
(2016) 09 JH CK 0077
In the Jharkhand High Court
Case No : W.P. (S) No. 4811 of 2010

Anita Kumari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 121 : (2017) 2 JBCJ 138 : (2017) 1 JLJR 164

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : J.C. to Sr. S.C.I, for the Respondent-State [In both the cases]; M/s. Binod Kumar Dubey, Rajni Kanti Ojha and Md. Kaisar Alam, Advocates, for the Petitioners [In both the cases]; Mr. Ashok Singh, C.G.S.C, for the Respondents - UOI [In both the cases]

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J. - Both these aforesaid writ applications have been heard together since the facts delineated and disclosed therein and the relief sought for are more or less similar, with the consent of the respective counsels, the matters have been heard analogously and are being disposed of by this common judgment.

W.P. (S) No. 4811 of 2010

2. The captioned writ application has been filed, praying, inter alia, for issuance of an appropriate writ/direction for quashing the order dated 2.1.2010 (Annexure-5), passed by the Dy. Commissioner-cum-Chairman, District Rural Development Authority, Hazaribagh, whereby the services of the petitioners have been terminated.

3. Sans details, the facts as disclosed and delineated in the writ application are that the petitioner no. 1 was appointed on 15.12.1987 by the order of the Dy. Commissioner, Hazaribagh and the petitioner nos. 2 and 3 were appointed on

28.01.1985 by the approval of the competent authority. It has been averred in the writ application that after appointment, the petitioners were posted at different blocks and they are performing their duties to their best of ability and there was no complaint against them. It has been further averred that the petitioners were getting their salary for the working period, but when the petitioners were not paid their salary, the petitioner no. 1 Anita Kumari Prasad moved before this Court in W.P. (S) No. 6763 of 2007 and this Court passed the order on 30.07.2008 for payment of salary. The entire salary of the petitioner no. 1 and others were paid in view of the order passed by this Court. Again the salary of the petitioners was withheld for the period from August, 2008 till date and the petitioners moved this Court by filing W.P. (S) No. 2926 of 2009 on 11.09.2009 this Court passed the following order :

"If the petitioners make application to the Respondent No. 2 for payment of their salary, Respondent No. 2 will look into the matter and after conducting such enquiry, as he may deem fit, will pass a reasoned order within six weeks of the date on which he received the application along with certified copy of the order about the entitlement of petitioners in regard to their salary."

Thereafter, the petitioners, in compliance of the direction of this Court, filed representations along with the order of this Court dated 11.09.2009 on 30.10.2009 before the Dy. Commissioner, Hazaribagh. Thereafter, Dy. Commissioner, Hazaribagh, without considering the spirit of the order dated 11.09.2009, passed in W.P. (S) No. 2926 of 2009, the representation filed by the petitioners and without deciding as to whether the petitioners are entitled to get their salary or not, as well as without giving any opportunity of being heard and in violation of the principles of natural justice, issued the order of termination dated 02.01.2010 (Annexure-5).

The Dy. Commissioner without considering the fact that the petitioners are working since long and their appointment is legal as it has been done by the competent authority, has passed the impugned order. Other similarly situated persons, namely, Indu Kumari, Maya Sahu, Renu etc. who were appointed with petitioners and working in other districts are still working and they are getting their salary and hence the action of the respondents is discriminatory and on this score alone the impugned order is fit to be set aside.

The petitioners have filed I.A. No. 1373 of 2010, which was heard on 12.08.2010 by this Court, wherein order has been passed that the prayer made in W.P. (S) No. 2926 of 2009 is for payment of salary for the working period and the prayer was also to amend in the prayer portion as the impugned order relates to termination of service, so the nature of prayer will be changed and hence, the petitioners were directed to file separate writ petition challenging the termination.

Earlier also, the petitioner no. 1 Anita Kumari Prasad had filed W.P. (S) No. 6763 of 2007, which was disposed of on 30.07.2008, wherein, counter affidavit has been filed, mentioning, therein, that the fund was not available and they

demanded the fund and payment was made. At, no point of time, the respondents have stated that the petitioners have not performed their duty diligently. Vide order dated 20.02.2009, the Dy. Commissioner, Hazaribagh wrote letter to the Secretary, Rural Development Department, Jharkhand, Ranchi for allotment of fund and on 09.09.2008, D.D.C. Hazaribagh also wrote to the Government and vide letter dated 29.4.07, the Dy. Development Commissioner, Hazaribagh wrote to the Govt. that 8 Sewikas including the petitioners are appointed on vacant and sanctioned posts after following all procedures and norms, which is prescribed under the law and they are the regular employees, whose services have been confirmed and they are performing their duties and, therefore, they are entitled to get the salary.

