
(2004) 06 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No. 837 of 2002

Bhola Prasad Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 395

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : P.P.N. Roy, for the Appellant; Pradip Modi, GPI, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The present writ petitioners alongwith 15 other filed CWJC No. 13043 of 1993 before the Patna High Court, claiming regularisation in the Health Department of Government of Bihar. The said writ petition was dismissed by order dated 23.9.2004. All the 20 writ petitioners including the present 5 petitioners of this writ application preferred SLP before the Supreme Court, which after grant of leave was converted into civil appeal No. 8336 of 1997. The Supreme Court disposed of the said appeal with certain directions. The judgment of the Supreme Court is reported in, 1998 (1) PLJR (SC) 17, Arun Kr. Rout and Ors. v. The State of Bihar and Ors. Form perusal of the judgment of the Supreme Court as aforesaid, it appears that the Apex Court has noted the following facts of the case. The facts noted in the judgment are reproduced hereinbelow :--

"The writ petition filed by the appellants, 20 in number, claiming regularisation in the Health Department of the Government of Bihar was dismissed by the impugned judgment. All the said 20 appellants were appointed on 1st of January, 1980 by the Civil Surgeon, Dumka in Class III and Class IV posts as daily wagers. On 30th March, 1989 the appointments of the appellants were regularised on the recommendation of the Appointment Committee. On

25.8.1993 the District Level Establishment Committee issued show cause notices to the appellants asking them to show cause why their appointments should not be cancelled in view of the fact that they got irregular appointments. Ultimately on 14.10.1993 the services of the appellants were terminated. It has been found as a matter of fact that at the time of initial appointment, no advertisement had been given and the names of these appellants were also not sponsored by the Employment Exchange. There is, however, no dispute that they are not lacking in requisite qualifications for appointment to the respective posts in Class HI or Class IV. There is also nothing on record to suggest that, in obtaining the said appointments the appellants were guilty of any fraud or privy to any irregularity. Although in the matter of getting appointment in the Government Service, the procedure required to be followed for such appointments cannot be bypassed and if the initial appointment was illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following due procedure cannot claim as a matter of right to be regularised. This Court, however, has looked with sympathy when question of regularisation came for consideration in case of temporary or ad hoc appointments, even made improperly, if the incumbents had been allowed to continue for a long time because of the human problem involved in such continued service. In the instant case, all the appellants after getting appointments continued for more than five years and it also appears from the records of the case that they got salary initially for a few months and thereafter continued in service without getting any salary whatsoever from 1989 upto some period of 1992. Thereafter the salary had been paid to them until the services were terminated. It may be stated that there is nothing on record to suggest that the service rendered by the appellants was otherwise unsatisfactory. It may also be stated that such salaries had been paid to these appellants after a departmental inquiry indicating that even though there were irregularities in the appointment but the appellants had requisite qualifications for the respective post to which they were appointed. (underlining is mine for emphasis).

2. After noticing the above facts, the Supreme Court disposed of the aforesaid civil appeal with the following observation and direction.

"Although the" appellants had not been appointed by following the due procedure and, therefore, they cannot claim regularisation as a matter of course but considering the fact that they had satisfactorily served the department even without getting any salary for a long time and they were not guilty of any fraud or sham practice and also did not lack in requisite qualification and they had been appointed against sanctioned posts, we feel that the appellants deserve sympathetic consideration in getting appointment against such sanctioned posts on humane consideration. Considering the special facts of this appeal it appears to us that it will be just and proper consistent with ends of justice to direct that 50 per cent of the sanctioned posts which were held by these appellants should be filled from amongst the appellants on the basis of their inter se merit position by taking into account their academic qualifications by waiving question of age

bar if any and usual procedure for such appointment. The remaining 50 per cent of the said sanctioned posts, will be filled up on regular basis by throwing it open to the members of the public and following the procedure prescribed for such appointment in the State of Bihar. The remaining appellants who will not be absorbed against 50 per cent of the said sanctioned posts will be entitled to compete for appointment in the balance 50 per cent posts alongwith other eligible candidates but they will not be treated unsuitable on account of age bar. On the contrary, in the matter of assessment of merit they will be given a credit of 25 per cent marks for the experience they have gained for services rendered by them for the said long period of 5 years or more."

3. Pursuant to the directions of the Supreme Court, the respondent No. 3, the Chief Medical Officer-cum-Civil Surgeon constituted a Committee and then pursuant to the decision taken by the Establishment Committee dated 12.5.1998, all the 20 appellants including the present petitioners were reappointed on the same scale in which they were working, before removal for their services vide order in Memo. No. 938, dated 12.5.1998.

