
(2015) 10 JH CK 0125
In the Jharkhand High Court
Case No : WP(S) No. 3378 of 2011

Badri Prasad Mitra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 147 FLR 1039 : (2015) 4 JLJR 324

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mahesh Tewari and Bhaskar Trivedi, for the Appellant; Ashish Kumar Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for issuance of an appropriate writ in the nature of certiorari for quashing the order of punishment dated 23.7.1992 pertaining to termination the services of the petitioner vide Annexure-2 and for a further direction to respondent Nos. 5 and 6 to allow the petitioner to be reinstated in his original post as a Clerk at Chhotkidevi Balika Girls' High School, Chirkunda and for direction to respondents to make payment of the wages to the petitioner along with all consequential benefits. The facts as averred in the writ application in a nutshell is that initially, the petitioner was appointed as Clerk vide memo Nos. 328-29 dated 19.9.1988 as per Annexure-1 to the writ application and petitioner was terminated from services vide order dated 23.7.1992 in which the name of the petitioner finds place at serial No. 1 vide Annexure-2 to the writ application. The writ application has averred that along with the petitioner other 15 persons who also had been working since 1990 and their services were also terminated vide the same letter being letter No. 325 dated 23.7.1992. Some of them moved before this Court in different writ applications vide C.W.J.C. No. 520 of 1996(R) by order dated 3.3.1998 to allow the writ application with a direction that the

petitioner should be provided job either in the continuity of previous service or against a new post within two months as per Annexure-4 to the writ application and vide order dated 13.1.2000 passed in M.J.C. No. 560 of 1998(R), direction was made to the District Education Officer, Dhanbad to comply the order vide order dated 13.1.2000 as per Annexure-5 to the writ application. Similarly, many other persons, whose case stands on exactly similar footing that the petitioner moved before this Court in C.W.J.C. No. 636 of 1996(R) has been pleased to allow the petitioner to join at his original post even in M.J.C. No. 42 of 2000(R) vide order dated 14.3.2001, direction was made for allowing the petitioner to join the original post with consequential benefits as evident from Annexure-6 to the writ application. It has been averred in the writ application that the petitioner exactly on similar footing. It has been submitted by the petitioner that the order passed in W.P.(S) No. 1332 of 2003 vide order dated 16.7.2008 has been pleased to allow the writ application directing the respondents to join at his original post as evident from Annexure-7 to the writ application. As against the order of the learned Single Judge, LPA was filed and the same has been dismissed against which special leave was preferred and the Apex Court has also dismissed the SLP as evident from Annexure-8 to the writ application. Similarly, one Dhananjay Kumbhakar has also moved this Court in C.W.J.C. No. 1846 of 1993(R) challenging the order of termination dated 23.7.1992 and the order was passed on 27.3.1995 setting aside the order of dismissal and direction was made to reinstatement of the petitioner as per Annexure-9 to the writ application. It has been averred in the writ application since the petitioner is on similar footing to that of the other persons who have already been allowed to join the respective posts after the termination order dated 23.7.1992 which has been passed by this Hon'ble Court upheld by the Division Bench and confirmed by the Hon'ble Apex Court. Left with no other alternative, efficacious and speedy remedy, the petitioner has invoked extraordinary jurisdiction under Article 226 of the constitution of India for redressal of his grievances.

2. Per contra, counter-affidavit has been filed on behalf of respondent Nos. 5 and 6 controverting the averments made in the writ application. In the counter affidavit, it has been submitted that the appointment norms which were mandatory/statutory were not followed and in absence of the same the appointment cannot be treated as valid and as per rule since the vacancies were not advertised. So called decision for appointment was taken by the then District Education Officer and not by any committee formed for the purpose. Reservation policy was not observed. No interview was conducted and no qualification was fixed for making appointments. The names of the candidates were not called for from the employment exchange and no penal was prepared. As such none of the petitioners has any merit in the present writ and so the writ petition is liable to be dismissed with cost. It has further been submitted that the case of the petitioner is quite different from the cases of other petitioners who have been allowed to join services since the petitioner was terminated on 23.7.1992 and the writ petition has been filed in the year 2011 just after 19 years with no

sufficient explanation for delay.

3. Heard Mr. Mahesh Tewari, learned counsel appearing for the petitioner and Mr. Ashish Kumar Thakur, J.C. to Sr. S.C. I, learned counsel appearing for the respondents and perused the records.

4. Learned counsel for the petitioner has vehemently submitted by referring to rejoinder to counter-affidavit that 83 similarly situated persons as those of the petitioner had been irregularly appointed and vide letter Nos. 325, 326 and 328 their services were terminated. The petitioner categorically states and submits that out of these 83 terminated persons more than 60 persons are in the employment of the respondents either on the orders of the officers of the respondents themselves or on the orders passed by this Hon"ble Court and confirmed by the Hon"ble Supreme Court by respondents themselves. Counsel for the petitioner further submits that the case of the petitioner stands on exactly similar footing to that of those persons. Learned counsel for the petitioner by referring to averments made in the rejoinder to counter-affidavit, has submitted that in W.P.(S) No. 879 of 2010, this Court vide order dated 13.7.2011 has been pleased to quash the termination order dated 23.7.1992 and directing to respondents to reinstate the petitioner in service within sixty days.

5. Learned counsel for the respondents, however, has assiduously submitted that the writ application is liable to be dismissed in limine due to inordinate delay and laches. Moreover, the petitioner appears to be fence-sitter. Learned counsel for the respondents further submits that since the appointment of the petitioner was de hors rules the respondents rightly terminated the services of the petitioner, therefore, the impugned order of termination vide order dated 23.7.1992 does not call for any interference by this Court.

6. Having heard learned counsel for the respective parties and on perusal of the documents on records, I find that the writ petition is not legally entertainable due to following facts, reasons and judicial pronouncements:--

(i) On perusal of the records, it appears that there is nothing on record to show that the post on which the petitioner was appointed and was never advertised nor there has been interview for the said post. The respondents, on other hand, categorically submitted in the counter-affidavit that the very appointment of the petitioner was de hors rules due to the following facts:--

(a) The vacancies were not advertised.

(b) So called decision for appointment was taken by the then District Education Officer and not by any committee authorized for the purpose.

(c) Reservation policy was not observed.

(d) No interview was conducted before making the appointment.

(e) No qualification was fixed for making appointments.

(f) The names of the candidates were not called for from the employment exchange.

(g) No panel was prepared.

(ii) The Constitution Bench of the Hon"ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Karnataka and Others Vs. Sri G.V. Chandrashekar, and in the case of U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, and further in the case of Md. Ashif & Ors. decided in Civil Appeal Nos. 4256-4257/2010 decided on 6.5.2010 has held that once appointment was held to be illegal, termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed.

On the cumulative effect of facts, reasons and judicial pronouncement as well as logical sequitur to the discussion made in the foregoing paragraphs, I find that no illegality or infirmity in the order of dismissal/termination. Accordingly, writ petition is dismissed being devoid of merit.