A supplementary affidavit has been filed on behalf of the petitioners, wherein, it has been, inter alia, stated that other similarly situated Sevikas are getting their salary.

Left with no other efficacious, alternative and speedy remedy, the petitioners have been constrained to approach this Court invoking the extraordinary jurisdiction under article 226 of the Constitution of India for redressal of their grievances.

4. Counter affidavit has been filed on behalf of the respondent nos. 5 and 6, repelling the contentions made in the writ application. It has been inter alia, submitted in the counter affidavit, that as per the order passed by this Court in W.P. (S) No. 6763 of 2007 on 30.07.2008, the salary of the petitioners were paid in light of the direction issued by the Rural Development Department, Government, dated 06.09.2008 from the fund of DRDA. Thereafter, a request was sent to the Government for the fund for payment of due salaries from August, 2008 to February, 2009 vide letter no. 497 dated 20.02.2009 and the aforesaid facts have also been accepted by the petitioners in his writ petition. It has been further averred that in reply to the letter no. 497 dated 20.02.2009, the Special Secretary to the Government, Rural Development Department, Jharkhand, Ranchi vide letter no. 4427 dated 13.06.2009 addressed to the Respondent No. 5 (Deputy Commissioner, Hazaribagh-cum-Chairman D.R.D.A., Hazaribagh) intimated that there was no jurisdiction for allotment of funds for payment of salary of the Gram Sevikas. The petitioner again filed a writ petition bearing W.P. (S) No. 2926 of 2009 for payment of the salary from August, 2008 for their working period and in the light of the order passed by this Court on 11.09.2009, the petitioner filed their representations before the Respondent No. 5 and in turn, the respondent no. 5 considered the representation of the petitioners. Vide letter no. R-20015/7/2006-D.R.D.A. dated 16.05.2006 issued under the Signature of the Deputy Secretary (D.R.D.A.), Ministry of Rural Development, Government of India, New Delhi, a direction was received that no payment of salary should be paid to the Gram Sevikas and the staff of Block level/N.R.E.P., staff from D.R.D.A., Administration Scheme and again vide letter no. 8417 Ranchi dated 27.11.2009 of the Special Secretary, Government of

Jharkhand addressed to the respondent no. 5, it has been intimated that there was no jurisdiction for allotment of funds for payment of salary of the Gram Sevikas and on the basis of the aforesaid letter, the respondent no. 5 by a reasoned order dated 02.01.2010 ordered for termination of the services of the Gram Sevikas. It has been further submitted that pursuant to the direction issued by the Government of India, Ministry of Rural Development vide letter no. R-20015/7/2006-D.R.D.A. dated 16.05.2006, all the Secretaries of the Rural Development Department of the State as well as Union territories sent instructions and instruction no. 6 clearly directs that Gram Sevikas and staff at block level/NREP staffs should not be paid from DRDA administrative scheme and accordingly the payment of the salaries of the Gram Sevikas has been stopped and vide order dated 02.01.2010 termination of the services ordered. Earlier, the Respondent No. 5 repeatedly requested the Special Secretary, Rural Development Department for release of funds for payment of salary for the working period. It has been further stated that in compliance of the order dated 30.07.2008 passed by this Court in W.P. (S) No. 6763 of 2007, the salary of the petitioners was paid upto July, 2008 and further in compliance to the order passed in W.P. (S) No. 2926 of 2009, the answering respondents repeatedly requested to the Government to provide allotment of funds for payment of arrears of salary from August, 2008 and, therefore, as per the order of Rural Development Department, Jharkhand vide letter no. 8417 dated 27.11.2009, service of the petitioners were terminated by order dated 02.01.2010 by a reasoned order. It has been further stated that the petitioners are bound by the terms and conditions of the employment and are not on the post of regular employment with the State Government and as such, their cases cannot be considered for regularization or reinstatement since the posts are not permanent and are scheme based.

