
(2009) 05 JH CK 0017
In the Jharkhand High Court

Chadra Tirkey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0017

Hon'ble Judges : Gyan Sudha Misra, C.J;D.K. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant- Chadra Tirkey against the judgment and order dated 18.2.2008 passed by the learned Single Judge in W.P. (S) No. 4470 of 2007, by which the learned Single Judge was pleased to dismiss the writ petition, relying upon the judgment of the Supreme Court delivered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and thus the petitioner-appellant was denied the relief of regularization and payment of wages and salary.

2. The dispute giving rise to this appeal has a chequered history as it emerges that the petitioner-appellant was initially appointed in the department of Industries in the year 1976 alongwith several others but his services were terminated on account of an order of retrenchment. The petitioner-appellant thereafter was re-appointed on 9.8.1985 on ad hoc basis as per the order of Establishment Committee, headed by the Joint Director, in the department of Industries alongwith two others on a sanctioned vacant post. Thus petitioner-appellant although was appointed on a sanctioned post, the same was on ad hoc basis. However, he was granted regular scale of pay of Rs. 350-425/- for the post which was then prevalent. This appointment initially was for a period of three months but his appointment was thereafter renewed from time to time and thus the petitioner-appellant continued in the service upto the year 1992. The petitioner-appellant thereafter was also granted the revised scale of pay and was placed in the scale of Rs. 2550-55-2660 as a Class IV employee but suddenly in

February, 2005, the respondent-authority restrained the appellant from discharging duties and stopped payment of salary and allowance, stating that he should move the High Court claiming regularization on the basis of his 20 years of long service and only thereafter he will be entitled to regularization. The petitioner-appellant, therefore, filed this writ petition bearing W.P.(S) No. 2148 of 2006, claiming regularization as he had already discharged duties for 20 long years by this time.

3. The said writ petition was disposed of by the learned Single Judge of this Court on 12.9.2006 holding therein that the issue of regularization had been set at rest by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, but the direction of the Supreme Court which was quoted therein indicated that a Committee had to be constituted to consider the case of regularization of the employees who had served about 10 years or more on a duly sanctioned post and in case they had discharged duties on a duly sanctioned post, protection was granted to such appointments/services by the ratio of the aforesaid decision. However, a rider had been imposed therein that if appointment had not been on a regular basis and the person was not regularly recruited on the vacant sanctioned post, then such protection subsequently was not to be granted to such employees by retaining them in service. The learned Single Judge relying on this authority, disposed of the aforesaid writ petition observing therein that the case of the petitioner-appellant herein be considered in accordance with the direction of the Supreme Court within a period of six months and an appropriate order be passed. The petitioner-appellant was also allowed salary for the period during which he had actually worked.

4. In pursuance to this order, a Committee was constituted by the respondents in the year 2007 and the Committee decided the case of the appellant alongwith others but was pleased to hold that the petitioner-appellant's initial appointment was on ad hoc basis and there was no order of regularization due to which he was not fit to be continued in the service of the respondent-department. Thus, the appellant, who had already discharged duties in the respondent-department for more than 20 years, was ordered to be removed from services.

5. The aforesaid order was assailed by the petitioner-appellant by filing a writ petition bearing W.P.(S) No. 4470 of 2007, which was dismissed by the learned Single Judge against which this appeal has been preferred. While dismissing the writ petition, the learned Single also relied upon the Constitution Bench judgment of the Supreme Court delivered in Umadevi's case(supra) and was pleased to hold that the petitioner-appellant herein could not be regularized in service because regularization cannot be claimed merely on the ground of continuous working for a long period and, therefore, the writ petition was dismissed.

6. Assailing the impugned judgment and order of the learned Single Judge, the counsel for the petitioner-appellant furnished a Synopsis of the entire history and background of the petitioner's case and on perusal of the same it could be

instantly gathered that the petitioner-appellant, although, was appointed on ad hoc basis in the year 1985, the appellant's appointment had assumed the status of a regular employee as he had been appointed on a sanctioned post and has also put in the regular scale of pay, after which he was also granted increments from time to time. Besides this, his annual confidential records were also maintained and, as stated earlier, he was put in the revised pay scale of Rs. 2550-55 2660/-. Thus inspite of service of 20 years to the credit of the appellant, which had already assumed the nature and character of a regular appointment, an order was passed that as he had been appointed on ad hoc basis, the services of the petitioner-appellant were terminated by the Committee. In fact, the Committee was constituted by the Department in pursuance to the order passed by the Supreme Court in Umadevi's case(supra), wherein the Apex Court had directed that a Committee be constituted to examine and scrutinize the cases of those who have served for about 10 years or more on a valid and sanctioned post. It was in pursuance to this direction that a Committee in the State of Jharkhand was also constituted and the cases of workmen/employees, including the petitioner-appellant, were scrutinized by the Committee. In the process, however, the Committee completely missed that the case of the appellant, no doubt, had to be considered in the light of Umadevi's case as also by virtue of the direction issued by the learned Single Judge to consider the case in the light of the direction of the Supreme Court quoted in the order passed by the Single Bench in the earlier writ petition filed by the petitioner-appellant and the only scrutiny that was to be made was whether the appointment of the employee was on a vacant and a regular sanctioned post or not as also the fact whether the employees who claimed regularization had served for 10 years or more on a sanctioned post or not.

