
(2009) 03 JH CK 0035
In the Jharkhand High Court
Case No : L.P.A No. 91 of 2008

Anil Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0035

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Advocate : K.M. Verma, M.M. Sharma and L. Sharma, for the Appellant; A. Allam, Senior Standing Counsel II and N. Sharmin, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the appellant, Anil Kumar Singh, against the order dated 14.2.2008 passed by the learned Single Judge in W.P.(S) No. 4289/2007, by which the writ petition filed by him claiming regularization on the post on which he claimed to have been working on daily wages was rejected. The learned Single Judge was pleased to observe that there was no appointment letter to indicate on what basis the authority had appointed the petitioner/appellant herein on daily wages; hence no relief was granted to him and the writ petition was dismissed, against which this appeal has been preferred.

2. The counsel for the appellant first of all submitted that the petitioner-appellant had previously filed a writ petition bearing W.P (S) No. 6661/2006, whereby he had claimed regularization on the post of Peon-cum-Night Guard, wherein he was discharging duties on daily wages for more than 19 years and therefore, he claimed that he should have been granted relief of regularization. The writ petition was disposed of with liberty to the petitioner-appellant to file a representation before the concerned authority and the authority had been directed to consider his representation in regard to his claim for regularization. The respondent-authorities, therefore, decided the representation and rejected the same by a speaking order, indicating that there was no regular vacancy

available and the petitioner-appellant had been appointed on a consolidated salary, which too was generated partly out of the contingency fund of the school and partly by way of contribution from the teachers and students of the school. Thus, it was held that as his appointment was neither on a sanctioned post, nor any post was available, his claim for regularization as class-IV servant could not be accepted. Consequently the representation was rejected. Hence, the appellant filed another writ petition bearing W.P (S) No. 4289/2007, out of which this appeal arises, wherein he had reiterated his prayer claiming regularization on the plea that he had been discharging duties on daily wages and having continued on the post of daily wages for the last 19 years, he had a right to be regularized on regular basis. The writ petition was dismissed for the reason, already recorded hereinabove.

3. The counsel for the appellant submitted that the petitioner-appellant had been discharging duties uninterruptedly for the last 19 years and therefore, his representation could not have been rejected on the ground that a regular post was not available as he was receiving salary from the contingency fund and therefore, the order rejecting his representation was fit to be quashed and set aside.

4. Countering the submission of the petitioner-appellant, it was submitted by the counsel for the respondents that the petitioner-appellant was never engaged as a regular employee by the respondent No. 5, the Headmaster, Adarsh Madhya Vidyalaya, Dhori, P.O. Bermo, District - Bokaro. He further submitted that the petitioner-appellant although had been engaged in the school by the headmaster, the same cannot be treated as regular since his appointment was neither on daily wages, nor there was any appointment granting legal status to the appellant to continue on the post or to claim regularization, as he was not drawing salary from the school and the salary that was being paid to him was out of the contribution made by the teachers and the students of the school.

5. Having deliberated over the submission and counter-submission of the counsel for the parties, it is difficult to accept the submission of the counsel for the appellant, as the appellant although might have been discharging duties in the school for the last 19 years, the fact remains that he had no order of appointment in his favour nor his name was on the muster roll in regard to payment made to him, treating him to be on daily wages. In fact, the appellant had not even been discharging duties on daily wages and practically his status was that of a domestic servant, who was related to the headmaster of the school and was permitted to discharge duties as Night Guard and salary was paid to him out of the contributions made by the teachers and students of the school.

6. In view of this position, it is difficult to attach any legal status to him either as daily wage earner or even temporary employee of the school as the duties discharged by him was clearly an internal and personal arrangement made by the Headmaster of the school. In that view of the matter, the appellant, cannot claim that he had a right to be regularized on the post on which he had been

functioning.

7. Besides this, there is also a technical bar against the petitioner-appellant clearly for the reason that when he filed the writ petition, out of which this appeal arises, he was already out of service and therefore, the utmost that he could do was to challenge his removal from service, disclosing the fact that he was not in service, when he filed the writ petition. The appellant appears to have been ill-advised to file the writ petition claiming regularization clearly missing the fact that he could not have claimed regularization without assailing the order of his removal from service.

8. The appellant for all these reasons could not have been granted the relief by the learned Single Judge and hence, we are of the view that this appeal has no substance on merit. Having said that, we cannot overlook the fact that the petitioner-appellant was not a person of sufficient legal understanding and might not have been aware of the fact that he had not attained any legal status to discharge duties in the school as he had no appointment order in his favour, nor he had any legal status oven to discharge duties on daily wages and the Headmaster of the school parhaps gave him an impression that he is an employee of the school by granting him salary from the so-called contingency fund and by virtue of he contribution made by the teachers and students of the school.

9. We are, therefore, anxious and take notice of the fact that a gullible and semi-literate employee has been exploited at the hands of the school authorities including the Headmaster where a false impression was created that he was a regular employee of the school, when the actual fact was otherwise.

10. The appellant, therefore, in our view, requires to be treated with compassion and sympathy by the authorities. Hence, in the interest of equity and justice as also taking an overall view of the circumstance in which the appellant had been discharging duties for the last 19 years, we feel compelled to direct the respondents to grant priority to the appellant, if any appointment in the school is made in future either on regular basis or on daily wages. Hence, if any appointment is made in that capacity, the appellant shall be granted the first priority.

We, thus, dismiss this appeal, subject to the observation made hereinabove in favour of the appellant.