4. Now the grievance of the petitioners is that suddenly after a period of about a period of 11 months from the date of their reappointment, the respondent No. 3, the Chief Medical Officer-cum-Civil Surgeon has issued an order vide Memo. No. 322, dated 3.4.1999, communicating the order of the Deputy Director, Health Medical Education and Family Welfare as contained in Memo. No. 202, dated 22.2.1999 and the order of the Commissioner-cum-Secretary, vide Memo. No. 307, dated 26.3.1999, cancelling the order dated 12.5.1998, i.e. reappointing the petitioner, on the ground that the reappointments were not done in accordance with the directions of the Hon'ble Supreme Court. The order dated 3.4.1999 of the respondent No. 3 had been made Annexure-5 to the present writ application. The respondent No. 3 vide his order dated 3.4.1999 asked all the aforesaid 20 persons including the present five petitioners to appear before him on 8.4.1999 with the Educational qualification certificate, Age certificates and Mark sheets. The petitioners appeared before the respondent No. 3 on the date fixed but since no order was being passed then all the 20 appellants filed contempt petition before the Supreme Court in two sets which were registered as contempt petition (C) No. 400 of 1999 and contempt petition (C) No. 401 of 1999. Both the contempt petitions were disposed of by the Supreme Court vide order dated 13.12.1999, annexed as Annexure-7 to the present writ application. For ready reference, the order of the Supreme Court is reproduced hereinbelow :--

"On the application of the learned counsel for the petitioners, the contempt petition is dismissed as withdrawn. Learned counsel states that the applicants shall take appropriate action before the High Court, in so far as they challenge the selection that have been made pursuant to the order of this Court."

5. The present petitioners were the petitioners in contempt petition (C) No. 400 of 1999. The claim of the present petitioners is that the respondents have

illegally removed them from service by misinterpreting the order of the Supreme Court.

6. On the other hand, the stand of the State, as it appears from the counter affidavit, is that there were 20 appellants before the Supreme Court out of their seven appellants were holding the post of Clerks, six appellants were holding the post of Health Workers, five were holding the posts of Health Prasichhak, and two were holding the posts of "Purus Gaon Sathi". As per the directions of the Hon"ble Supreme Court, 50 per cent of each category of the posts was to be filled up from the persons who were appellants before the Supreme Court. In other words four posts of clerk, three posts of Health Workers, three posts of Health Prasichhak and one post of "Purus Gaon Sathi" were to be filled up from amongst the appellants. It is further stated that due to mistake and/or misconception, the Civil Surgeon-cum-Chief Medical Officer, Dumka appointed all the 20 persons who were appellants before the Supreme Court vide order dated 12.5.1998 though that was not the direction of the Supreme Court.

7. Subsequently, when the matter was examined at the level of the State Government, the said mistake was rectified and the appointments of all the 20 persons were directed to be cancelled and, accordingly, Annexure-5, dated 3.4.1999 was issued. Thereafter, the respondent No. 3 by issue of Annexure-6, dated 3.4.1999 asked all the 20 persons to produce their Educational Qualification Certificate, Age Certificate etc. for verification for filling up 50 per cent of posts as per the directions passed by the Supreme Court.

8. It is further stated that according to the direction of the Supreme Court, 50 per cent of each category of the posts as calculated by the respondent No. 3, is calculated in the following manner .:--

Category of	Total No.	of	No. of	50%	Actual	No.	Post	appellant	appointed.	

Clerk	7	3.5%	4	Health Worker	6	3%	3	Health	5	2.5%
0.5%	1		Sathi	IV	the		grade	1	0.5%	1
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9. Accordingly, after scrutinising the Educational qualifications, inter se merit position and other relevant aspects, 12 persons out of the twenty appellants, were appointed against 12 posts vide order dated 27.3.1999 and the rest 8 persons could not be appointed as per the direction of the Supreme Court. Thereafter an advertisement was published on 30th of January, 2000 for filling up the vacant post of Clerk, Health Worker, Health Prasichhak (total 8 is numbers in Health Department) [Annexure-8] and the petitioners have submitted their applications pursuant to the said advertisement.

10. Having heard the learned counsel for the parties, it appears that only point which is to be considered in this case is as to whether the petitioners are entitled

for the reappointment as per the direction of the Supreme Court in the aforesaid civil appeal No. 8336 of 1997.

11. On a careful perusal of the order of the Supreme Court, it appears that the respondents have rightly reappointed 12 appellants, out of the 20 appellants before the Supreme Court because the direction was only to fill up 50% of the posts, which were held by the appellants. The break up as given by the respondents which has been quoted in paragraph-8 clearly shows that it is in conformity with the order of the Supreme Court.

12. Therefore, I find that the respondents have not committed any illegality in cancelling the reappointment of the present petitioners. However, it is made clear that the respondents while making first appointment shall give all the benefits as indicated in the order of the Supreme Court in the aforesaid Civil Appeal No. 8336 of 1997.

13. With the above observation/ direction, this writ petition is dismissed.