7. Thus Umadevi's case, in our opinion, appears to have been wholly misconstrued in several cases, including the writ petition out of which this appeal arises. In Uma Devi case, the clear emphasis of the Supreme Court is on the number of the years that has been put by an employee in service. The employee who has served 10 years or more had been granted protection of the scrutiny by the Committee and the only rider that has been put in Umadevi's case is that the employees should have served on a valid sanctioned post so as to claim regularization. The Committee which was constituted to scrutinize the cases of the petitioner-appellant and others thus was under the onus and burden to prove that the duty that was discharged by the employees, claiming regularization, have been done on a valid sanctioned post or not.

8. In the instant matter, when we apply this yardstick fixed by the Supreme Court, we have noticed that although the appellant's initial appointment was on ad hoc basis in the year 1985, it had assumed the nature and character of a regular appointment as he had not only been appointed on a valid sanctioned post but was also placed in the regular scale of pay. It is no doubt true that a regularization normally would be done by a specific order of regularization, but if by the very nature and conduct of employment the benefit of a regular employee

has been conferred on the employee and the employee also discharges duty for as long as 20 years, then it is not open for the employer even as per Uma Devi's case that he would still be treated as an employee on ad hoc basis. Once an employee has been put in the regular scale of pay and is also conferred the revised scale of pay and his annual confidential record also is maintained and the service book is opened after which the employee continued to discharge duty for as long as 20 years, then it has all the trappings of a regular appointment and cannot be treated to be an ad hoc employee. If it were to be mechanically treated as an ad hoc employee, the Supreme Court in Uma Devi's case would not have left the scope for constitution of any Committee to enter into a scrutiny to examine the nature of appointment in order to grant him regularization. However, we need to caution at this juncture that if the employer has not treated the employee on regular basis, either by an express order or by any other treatment in the sense that no regular scale of pay has been granted to him nor he has been granted the revised scale of pay nor A.C.R is maintained, then the employee obviously cannot be treated as a regular employee, so as to claim regularization on the basis of length of service as that would be contrary to the ratio of Uma Devi's case but in the alternative Uma Devi's case surely will operate in his favour.

9. As already stated, the petitioner-appellant has not only served for 20 long years, he had also been granted the regular scale of pay and other benefits which a regular employee was entitled. In the wake of these facts, the appellant, in effect, ceased to be an ad hoc employee and was fit to be granted the benefit of regularization by the Committee. The Committee, however, seems to have adopted a mechanical approach and passed a blanket order misconstruing the observation of the Supreme Court by stating that the appointment of the petitioner-appellant was on ad hoc basis due to which he was not fit to be regularized in service oblivious to the direction of the Supreme Court delivered in Uma Devi's case.

10. This, in our view, was absolutely an erroneous action on the part of the employer and the Committee was clearly in error in issuing an order of termination of the petitioner-appellant from service. When the order was passed against him in the year 2007, the learned Single Judge has completely missed that the ratio of Uma Devi's case could not have been applied mechanically in all circumstances as in the instant matter the petitioner-appellant's claim was not laid merely on the basis of length of service but also on the ground that his treatment was of a regular employee by the respondents themselves, for all intent and purpose which we have already indicated hereinbefore. Hence, when the Committee was constituted to scrutinize the cases, it was the duty of the Committee to take care of the direction, observation and parameters laid down by the Supreme Court and merely because the initial appointment 20 years ago passed in favour of the petitioner was theoretically ad hoc in nature, the same could not have been treated ad hoc ignoring the actual nature of appointment and the treatment given to the appellant by keeping him on par with a regular

employee. The appellant having received regular salary as also the revised pay scale and all the benefits of a regular employee, he could not have been subsequently denied the benefit of regularization merely on the ground that 20 years ago he had been appointed on ad hoc basis. That is surely not a correct interpretation and understanding of Uma Devi's case. The nature and character of an ad hoc appointment ceased to be effective at least in case of the petitioner-appellant for the reason already recorded hereinbefore.

11. The learned Single Judge, therefore, in our view, has not applied the ratio of the decision rendered by the Apex Court delivered in the case of Uma Devi in its right perspective and, as already stated, the ratio of the case of Umadevi itself has granted protection to such employees who were appointed not on ad hoc basis but on sanctioned post. Therefore, the Committee which was constituted had to take into consideration all these aspects of the observation in Uma Devi's case and hence the Committee, set up to scrutinize the case of the appellant and other similarly situated persons, as also the learned Single Judge were not correct in holding that the appellant's service were not fit to be regularized.

12. Hence, we set aside the order passed by the learned Single Judge in so far as the claim of the petitioner-appellant claiming regularization was not entertained and we direct the respondents to reinstate/regularize the services of the petitioner-appellant within a period of one month from the date of receipt of the order on the same terms and conditions on which he had been discharging duties when he was removed from service.

13. However, we may not be mis-understood so as to infer that the length of service alone is a criterion for regularization but what we wish to emphasize in the light of the order of Uma Devi's case that if the length of service is coupled with other trappings of a regular employment, then the employee cannot be denied the benefit of the services of a regular employee so as to face termination as that would be against the ratio and observation given out in Uma Devi's case. This we thought it necessary to record while setting aside the order of the Committee as also the judgment and order passed by the learned Single Judge.

14. The question of back wages was neither raised before us nor can be permitted to be raised in this appeal as the writ petition which had been filed by the petitioner before the learned Single Judge was confined to seeking a direction of reinstatement hence whether payment can be claimed for the period in which he had not discharged duties is legally not required to be addressed in this appeal.

15. The appeal, thus, stands allowed but without any order as to costs.