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**(2016) 08 JH CK 0123**

**In the Jharkhand High Court**

**Case No : W.P. (S) No. 2156 of 2015 with I.A. No. 4888 of 2016**

Anirudh Kumar Gupta

APPELLANT

Vs

Jharkhand State Mineral Development Corporation Limited

RESPONDENT

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**Date of Decision : 31-08-2016**

**Acts Referred:**

**Citation :** (2017) 2 AIRJharR 335 : (2017) 2 JBCJ 159 : (2017) 2 JCR 505 :  
(2017) 2 JLJR 75

**Hon'ble Judges :** Mr. H.C. Mishra, J.

**Bench :** Single Bench

**Advocate :** M/s. Pandey Neeraj Rai and Rohit Ranjan Sinha, Advocates, for the Petitioner; Mr. Rupesh Singh, Advocate, for the Respondent-Jharkhand State Mineral Development Corporation Ltd.; Mr. R.K. Shahi, J.C. to AAG, for the Respondent-State

**Final Decision :** Disposed Off

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## **Judgement**

Mr. H.C. Mishra, J.—Heard learned counsel for the petitioner, learned counsel for the Jharkhand State Mineral Development Corporation Limited, as also learned counsel for the respondent State.

2. The petitioner has filed this writ application claiming the benefits of regularisation of his services by the respondent Jharkhand State Mineral Development Corporation Limited (hereinafter referred to as the "Corporation"), in which the petitioner is working on daily wages since 29.6.1990, when the petitioner was appointed as Unskilled Labour by the respondent Corporation vide office order dated 23.6.1990, as contained in Annexure-1 to the writ application.

3. It is the case of the petitioner that after serving a long time, when the service of the petitioner was not regularized, the petitioner along with other similarly situated employees of the respondent Corporation moved this Court in W.P.(S) No. 5011 of 2004 for regularisation of their services. The matter was taken up on 31.1.2014, when in absence of the counsel of the petitioners, it was pointed out

by learned counsel for the respondent Corporation that the Corporation had already decided to regularize the services of the petitioners and to that effect, the statement was also made in the counter affidavit, filed on behalf of the respondent Corporation. It was also submitted by the respondent Corporation before the Court that the petitioners' grievances had already been redressed and accordingly, the writ application has become infructuous. On that date, no one could appear for the petitioners in the writ application and in view of the submission of learned counsel for the respondent Corporation, the said writ application was disposed of as infructuous, by order dated 31.1.2014, passed in W.P.(S) No. 5011 of 2004, as contained in Annexure-5 to the writ application.

4. The petitioner has brought on record an office order, issued by the respondent Corporation, as contained in Memo No. 61 dated 8.1.2015, which shows that in view of the resolution No. 37/36/07 adopted in the meeting of the Board of Directors, the services of the employees of the respondent Corporation, according to the list enclosed, were regularized. The employees who had not passed the Intermediate examination, their services were regularised in the Pay Band of Rs. 4,4407,440/- with Gr. pay of Rs. 1,650/-, and the services of the Intermediate pass employees were regularised in the Pay Band of Rs. 5,20020,200/- in the Gr. Pay of Rs. 1800/-. The name of the petitioner also finds place in the said order at Serial No. 52, which also shows the date of joining of the petitioner in the respondent Corporation as 29.6.1990.

5. The petitioner has filed this writ application claiming that even though the service of the petitioner has been regularised by the order as contained in Annexure-9 to the writ application, but the benefit thereof has not yet been given to him. The resolution of the Board of Directors with respect to agenda item No. 36/07 has also been brought on record as Annexure-4 to the writ application.

6. A counter affidavit has been filed on behalf of the respondent Corporation, in which, the claim of the petitioner has been denied. It is stated in the counter affidavit that the counter affidavit was filed in the earlier writ application being W.P.(S) No. 5011 of 2004, on the basis of 36th Board Meeting and the action taken notes, pursuant to 36th Board Meeting was placed for adoption in 37th Board Meeting and in the said Board Meeting, the action taken report of 36th Board Meeting had been accepted and same had also been adopted. However, in 38th Board Meeting, when the action taken note of 37th Board Meeting was placed for adoption, the Board nullified all the decisions of the 37th Board Meeting and the same were directed to be placed for reconsideration in the next Board Meeting. The minutes of the 37th and 38th Board Meetings have been brought on record as Annexures-B and C to the counter affidavit, filed on behalf of the respondent Corporation.