5. Another counter affidavit has been filed on behalf of the respondent nos. 8, 9 and 10, wherein, they have almost adopted the stand taken in the counter affidavit filed by the respondent nos. 5 and 6.

6. Another counter affidavit has been filed on behalf of the respondent nos. 1 and 3, wherein, it has been submitted that the petitioners were appointed by the DRDA, Hazaribagh, temporarily in the post of "Gram sevika" on 15.12.1987 and continued in their service till 01.01.2010 and the petitioners were terminated from their services vide order dated 02.01.2010 by the Dy. Commissioner-cum-Chairman, District Rural Development Authority, Hazaribagh. It has been further averred that since the DRDA was established by the State Governments as registered societies in 1980. Thereafter, through DRDA Administration Scheme from 1999, the Ministry of Rural Development only agreed to share the financial burden with the State Governments. The Ministry of Rural Development is not the "owner" of DRDA in any manner. The employees in DRDA in a State are recruited by the State Government and, as such, the matter comes under the purview of the State Government, and the Central Government has no role in the matter and the Central Government is in no way concerned with the matter of

the petitioners and, therefore, the writ petition is liable to be dismissed in limine.

W.P. (S) No. 2926 of 2009

7. In the instant writ application, the petitioners have, inter alia, prayed for issuance of an appropriate writ/direction upon the concerned respondents to pay the salary of the petitioners for the working period i.e. from August, 2008 till date and further to direct the concerned respondents to pay their salary on monthly basis.

8. The facts, as disclosed in the instant writ application, in brief is that the petitioners are educated lady and vacancy occurred in news papers and accordingly, they applied for the post along with so many candidates and they are holding the qualification for the post and their cases were considered with other candidates and accordingly they were appointed on the post of Sewika vide order dated 23.01.1985 and their place of posting were also shown. It has been averred that during the course of their service period, they were transferred at different places and at present petitioner no. 1 is posted at Bishungarh Block and petitioner no. 3 is posted at Mandu Block and they are regularly working in their place of posting but from August, 2008 till date, their salary were not paid. One Anita Kumari Prasad moved before this Court in W.P. (S) No. 6763 of 2007 and this Court passed the order on 30.07.2008 for payment of salary. The entire salary of Anita Kumari Prasad and others were paid in view of the order passed by this Court. Again the salary of the petitioners was withheld for the period from August, 2008 till date. The petitioners filed several representations before the concerned Authority along with others on 15.12.2008, 19.02.2009 and 22.04.2009 but till date, no action was taken by the concerned authorities.

The petitioners, feeling aggrieved, have been constrained to approach this Court invoking the extraordinary jurisdiction under article 226 of the Constitution of India for mitigating their grievances.

Counter-affidavit has been filed on behalf of the respondent nos. 2, 4 and 5, repelling the contentions made in the writ application. It has been inter alia, submitted in the counter affidavit, that vide letter no. R-20015/7/2006-D.R.D.A. dated 16.05.2006 issued under the Signature of the Deputy Secretary (D.R.D.A.), Ministry of Rural Development, Government of India, New Delhi, a direction was received that no payment of salary should be paid to the Gram Sevikas and the staff of Block level/N.R.E.P., staff from D.R.D.A., Administration Scheme. Pursuant thereto, vide letter no. 8417 Ranchi dated 27.11.2009 of the Special Secretary, Government of Jharkhand addressed to the respondent no. 2, it has been informed that there was no justification for allotment of funds for payment of salary of the Gram Sevikas and on the basis of the aforesaid letter, the respondent no. 2 by a reasoned order dated 02.01.2010 directed for termination of the services of the Gram Sevikas. Earlier, the Respondent No.2 repeatedly requested the Special Secretary, Rural Development Department for release of allotment of funds for payment of salary of the Gram Sevikas. It has

been further stated that from the facts stated above and the enclosures made therein, it is crystal clear that the claim of the petitioners are not maintainable and the writ application is fit to be dismissed in limine.

9. Reply to the counter affidavit has been filed by the petitioners, wherein, it has been specifically stated that several Gram Sevikas who were appointed along with petitioners and posted in another districts, such as, Chatra, Koderma and Giridih in the Jharkhand State are still working and they are getting their salary and, as such, the respondents cannot adopt two different yardsticks.

