

(2012) 08 JH CK 0081
In the Jharkhand High Court
Case No : L.P.A. No. 55 of 2012

Biroj Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 4 JCR 428

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Sujit Narayan Prasad and Amit Kr. Tiwary, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. The appellant is aggrieved against the order dated 9th January, 2012 passed in W.P.(S) No. 3845 of 2003, by which writ petition of the petitioner has been dismissed, on the ground that the petitioner did not produce his appointment letter and did not show that he has been appointed on the sanctioned post after following all procedures for appointment and his service has been terminated in view of the Government instruction, whereby it has been directed that all persons who have been wrongly given appointment after 1st January, 1988, their services may be terminated.

2. Learned counsel for the appellant submitted that all the documents of the respondent-State itself clearly indicate that direction was given only to remove those persons who were given appointment illegally or by not following the procedure and who were appointed after 1st January, 1988. The writ petitioner was not an appointee after 1st January, 1958 but was appointed on 1st January, 1988, therefore, petitioner's services could not have been terminated in the exercise of power, which they are deriving from the Government orders, which only says that a person appointed after 1st January, 1988 be removed.

3. Learned counsel for the State vehemently submitted that petitioner himself came up with the case that he was appointed prior to 1st January, 1988 but did

not produce the appointment letter. The petitioner also came up with the case that he was appointed in the year 1987 which was found to be a wrong fact. It is also submitted that the petitioner was a daily wager and, therefore, had no right over any of the post.

4. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. It is clearly mentioned in the impugned order issued by the respondents themselves that the petitioner was given appointment on 1st January, 1988, therefore, it does not lie in the mouth of the respondents to say that petitioner was appointed after 1st January, 1988. Therefore, the order of termination Annexure-2, terminating the services of the petitioner was contrary to the direction of the State Government, which is apparent from several communications, copies of which have been placed on record by the writ petitioner along with this Letters Patent Appeal also, which clearly says that direction was given to remove those Class-III and IV persons who have been wrongly given appointment and whose appointments were given after 1st January, 1988.

5. Admittedly, petitioner was not removed on the ground that he was illegally appointed and that too after about ten years. There was no enquiry held against the writ petitioner-appellant to find out whether he was given appointment illegally or against the rules or without following the procedure or he was given appointment not against the sanctioned post. If the contention of the respondents is accepted that petitioner was daily wager, then also he acquired certain rights under the Industrial Disputes Act, 1947 by virtue of his continuous service from 1st January, 1988 to 31st March, 1999. In any case, the impugned order dated 31st March, 1999 cannot be justified and the learned Single Judge though has observed that there is no documentary evidence to show that petitioner was appointed on a sanctioned post after following the procedure whereas it is admitted in the impugned order of termination of service of the petitioner that he was appointed on 1.1.1988, which is the case of the respondents themselves and, therefore, petitioner's appointment and, that too, on 1.1.1988 was not the disputed fact but was admitted fact.

6. In view of the above reasons; the writ petition deserves to be allowed, So far back wages are concerned, in the facts of the case and looking to the fact that the petitioner was a poor employee, working on the post of Pump Khalashi, therefore, he is entitled to 25% of the back wages. The respondents are, therefore, directed to take back the petitioner in service on the post on which he was working with consequential service benefits which are available to him and 25% of the back wages. The Letters Patent Appeal is allowed and the order passed by the learned Single Judge is set aside. The writ petition of the petitioner is allowed.