugned orders have been issued without earlier informing to the petitioners, the reason and without giving them any notice to that effect or without giving them knowledge of any enquiry or report thereof. The petitioners were not given any opportunity of hearing/representation and as such the impugned orders are wholly illegal and violative of principle of natural justice and are not sustainable in law.

5. Learned JC to SC-II, on the other hand, submitted that the petitioners' appointment along with other persons were found illegal after an enquiry and as the petitioners did not acquire any right to the said posts, there was no question of violating the principles of natural justice by not giving them any opportunity of hearing. It has been submitted that the petitioners are not entitled for any notice/hearing and the impugned orders are proper and legal.

6. After hearing the parties and considering the materials appearing on record. I find that the petitioners have been initially appointed on temporary basis and thereafter they have been transferred from one place to another. The petitioners' services were also confirmed and they were given time bound promotion. The said facts are uncontroverted and there is no denial by the respondents. In view of the said factual position, the petitioners cannot be suddenly stopped from working or cannot be removed from their services without giving them any notice informing the reasons for such action or without giving them any opportunity of hearing. The petitioners were neither informed about the reasons nor any charge was framed against them. The petitioners were not aware about the enquiry. The enquiry report of the enquiry which was allegedly made by the department was also not served/shown to the petitioner. The impugned orders are thus violative of the principles of natural justice and are arbitrary and illegal. In almost similar circumstances other similarly situated persons assailed the order in WP(S) Nos. 722 and 723/2004 with other analogous cases which were heard and decided by this Court and almost similar view has been taken and the impugned orders were quashed.

7. In the light of the aforesaid discussions, this writ application is allowed. The impugned orders as contained in Annexures-9 and 12-14 are, hereby, quashed.

The petitioners are held to be entitled to get their salary without any break in service.