10. Heard Mr. Binod Kumar Dubey, learned counsel for the petitioners and learned Sr. S. C. I for the respondent-State.

11. Mr. Binod Kumar Dubey, learned counsel for the petitioners has vehemently submitted that the petitioners are working since long and they are entitled to get the salary for the working period without any dispute. Learned counsel for the petitioners has submitted that the order passed by the Respondent vide order dated 09.01.2010 is without jurisdiction and based on violation of the principles of natural justice and neither any opportunity of hearing was provided before issuance of order and no reason is mentioned and similarly situated persons who were appointed along with the petitioners are working and they are getting their salary. Learned counsel for the petitioners has submitted that the order passed by the authority, is against the spirit of the order passed by this Hon'ble Court vide order dated 11.09.2009, wherein the Respondents were directed to pass a reasoned order regarding the entitlement of the petitioners in regard to their salary, but, contrary to the order passed by the Court, the Respondents-authorities have not stated any word whether they are entitled to get any salary or not, but they have terminated their services. Learned counsel for the petitioners has submitted that non-availability of fund is not a ground to dismiss the services of the petitioners. Learned counsel for the petitioners has submitted that none has been appointed in place of the petitioners and in other districts, others are continuing and getting salary. Learned counsel for the petitioners has submitted that several Gram Sevikas who were appointed along with petitioners and posted in another districts, such as, Chatra, Koderma and Giridih in the Jharkhand State are still working and they are getting their salary and, as such, the respondents cannot adopt two different yardsticks on pick and choose principle and hence, the action of the Respondents are discriminatory.

12. Per contra, Mr. Dhananjay Kumar Dubey, learned Sr. S.C. I for the respondent-State has vociferously submitted that vide letter no. R-20015/7/2006-D.R.D.A. dated 16.05.2006 issued under the Signature of the Deputy Secretary (D.R.D.A.), Ministry of Rural Development, Government of India, New Delhi, a direction was received that no payment of salary should be paid to the Gram Sevikas and the staff of Block level/N.R.E.P., staff from D.R.D.A., Administration Scheme. Pursuant thereto, vide letter no. 8417 Ranchi dated 27.11.2009 of the Special Secretary, Government of Jharkhand addressed to the respondent no. 2, it has been informed that there was no justification for allotment of funds for

payment of salary of the Gram Sevikas and on the basis of the aforesaid letter, the respondent no. 2 by a reasoned order dated 02.01.2010 directed for termination of the services of the Gram Sevikas. Earlier, the Respondent No.2 repeatedly requested the Special Secretary, Rural Development Department for release of allotment of funds for payment of salary of the Gram Sevikas. It has been further stated that from the facts stated above and the enclosures made therein, it is crystal clear that the claim of the petitioners are not maintainable and the writ application is fit to be dismissed in limine.

13. After hearing learned counsel for the respective parties at length and on perusal of the evidences on records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated herein below :-

(i) Similarly situated persons in other districts of the State of Jharkhand are continuing and getting salary for the working period, for the reasons best known by the authorities and without any justifiable reasons the services of the petitioners have been dispensed with.

(ii) Several Gram Sevikas who were appointed along with petitioners and posted in another districts, such as, Chatra, Koderma and Giridih in the Jharkhand State are still working and they are getting their salary and, as such, the respondents cannot adopt two different yardsticks on pick and choose principle and hence, the action of the Respondents are discriminatory.

14. In view of such, the impugned order of termination dated 02.01.2010 (Annexure-5) passed by the Dy. Commissioner Hazaribagh cum Chairman, District Rural Development Authority, Hazaribagh (respondent no. 5) being not legally sustainable is hereby quashed and set aside and the concerned authorities of the respondents are directed to consider the case of the petitioners in the light of the fact that other similarly situated Gram Sevikas" are getting salary for the working period and which has been asserted by the learned counsel for the petitioners and, therefore, the respondents are directed to consider the case of petitioners at par with similarly situated persons within a period of 12 weeks from the date of receipt/communication of the order.

15. With the aforesaid observations and directions, the writ petition stands disposed of.