
(2016) 01 JH CK 0073

In the Jharkhand High Court

Case No : W.P.(S) No. 3762, 5053, 5054, 5409 and 5590 of 2015

Chandreshwar Prasad Sharma

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Citation : (2016) 2 JCR 266 : (2016) 1 JCR 597

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Atanu Banerjee, G.A, Sumir Prasad, Prashant Kumar Singh and Sumir Prasad, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J. - Common issues were involved in all these writ petitions which have been tagged together and are being heard and decided.

2. Petitioners in the individual writ petitions are engaged on contractual basis in the job of Data Entry Computer/Computer Operator in the respective departments i.e., Forest Environment Department and Rural Development Department, Govt. of Jharkhand, Ranchi.

3. In W.P. (S) No. 3762 of 2015, the sole petitioner is in contractual engagement since 2008 having been employed by the respondent department. He was earlier sponsored by JAPIT in 2007.

4. Petitioners in W.P.(S) No. 5053 of 2015 are engaged on the same post in Rural Development Department since 2007, 2008 and 2009 while petitioners in W.P. (S) No. 5054 of 2015 have been engaged since 2011. Two of the writ petitioners, Amar Ram and Amit Kumar Ram in W.P (S) No. 5053 of 2015 were terminated from their contractual engagement by the impugned order at Annexure-14 dated 8th October, 2015.

5. Petitioners in W.P. (S) Nos. 5409 of 2015 and 5590 of 2015 have also been

engaged in Rural Development Department on the same post since 2011 in both the cases and have been terminated by the impugned order dated 8th October, 2015. In W.P. (S) Nos. 3762 of 2015, 5053 of 2015 and 5054 of 2015, interim orders were passed earlier restraining the respondents from terminating the petitioners, who were still in engagement. In effect, except the petitioner Nos. 1 and 3 in W.P. (S) No. 5053 of 2015, all other petitioners in these three writ petitions have continued during the pendency of the writ application on contractual basis on the respective posts.

6. Essentially, all these petitioners are aggrieved as the concerned respondent department have decided to replace them from persons who have been sponsored by JAPIT. Originally, the order impugned in the writ petitions were to the effect that their engagement is upto 30th September, 2015 or any time earlier when an incumbent sponsored by JAPIT would replace them. It would not be out of place to mention here that in W.P. (S) No. 3762 of 2015 an intervention has been made by one Manoj Kumar Pramanik in I.A. No. 5987 of 2015, who claims to be sailing on the same boat and has been working in the respondent Forest and Environment Department since 2009 and his contract has been extended from time to time.

7. Counsel for the petitioners have assailed the impugned action of the respondent department on the grounds that contractual engagement on the said post being satisfactorily performed by the individual petitioners for sufficient length of time since their original engagement is being replaced by persons now being sponsored by JAPIT without any rational justification. It is, therefore, arbitrary.

8. Japit also has appeared in one or the other writ petitions on being impleaded and has enclosed letter dated 20th May, 2015 addressed to the Principal Secretary/Secretaries and Head of the Department/Divisional Commissioner/Deputy Commissioner of various districts under the State. It states that work of Data Entry is to be undertaken through outsourcing which is being done through one M/s. I.T. Solution, Ranchi, a Service Provider. The said letter however categorically indicates that such Data Operators working in different departments from before would continue in the respective departments.

9. Counsel for the petitioners alleged that in view of the stand of JAPIT and the reasons that the work in itself has not come to an end, rather requires engagement for indefinite length of time, there is no reason or justification in replacing one set of employees like the petitioner from those who are being recruited through outsourcing to do the same nature of work.

10. Learned counsel for the State have filed counter affidavit in the individual matters.

11. Mr. Atanu Banerjee, learned Government Advocate appearing in W.P.(S) No. 3762 of 2015 submits that as per the decision of 2006 taken by the Department of Information Technology, the work relating to Computerisation and Data Entry

in different departments and districts were to be undertaken through personnel sponsored by Jharkhand Agency for Promotion of Information Technology (JAPIT). It is in pursuance of the said policy that JAPIT has from time to time been undertaking the exercise and sponsoring skilled I.T. Personnel in different departments for undertaking the work of Data Entry. The impugned action is also undertaken in furtherance of the said decision of the State Government. Petitioners otherwise have no right to continue in contractual engagement which is governed by its terms and conditions. Learned Government Advocate has however not been able to justify the rationale behind replacement of the petitioners who are performing the same nature of work as Data Entry Operator/ Computer Operator in the respective departments over a period of time in contractual engagement by another set of contractual employees now being sponsored by JAPIT. He also is not in a position to overcome the specific stand of JAPIT as reflected in letter dated 20th May, 2015 enclosed to the counter affidavit and referred to herein above which indicates that such Data Entry Operators working in different departments from before shall continue to work.

12. In the background of the aforesaid relevant material facts borne out from the pleadings on record, this Court is also of the view that there is no justification for replacement of the petitioners who have been performing the same job over a period of time since their engagement in the respective departments without any complaint and to the satisfaction of the concerned authorities. The present impugned action would only replace the petitioners by another set of fresh employees to undertake the same nature of work only for the reasons that JAPIT would be sponsoring them. The nature of work does not change. The initial engagement of the petitioners is also not in question on any grounds of illegality or irregularity. Since the respondent department have also in their affidavit shown that jobs undertaken by the petitioners are to be performed by personnel now being sponsored by JAPIT, it leads to the conclusion that the job in question of Data Entry has not come to an end in the respective departments.

13. In view of the aforesaid facts and the reasons, there seems to be no justification to replace the petitioners, who are still in engagement by another set of I.T. personnel now being sponsored by JAPIT. However, some petitioners have been thrown out of engagement by virtue of impugned action and certain I.T. Personnel sponsored by JAPIT also seems to have been appointed in their places on contractual basis.

14. Learned counsel for those petitioners have submitted that there are sufficient number of posts still available in the same department where these petitioners would again be reengaged. Since the Court is of the considered view that the impugned action relating to disengagement of the petitioners on the ground of replacement by fresh set of employees son-sored by JAPIT is without any rational justification, the decision to disengage them cannot survive the test of legal scrutiny. Petitioners who are in engagement pursuant to interim orders passed by this Court in the respective petitions would be allowed to continue on the

respective posts as per terms and conditions of their engagement renewed from time to time. The respondent department would consider the cases of such petitioners who have been thrown out by virtue of impugned decision for re-engagement subject to availability of vacant posts in the respondent department concerned within a period of 4 weeks from the date of receipt/production of a copy of this order. However, it is made clear the engagement of these personnel being contractual in nature, it would be governed by its terms and conditions. It would also be open for the respondents to undertake recruitment to such post in a regular manner as per any policy decision of the respondent State taken in that regard.

15. The impugned condition relating to replacement of individual petitioners by personnel now being sponsored by JAPIT in the individual writ petitions has to go in view of the reasons recorded herein above. It is accordingly quashed.

16. Accordingly, the writ petitions are allowed in the manner and to the extent indicated herein above. Consequently, I.A. No. 5987 of 2015 is also closed.