7. The minutes with regard to Agenda Item No. 38/B under the consideration of 38th Board Meeting, shows that it was noted by the Members that the 37th Board Meeting was held in absence of the Secretary, Department of Mines and

Geology, which is the Controlling Government Department of the respondent Corporation, because of which most of the agenda items could not be critically deliberated upon, and hence the Members, present in the meeting unanimously decided to nullify the minutes of 37th Board Meeting and directed to resubmit all the proposals in the next meeting. It is also the stand of the respondent Corporation that the Administrative Department of the respondent Corporation, namely, the Department of Mines and Geology had issued a letter vide Memo No. 88 dated 27.1.2015, whereby a Three Men Committee was constituted to inquire into the various matters, pertaining to the respondent Corporation, and accordingly, the office order was issued by the respondent Corporation bearing Memo No. 180 dated 28.1.2015, whereby all the appointments made in January, 2015 had been stayed with immediate effect. It is further stand of respondent Corporation that since the minutes of the meeting of 36th Board Meeting was adopted in 37th Board Meeting and the 37th Board Meeting was annulled in the 38th Board Meeting of the respondent Corporation, the minutes of the 36th Board Meeting also stood automatically annulled.

8. An interlocutory application has been filed on behalf of the petitioner, but certain other developments have been brought on record by way of said interlocutory application, which are not of much relevance, in view of the order that is being passed in this case.

9. Learned counsel for the petitioner has submitted that since the services of the petitioners had already been regularised by the respondent Corporation in its 36th Meeting of the Board of Directors, and this fact was submitted before this Court in W.P.(S) No. 5011 of 2004, and subsequently an office order had also been issued, regularising the services of the petitioner and the other employees, pursuant to the 36th and 37th Board Meetings, the petitioner is entitled to the benefit of the regularization of service and the same must be granted to the petitioner.

10. Per contra, the submission of the learned counsel for the respondent Corporation is that the decision for regularization of the service of petitioner and the other employees was wrongly taken and the office order, as contained in Annexure-9 to the writ application was wrongly issued by the respondent Corporation. It is also submitted by learned counsel for the respondent Corporation that by the order, as contained in Memo No. 180 dated 28.1.2015, which has been brought on record as Annexure-A to the counter affidavit, the operation of the order dated 8.1.2015, as contained in Annexure-9 to the writ application has been stayed. However, the submission of learned counsel for the respondent Corporation in this regard cannot be accepted in view of the fact that had the respondent Corporation decided to stay or withdraw the office order dated 8.1.2015, as contained in Annexure-9 to the writ application, it would have done so in specific terms. No order has been brought on record either withdrawing the order dated 8.1.2015 or putting the same in abeyance. The order, as contained in Annexure-A to the writ application only states that the

appointments, made in the month of January, 2015 have been stayed, but the case of the petitioner was not of any appointment, rather it was of regularisation of service.

11. The other contention of the learned counsel for the respondent Corporation is that the 37th Board Meeting was not attended by the Secretary of the Department of Mines and Geology and accordingly, it was annulled. Consequently the 36th Board Meeting also stood annulled automatically, as the minutes of the 36th Board Meeting were approved and adopted in the 37th Board Meeting.

12. During the course of arguments, it was also submitted by learned counsel for the respondent Corporation for the first time, that in the 36th Board Meeting, there was no decision to regularize the services of the petitioner, and accordingly, even in the 37th Board Meeting, the services of the petitioner were not regularised. However, as regards the order dated 8.1.2015, as contained in Annexure-9 to the writ application, there is no denial of this document and it is only submitted by learned counsel for the respondent Corporation that this document had wrongly been issued by the respondent Corporation. Learned counsel for the respondent Corporation has also submitted that in the prevailing circumstances, at that time, it was mentioned before this Court in W.P.(S) No. 5011 of 2004, in view of the decision of the Board Meeting, that the respondent Corporation had already decided to regularize the services of the petitioner and the other employees at its 36th Board Meeting and had submitted before the Court that the writ application had become infructuous, which was also accepted by this Court, and the case was disposed of as infructuous, relying upon the statements made in the counter affidavit and the submission of learned counsel for respondent Corporation. It is submitted that however, later the circumstances changed in view of 38th Board Meeting, which had found that 37th Board Meeting was wrongly held and its resolutions have been annulled.

