
(2009) 08 JH CK 0055
In the Jharkhand High Court

Arun Kumar

APPELLANT

Vs

The State of Jharkhand, The Secretary, Building Construction Dept., Govt. of Jharkhand, The Chief Engineer, Building Construction Dept., Government of Jharkhand and The Superintending Engineer, Building Construction Dept.

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0055

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ application is to quash the office order contained in Annexure-10 issued under the signature of the Superintending Engineer, Building Construction Department dated 03/05/2003, whereby the petitioner has been dismissed from service.

3. The relevant facts, leading to the present writ application, are that the petitioner was initially appointed as Accounts Clerk vide office order No. 515 dated 27/11/1984, for a period of six months only against a vacant sanctioned post of Accounts Clerk. The petitioner joined the said post and, thereafter, by issue of letter dated 22/09/1985, he was transferred to the vacant post of Accounts Clerk in the office of the Superintending Engineer, Chhotanagpur Circle, Ranchi.

It appears that even after expiry of the period of six months, the service of the petitioner was not terminated rather he continued its service for a period of about 16 years and during that period; he even acquired requisite qualification for the said post and also passed the departmental examination. Not only that his service book was also opened on 25/08/1986 and he was also allotted a GPF

account in the year 1985 in terms of Rule 4 of Bihar G.P.F. Rule 1948. The petitioner was posted against sanctioned vacant post of Senior Accounts Clerk in the pay scale of Rs. 580-10-620-15-770/-.

4. In the year 1998, a local M.L.A. namely Jawahar Lal Banra made a complaint against the petitioner that he was illegally continuing in service though his appointment was made only for a period of six months. On such complaint, the petitioner was suspended on 28/11/1998 in contemplation of departmental enquiry. However, the said suspension was revoked on 28/02/2002 pursuant to the order of this Court dated 09/10/2001 in WPS No. 5122/2001.

5. A departmental enquiry was initiated against the petitioner vide Annexure-4 dated 06/02/2002 and he was asked to file show cause, which he submitted by him as contained in Annexure-6 to this writ application.

6. An enquiry report as contained in Annexure-7 was submitted on 24/02/2002. The Enquiry Officer took notice of the facts that the petitioner was appointed against a vacant sanctioned post of Sr. Accounts Clerk for a period of six months but his service was never terminated on expiry of the period of six months rather he continued in Government Service uninterrupted and he worked satisfactorily till his dismissal from Service and further that he rendered his satisfactory service to the Government, without any break from 01/04/1984 and that he also passed the departmental examination and he was allowed to draw the revised salary of the Accountant from time to time. In the light of the aforesaid facts, the Enquiry Officer recommended for dropping the departmental proceeding against the petitioner after holding that though there was no specific order for regularization of the service of the petitioner but since he continued in service from 01/04/1984 till the date of his dismissal without any break with satisfactory service and he also passed departmental examination and, therefore, it may be deemed that his services has been regularized automatically.

7. The petitioner, thereafter, was issued with a second show cause notice on 22/02/2003 contained in Annexure-8, to which the petitioner gave his reply requesting to drop the proceedings since he has not been found guilty of any misconduct on his part. On the contrary, he was rendering his selfless service to the Government without any break, continuously almost for 16 years and for the last 16 years there was no charge against him for any misconduct.

8. As it appears that without considering the finding and recommendation made by the Enquiry Officer, the Additional Commissioner-cum-Engineer-in-Chief by canceling the appointment of the petitioner directed the respondent No. 4 the Superintending Engineer, Building Construction Department, i.e. the Disciplinary/Appointing Authority of the petitioner to take steps for recovery of salary paid to the petitioner. Thereafter, by issue of Annexure-H, the Additional Secretary, Building Construction Department, Government of Bihar, Patna, modifying the order of the Additional Commissioner as contained in Annexure-G dated 21/08/2000, directed the Respondent No. 4 to get an explanation from the

petitioner and forward the same with his comments immediately to him without any further delay.

9. Mr. Sahani, learned Counsel appearing for the petitioner submitted that the Disciplinary Authority has passed the order of dismissal, contained in Annexure-10, only on the direction of the Special Secretary and The Chief Engineer, who are his superiors, without applying his independent mind and without considering the findings arrived at by the Enquiry Officer and without considering the recommendation made in the enquiry report. It is further submitted on behalf of the petitioner that no doubt, the petitioner was initially appointed for a period of six months but even after expiry of the said period, he continued in the Government Service without there being any specific order of regularization of his service but the facts remain that he continued in service to the Government since 1984, without any complaint of any kind against him. On the contrary, he even passed the departmental examination and his service book was also opened and he worked against the vacant sanctioned post on a regular pay scale and he was also given the benefit of revised pay scale from time to time. It is not the case of the respondents that the petitioner in any way continued in service by playing any fraud or misrepresentation and, therefore, for no fault on the part of the petitioner he has been awarded major punishment of dismissal.

