
(2007) 08 JH CK 0010
In the Jharkhand High Court

Bhavesh Kant Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2007) 4 JCR 649

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

Ramesh Kumar Merathia, J.

Heard.

1. Mr. J.P. Jha, learned senior counsel appearing for the petitioner relied on the judgment of this Court, in Arvind Vijay Bilung v. State of Bihar 2001 (2) JLR 227, and submitted that after bifurcation, the respondent No. 7 could not pass the order of termination of the petitioner and the respondent No. 2 also could not follow the said order.

2. Mr. Shamim Akhtar, learned Standing Counsel appearing for the State of Jharkhand submitted that a show-cause notice was issued to the petitioner on 21.4.1998 (Annexure 5) as to why his services be not terminated as he was appointed by one Shri Ramjee Yadav, the then District Manager, Industries, Dumka in illegal manner. Petitioner filed his show-cause on 4.5.1998 (Annexure 7). By letter dated 26.4.2000 (Annexure 6), petitioner was asked to produce certain documents. In pursuance thereof, the petitioner filed his reply on 26.5.2000 (Annexure 7/A). In such circumstance, he submitted that the respondent No. 7 was justified in passing the order dated 4.10.2004 (Annexure 1). He further submitted that on receipt of the said order, the matter was examined by the respondent No, 2 and thereafter the services of the petitioner was terminated by order dated 5.11.2004 (Annexure 1/A). He further submitted that petitioner has not shown that he was appointed legally after following the procedure. He lastly submitted that this is a case of illegal and back door

appointment, and in view of the judgments of the Supreme Court, no illegal appointee, like the petitioner, can be allowed to continue, even if he worked for a long period.

3. Mr. J.P. Jha, learned Counsel for the petitioner, in reply, submitted that though show-cause notices were issued and petitioner replied to the same before bifurcation of the State, but as he was posted at Maheshpur, Pakur, now falling within the State of Jharkhand, his record should have been sent to respondent No. 2 for taking a decision. He further submitted that it does not appear from the said order dated 5.11.2004 (Annexure 1/A) passed by respondent No. 2 that the petitioner's show-cause was considered by him, rather only on the basis of the said order dated 4.10.2004 passed by respondent No. 7, petitioner was terminated.

4. It is settled law that an illegal/ back door appointee cannot be allowed to continue, even if he continued for a long period. But it appears that show-cause notices were issued to the petitioner as to why his services be not terminated, as his appointment itself was illegal; the petitioner filed his show-cause prior to bifurcation of the State, but order was passed by respondent No. 7 after bifurcation. In such circumstances, the respondent No. 7 should have sent the records to respondent No. 2. Moreover it does not appear from the order dated 5.11.2004 passed by respondent No. 2 that he applied his mind.

5. In the circumstances, the impugned order dated 4.10.2004 (Annexure 1) passed by respondent No. 7 and the order dated 5.11.2004 (Annexure 1/A) passed by respondent No. 2 is set aside with a liberty to respondent No. 2 to pass a speaking order in accordance with law but within two months from the date of receipt/production of a copy of this order. The respondent No. 7 is directed to send the entire records of the petitioner, to respondent No. 2 within two weeks from the date of receipt of a copy of this order, if not already sent.

6. Mr. Jha also submitted that respondents have taken work from the petitioner and, therefore, he is entitled to salary from April, 1998.

7. Mr. Akhtar submitted that inspite of the letter dated 21.4.1998 (Annexure C), if any officer has taken work from the petitioner, he is responsible to pay salary and not the Department.

8. The respondent No. 2 will also look into the said claim of salary and will pass orders in accordance with law within two months from the date of receipt/production of a copy of this order.

9. With these observations and directions, this writ petitions disposed of. However, no costs.