13. It is also submitted by learned counsel for the respondent Corporation that in one L.P.A. No. 261 of 2015, the Division Bench of this Court has taken note of the resolution of the 38th Board Meeting and disposed of the said Letters Patent Appeal in view of the resolution of 38th Board Meeting.

14. Having heard counsels for both the sides and upon going through the record, I find that admittedly, the petitioner is still working under the respondent Corporation. The claim of the petitioner is that his service has been regularised at least with effect from 8.1.2015 by the office order, as contained in Annexure-9 to the writ application. Admittedly, the fact that the said office order was actually issued, is not denied by the respondent Corporation, rather it is only submitted by learned counsel for the respondent Corporation that the operation of the said office order had been stayed by the order, vide Memo No. 180 dated 21.8.2015, as contained in Annexure-A to the counter affidavit. As mentioned above, no order has been brought on record either withdrawing the order dated 8.1.2015 or putting the same in abeyance, and the order, as contained in Annexure-A to the writ application only states that the appointments, made in the month of

January, 2015 had been stayed, but the case of the petitioner was not of any appointment, rather it was of regularisation of service.

15. Though learned counsel for the respondent Corporation has denied the fact in course of his argument that the services of the petitioner were regularised pursuant to the 36th Board Meeting, but this submission of the learned counsel is self contradictory, as it is also submitted by him that in the circumstances prevailing then, it was submitted before this Court in the earlier writ application that the respondent Corporation had already decided to regularize the services of the petitioner and the other employees at its 36th Board Meeting. The fact remains that the order, as contained in Annexure-9 to the writ application, clearly shows that it has been issued pursuant to the 36th Board Meeting. The submission of learned counsel for the respondent Corporation that resolution of the 36th Board Meeting is no more in force in view of the 38th Board Meeting, in which, the earlier resolution, had been recalled, also cannot be accepted. The fact remains that it was stated before this Court on affidavit in W.P.(S) No. 5011 of 2004 that the respondent Corporation in its meeting of the Board of Directors had decided to regularise the services of the petitioner and the statement to that effect was also made by the learned Counsel for the respondent Corporation, submitting that the writ application had become infructuous, which was accepted by this Court disposing of the writ application as infructuous. This clearly results in the situation that the respondent Corporation now cannot take a U-Turn from that stand, declaring that the decisions of the 36th Board Meeting had been annulled. In fact the statement before this Court on affidavit in W.P.(S) No. 5011 of 2004 that the respondent Corporation in its meeting of the Board of Directors had decided to regularise the services of the petitioner and the submission to that effect made by the learned Counsel for the respondent Corporation, have got the seal of this Court by order dated 31.1.2014, passed in W.P.(S) No. 5011 of 2004, as contained in Annexure-5 to the writ application.

16. In view of the aforementioned discussions, though it is the stand of the respondent Corporation that there is some inquiry pending by the State Government with respect to the appointment/regularisation and other affairs of the respondent Corporation with respect to 36th and 37th Board Meetings, even during the pendency of any such inquiry, if any, the petitioner cannot be deprived of the benefit, which has accrued to the petitioner by order dated 31.1.2014, passed in W.P.(S) No. 5011 of 2004, as contained in Annexure-5 writ application, due to action of the respondent Corporation themselves.

17. In that view of the matter, the respondent Corporation is directed to give all due benefits to the petitioner, arising out of its office order, vide Memo No. 61 dated 8.1.2015, as contained in Annexure-9 to the writ application, even during the pendency of the inquiry by the State Government, if any, positively within the period of eight weeks from the date of communication/production of this order.

18. This writ application is accordingly, disposed of with the directions as above.

The aforesaid Interlocutory Application also stands disposed of.

19. It is made clear that this Court has not considered the other claims of the petitioner, which, the petitioner shall be free to raise before the appropriate forum.