10. On the other hand, the plea has been taken by the respondents in their counter affidavit that the petitioner, in order to dupe the Department got himself transferred from Ranchi to Chaibasa on 27/04/1985 and he got his service book opened on 14/08/1986 by an Assistant Engineer, PWD, Soil Examination, who was not competent person to open service book and in this manner, the petitioner continued in Government Service beyond the period of six months.

It is also stated in the counter affidavit that one Jawahar Lal Banra a local M.L.A. wrote a letter to the Minister, Building Construction Department, on 02/06/1998 regarding illegal continuation of the petitioner in service and on the basis of such complaint, the matter was enquired into by the Deputy Commissioner, West Singhbhum and, thereafter, the petitioner was put under suspension. The enquiry proceeding was initiated against him and was recommended for dropping the petitioner since he has continued in service for more than 15 years. The Additional Commissioner-cum-Engineer-in-Chief, Building Construction Department, vide letter dated 21/08/2000, contained in Annexure-G to the Counter Affidavit, after canceling the illegal appointment of the petitioner directed to recover all the salaries etc. paid to the petitioner during the period of his illegal continuation in service.

11. As it appears that by issue of Annexure-H, the Additional Secretary, Building Construction Department, Government of Bihar, Patna, modifying the order of the Additional Commissioner as contained in Annexure-G dated 21/08/2000, directed the Respondent No. 4 to get an explanation from the petitioner and forward the same with his comments immediately to him without any further

delay. The petitioner submitted his explanation.

In the meantime, the petitioner filed a writ petition being CWJC No. 3589/2000 (R), which was disposed of on 18/10/2000, directing the petitioner to file an appeal before the Secretary, Building Construction Department and the Secretary was directed to dispose of the appeal of the petitioner within three months.

12. The petitioner, thereafter, filed an appeal before the Secretary, Building Construction Department, but since the same was not being disposed of and, as such, the petitioner filed another writ petition being WPS No. 5122 of 2001, which was disposed of on 09/10/2001.

13. As per the respondents, the recommendation made by the Enquiry Officer was not accepted by the State Government as the petitioner illegally continued in service, knowing fully well that he was provisionally appointed for a period of six months only but he continued in service by manipulation.

14. There is no denial of the fact that the petitioner was initially appointed in the year 1984 for a period of six months only and there is no specific order by which the petitioner's service was regularized but the fact remains that the petitioner since the date of initial appointment has continued in service for long 16 years and during this period of his service, there was never any complaint against him rather he was given the regular pay scale and he also passed departmental examination and he was allowed to draw the revised salary of the Accountant from time to time. There is no allegation against the petitioner that he in any way made any misrepresentation or committed any fraud for continuing in service. Nothing has been shown by the respondents that there has been any manipulation by the petitioner for continuing in service and, therefore, in such a situation, in my view, the Enquiry Officer rightly recommended for dropping the proceedings against the petitioner.

15. The respondents, after expiry of the period of six months from the date of the initial appointment of the petitioner, neither passed any order terminating his engagement nor passed any specific order for regularization of the service. As a matter of fact the petitioner continued in service since he was never removed from the service and, therefore, by continuing in service for over 16 years, a right accrued to the petitioner to continue in service which could not have been taken away by dismissing him from service for no fault on his part. In my view, the service of the petitioner can be deemed to have been regularized. The respondents after more than 16 years of the service of the petitioner could not have dismissed him from service on the ground that his initial appointment was only for a period of six months. The fault, if any, lies with the respondents themselves and for their own fault, the petitioner cannot be penalized and he cannot be thrown out of service.

16. From the impugned order as contained in Annexure-10, it also appears that the same was issue by the Superintending Engineer only on the instructions and directions of his superiors and not on his independent application of mind. No

reason has been assigned for not accepting the findings and recommendation of the Enquiry Officer. The dismissal of the petitioner from service, in my view, is absolutely illegal and arbitrary for the reasons already stated herein above.

17. Accordingly, this writ petition is allowed. The order dated 03/05/2003 as contained in Annexure-10 to the writ petition, passed by the Superintending Engineer is hereby quashed and the petitioner is directed to be reinstated in service with all consequential benefits forthwith.

However, in the facts and circumstances of the case, there shall be no order as to cost.